

In *Beven on Negligence*, at page 92, the author says a person guilty of negligence should be held responsible for all the consequences which a prudent and experienced man fully acquainted with all the circumstances which in fact existed, whether they could have been ascertained by reasonable diligence or not, would be thought at the time of the negligent act reasonably possible to follow, if they had been suggested to his mind. Wills, J., in *Vaughan v. Taff Vale Railway Co.*, 5 H. & N. 679, at p. 688, defines negligence as "the absence of care, according to the circumstances."

The trial judge is always justified in asking counsel at the close of the plaintiff's case what legal duty was there on the defendant to do or not to do the acts complained of, and what evidence do you adduce to establish a breach of that duty? and surely if he fails to show this to the satisfaction of the judge, the action must fail.

It is true many judges have erred in non-suiting in actions for negligence. One of the most notable cases is that of *Sangster v. Eaton*, 25 O.R. 78, in which one of our most astute and clear-headed judges fell into an error in non-suiting the plaintiff. The facts of that case are as follows: A mother and infant child, for the purpose of purchasing goods, went into a large departmental store, where a portable mirror was leaning against the wall unfastened. The mother, while engaged in making some purchases, allowed the child to walk about. The mirror fell upon the child and caused an injury, for which damages were sought to be recovered in the action. The learned trial judge, Mr. Justice Street, non-suited, holding that there was no breach of duty to the plaintiff on the part of the defendant company. The Queen's Bench Divisional Court, however, consisting of Armour, C.J., and Falconbridge, J., reversed the trial judge, and directed a new trial. Armour, C.J., in his judgment, which is a masterly exposition of the law, says: "This case ought not to have been withdrawn from the jury, for there were questions arising upon the evidence which must have been submitted to them." After showing the duty upon the defendants to use reasonable care in the premises, the learned Chief Justice goes on to