

**INJURIES OCCASIONED BY OR THROUGH THE ACTS
OF THIRD PERSONS.**

It seems repugnant to one's notion of abstract justice to find that many injuries to which other people have directly or indirectly contributed by carelessness or greed should come under the classification of injuries incapable of legal redress. This objection has been felt in courts of law, and attempts have been made to enlarge the borders of redressible injuries, but these efforts have been more or less hampered, on the one hand by the difficulty of finding any satisfactory legal principle on which to base relief, and on the other, by a dread of opening the door of justice too widely. One of this class of cases was the well-known case of *Heaven v. Pender*, 11 Q.B.D. 503. In that case the plaintiff's master was employed to paint a ship then lying in the defendant's dock, the defendant having contracted with the ship's owner to provide the necessary staging to be strung on the side of the vessel to enable the painting to be done. This staging proved to be insecure, and gave way, whereby the plaintiff was injured. His master, apparently, was not liable, because he was in no way responsible for the efficiency of the staging unless therefore the man who negligently erected the staging was liable—the injured workman was without redress and his misfortune would be *damnum absque injuria*. He accordingly sued the dock-owner and at the trial judgment was given in favour of the plaintiff, but this was subsequently set aside on appeal by the Divisional Court (Field and Cave, J.J.), 9 Q.B.D. 302. Field, J., said: "In order to support an action, the plaintiff must shew either the existence of a contract between himself and the defendant, or that some relation existed between them which created a duty from the defendant to the plaintiff to use due and reasonable care, and that the defendant was guilty of a breach of that duty," and this was considered generally up to that time to be a correct statement of the law governing the case. Here there was no contract between the plaintiff and defendant, and the Divisional Court held there was no duty owing from the defendant to the plaintiff. The Court of Appeal (Brett, M.R., and Cotton and Bowen, L.JJ.) reversed this decision, and made a distinctly new departure, but they differed in their reasons. Brett, M.R., laid down as the guiding principle that "wherever one person is by circumstances placed in such a position with regard to another that everyone of ordinary