

The fallacy underlying the *Coultas* case seems to consist in the unwarranted assumption that nervous and mental disorders are not physical. "Physical," according to the dictionary, is a term to signify something pertaining to the material part or structure of an organized being, as opposed to what is mental or moral: but how can it be said that the nervous system is not strictly a physical part of the human organism? Nerves are actual organisms as much as legs and arms, and for that matter so are brains. On what intelligible principle of law can it be said that if you negligently injure a man's leg you are liable in damages, but if you only destroy or injure his nerves you are not responsible? And even in the case of mental disorders resulting from negligence if they are due to a disorder of the brain brought about by the negligence complained of, why in reason should they not be equally a subject for compensation? The brain is surely as much a physical part of the body as a leg, and of the two, the more important. The difficulty is that while an injury to a leg can be seen an injury to the brain or nerves is frequently only manifested by its effects, and the nature of the injury is more or less a matter of conjecture; but any attempt to exclude such injuries from the category of physical injuries seems to be unfounded in reason. It has been remarked by a learned Judge: "That fright—where physical injury is directly produced by it—cannot be a ground of action merely because of the absence of any accompanying 'impact,' appears to me to be a contention both unreasonable and contrary to the weight of authority," *per* Kennedy, J., *Dulieu v. White* (1901), 2 K.B. 669, 85 L.T. 126; but that learned Judge goes on to say that it is necessary that the fright should have been occasioned by an act of negligence in regard to the person affrighted. It is not sufficient that the fright should have been occasioned by an act of negligence towards someone else, such as was the case in *Smith v. Johnson*, an unreported decision referred to by Kennedy, J., where a man was killed negligently in sight of the plaintiff, and the plaintiff became ill, not from the shock produced by fear of harm to himself, but from the shock of seeing another person killed.