

## LIABILITY FOR ACCIDENTS.

ing to the class of actions in question is this—that the penalty of the act of negligence, even when it is proved ever so clearly, almost always falls on one who is perfectly innocent of any blame. A servant carelessly drives a cart over the plaintiff and breaks his leg; but the servant can't pay anything—his master can—therefore the law makes the master pay the damages. Of course the servant in ninety-nine cases out of a hundred is wholly unable to repay his master. The result is that the master is punished, and the servant who did the mischief goes scot free."

But his language is, it seems to us, "extravagant when he says:—

"If a tradesman who has saved £10,000 by a life of industry and frugality, sets up a brougham, and his coachman happens in a moment of carelessness to drive over and kill a merchant who is making £2,000 a-year, the master may be mulcted of his whole fortune in damages, though he was entirely blameless."

He argues that the rule *respondet superior* is only applicable with justice where the servant has followed his master's orders in doing the very act complained of, and that it ought never to be applied where the act done is beyond or contrary to orders; and in support of his contention he calls in the analogy of the criminal law, and cites the institutes of Menu, "the oldest system of law known to us," where it is laid down that,—

"Where a carriage has been overturned by the unskilfulness of the driver, then, in case of any hurt, the master shall be fined 200 panas; that if the driver shall be skilful but negligent the driver alone shall be fined, and those in the carriage shall be fined each 100, if the driver be clearly unskilful."\*

He continues: "The rule which thus approved itself to the mind of the Indian lawgiver 3,000 years ago, rests upon the immutable distinction of justice and reason, that in the one case the master is to blame, and in the other he is not. He must of necessity employ servants to do a multitude of things which he can't do himself; he does his best to employ skilful and careful servants; this is all he can do, and, when he has done it, to make him answerable for an act of carelessness of the servant is to charge him with what he neither committed nor was able to prevent or foresee.

"Let me guard myself against misunderstanding—

ing, by saying, that I am not contending for any immunity for the master in any case where he is justly chargeable with personal neglect or blame. For instance, if he makes regulations calculated to cause mischief—if he knowingly provides materials improper for the work in hand—if he does not exercise due vigilance over his labouring men, and in many other cases, he might fairly be held liable as for his own fault. What I contend against is the law which makes him suffer where he is blameless, the fault lying entirely with the servant—as it commonly does."

After arguing out the position he supports at considerable length, Mr. Brown proposes to carry out his views as to the limitation of the master's liability in this way:—

"Let it be enacted that in no case should a master be responsible in damages for the negligence of a servant beyond the amount of £200, or any other fixed sum which may be considered a sufficient penalty for keeping a servant, who committed an error. If, however, the public come to see the injustice of punishing a master at all, where he has taken due care to hire an experienced servant of good character, the requisite amendment of the law would be effected by enacting as follows:—1. That no action should be brought against the master without joining the servant who did the mischief as co-defendant. 2. That the master should be entitled to acquittal on proof that he took due care in the engagement of the servant, and was personally free from any other kind of blame. 3. That the guilty servant should be compelled to pay a part of his wages weekly towards the satisfaction of the damages, with a summary remedy to enforce payment. Imprisonment might be justly added in cases of injury to life or limb.

"I submit that such a law would be far preferable to that which now subsists. To see the way in which it operates is enough to extort from one an outcry against the perversity of mankind, and the imbecility of laws to deal with it. Because men are prone to negligence, and because society requires some protection from this propensity, the law has endeavoured to give it by allowing such actions as I have described. What can be more laudable or politic in appearance? Yet the effect has been to let in a flood of fraud and perjury, imposture and injustice—such as excites a doubt whether greater mischief would arise from abolishing such actions altogether. Too often they exhibit the spectacle of a court of law laboriously doing iniquity in the name and with the forms of justice—a scene the most revolting to every right-minded man."

\* "Institutes of Menu," by Sir W. Jones, p. 181, ss. 293, 294, last edition.