

opinions of the judges expressed in the cases collected in the foot note (d).

*Negligence, as a cause of action for civil damages, consists in a breach of duty to exercise care, whereby injury naturally and proximately results to some one entitled to a fulfillment of the duty.*

Before proceeding to examine the legal doctrine of negligence in its psychical bearings it would not be an uninteresting digression to notice for a moment the sociological principle which underlies it as a whole.

That principle has been designated by Herbert Spencer as the principle of "equal freedom" (e). Mr. Spencer says: "Every man has freedom to do all that he wills, provided that he infringes not the equal freedom of any other man." If we regard the word "freedom" so used as equivalent to the word "right" (f), then Mr. Spencer's formula sufficiently expresses the legal conception of man's duty to man in the social state. Cicero declared that the right of the citizen to immunity from harm at the hands of his fellows lies at the very base of positive law—"Fundamenta justitiæ sunt ut ne cui noceatur, etc.," and in generalizing the domain of Wrongs the Roman jurists regarded every unjust infringement of the rights of others as the result of malice or negligence, the presence of either rendering the conduct complained of culpable, i.e., giving rise to the legal duty of reparation (g). Thus throughout the literature of jurisprudence we will find that the principle of altruism—le droit d'autrui—is recognized as the very essence of the conception of responsibility for negligence.

(d) Per Alderson, B., in *Blyth v. Birmingham Waterworks Co.*, 11 Exch. 781; per Willes, J., in *Vaughan v. Taff Vale Ry. Co.*, 5 H. & N. 679; per Blackburn, J., in *Mersey Docks Trustees v. Gibbs*, L.R. 1 H.L., 115; per Byles, J., in *Collis v. Selden*, L.R. 3 C.P. 498; per Brett, M.R., in *Heaven v. Pender*, L.R. 11 Q.B.D. 503; and in *Lane v. Cox*, [1897] 1 Q.B. 415; per Fatterson, J., in *Chandler Electric Co. v. Fuller*, 21 S.C.R. 337; per Robinson, C.J., in *Dean v. McCarthy*, 2 U.C.Q.B. 448; per Young, C.J., in *McDougall v. McDonald*, 12 N.S.R. 219; per Mitchell, J., in *Osbo ne v. McMasters*, 40 Minn. 103, S.C. annotated in 12 Am. St. Rep. 698.

(e) Social Statics, ed. of 1868, p. 121.

(f) "Legal rights are the effects of civilized society. . . Freedom. . . is the effect of law." Bouvier's Law Dict. (by Rawle) 1. p. 848.

(g) Cf. Salkowski, Rom. Priv. Law, p. 514, and Goudsmit's Pandects, § 76.