NEGLIGENCE IN RELATION TO PRIVITY OF CONTRACT.

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I. It is sufficiently obvious that, from a purely logical standpoint, the natural and probable consequences which the common law declares to be the measure of a man's liability for a negligent act include the likelihood that a certain individual will be injured as well as the likelihood that he will be injured in a certain manner. If therefore the courts had carried out that doctrine consistently, the question whether the plaintiff was one of those persons to whom the duty of exercising reasonable care was owed by the defendant would be decided by the same standard as the question whether there is a causal connection between the given breach of that duty and the physical changes which constituted the injury in suit. That is to say, the issue proposed would be, whether the defendant ought, as a man of ordinary sense and intelligence, to have seen that, if he should be careless in respect to the given subject matter, persons coming within the same category as the plaintiff would probably suffer damage.

In the countries where the common law is administered, however, the course suggested by these obvious considerations has not been pursued. It is true that the courts, in dealing with one large class of cases, viz., those in which the injury was the direct result of the use of an agency which was under the immediate control of the defendant at the time when the plaintiff was damaged by it, have naturally and perforce worked out a theory of liability which confers a right of action upon the same classes of persons as would have that right if the test of reasonable anticipation had been consciously applied. Under no conceivable scheme of juridical responsibility could a defendant be heard to allege that a person who was, as a matter of fact, injured by reason of his contact with or proximity to real or personal property which the defendant then controlled, was not one of those persons whom a reasonable man would have expected to suffer injury from such contact or proximity (*a*). The applicability of the fundamental

(*a*) See *Elliott* v. *Hall* (1885) 15 Q.B.D. 315, where this point is clearly brought out. It was laid down in a recent case by Lord Justice Rowen that, "if the owner of premises knows that his premises are in a dangerous condition, and that people are coming there to work upon them by his own permission and