

stated than by Ayliffe(*f*), an English writer of the early part of the eighteenth century. These are his words: "The word 'fault,' in Latin called culpa, is a general term; and according to the definition of it, it denotes an offence or injury done unto another by imprudence, which might otherwise be avoided by human care. For a *fault*, says Donatus, has a respect unto him who hurts another not knowingly or willingly. Here we use the word offence or injury by way of a *genus* which comprehends deceit, malice and all other misdemeanours, as well as a fault. For deceit and malice are plainly intended for the injury of another, but a fault is not so designed. And, therefore, we have added the word *imprudence* in this definition to point out and distinguish a fault from deceit, malice, and an evil purpose of mind which accompanies all trespasses and misdemeanours. A fault arises from simplicity, a dulness of mind, and a barrenness of thought which is always attended with imprudence, but deceit, called dolus, has its rise from a malicious purpose of mind, which acts in contempt of all honesty and prudence, with a full intent of doing mischief or an injury." The mental attitude of the wrong-doer in culpa, is thus described by a modern commentator on the Roman law(*g*): "La faute (culpa) considérée au point de vue le l'acte illicite, consiste à commettre celui-ci par suite d'un défaut de soins. Le caractère distinctif de la faute est la négligence; l'auteur de l'acte illicite n'a pas prévu la lésion du droit d'autrui, ou bien s'il la prévu, il ne l'a point voulue; mais il n'a pas apporté à ses actions la somme de soins nécessaire."

That the Roman law basis of liability for negligence was an objective one is apparent from the last quotation and the following: "There was grave fault (culpa lata) where one neglected the measures of precaution that every man habitually takes, under ordinary circumstances, and with due regard to the manners, the usages or the peculiarities of the place where the act is done;" or, "where, being under an obligation to another, a person had not given to the property or the business of that other the same care and attention that he habitually gave to his own. . . .

(*f*) A new Pandect of the Roman Civil Law, by John Ayliffe, (Lond. 1734), Bk. 2, tit. 23, pp. 108-110.

(*g*) Van Wetter, Cours élémentaire de droit romain, 1, § 88.