principle, Sic utere tuo, ut alienum non laedas, is here so manifest that there is no room for controversy as to the extent of responsibility (*b*). But in the cases where this element of control cannot be treated as a determinative factor—the cases, that is to say, whose common distinctive feature is the circumstance that the plaintiff has been injured through the negligence of other parties in respect to a transaction to which he was a stranger—it is only very recently, and to a very limited extent, that judges have shewn any willingness to determine the question whether the plaintiff was one of those persons to whom the defendant owed a duty to use care upon a theory which would ascribe a proper weight to the doctrine of probable consequences. (See XII. post.) This disregard of a fundamental principle has borne its natural fruit in a series of decisions which furnish as deplorable illustration as can be mentioned of the characteristic defects of what the late Poet Laureate aptly described as "the lawless science of our law."

II. The obscurities which beset the subject have been greatly aggravated by the very unpraiseworthy ingenuity which judges have commonly exerted to confine their discussions and their rulings within the narrowest possible boundaries. Even the House of Lords, which, as a general rule, is not lacking in a due appreciation of the obligations incumbent upon it as a court of last resort in a country where most of the codification of the law must for the present be carried on by the collation of earlier decisions, has in this instance chosen the worse part. In the recent case of *Mulholland* v. *Caledonia R. Co.* (*a*) it has had for the first time an opportunity of expressing its views as to the theory upon which the limits of liability for negligence should, as respects persons, be fixed; but it has failed entirely to rise to the occasion. When it is remembered how much trouble questions of the type

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invitation, of course he must take reasonable care that these premises do not injure those who are coming there;" that "it is because he has the conduct and control of premises which may injure persons whom he knows are going to use them and who have a right to do so, that he is bound to take care to protect those persons who will thus be brought into connection with him," and that a similar obligation and for a similar reason arises where the thing so controlled is a chattel. *Le Lievre* v. *Gould* (1893) 1 Q.B. 491. Compare *Heaven* v. *Pender* (1882) 9 Q.B.D. 302, per Cave, J.; *Smith* v. *Steele* (1875) 10 Q.B. 125, per Blackburn, J.; *Collis* v. *Selden* (1868) L.R. 3 C.P. 495, per Bovill, C. J.; *Scholes* v. *Brook* (1891) 63 L.T.N.S. 837, per Romer, J.

(*b*) "Where is the duty of care? I answer that duty exists in all men not to injure the property of others." *Hayn* v. *Culliford* (1879) 4 C.P.D. 182, 185, per Bramwell, B.

(*a*) (1898) A.C. 216.