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THE PSYCHOLOGY OF NEGLIGENCE.

Negligence has been characterized as "one of the most difficult, involved and voluminous topics of the law"^(a).

The English word "negligence" is derived from the Latin substantive "negligentia," which primarily means "want of care" and is the antonym of "diligentia." But while the correspondence between "negligentia" and its English derivative is exact in ordinary use, there is a technical difference between them as respectively employed in the Roman and English systems of law. In the former system "negligentia" only became an actionable or punishable fault (*culpa*) when it fell within the classification of "great negligence"—"magna negligentia culpa est"^(b).

In the language of jurisprudence, therefore, "culpa" and "negligence" are to be regarded as terms of equal meaning.

It has been said that no definition of negligence formulated by any one judge or jurist has proved satisfactory to the framer of another definition^(c); and the reason is not far to seek; for when we begin to define the law we enter the province of philosophy, and since philosophy emerges from the analysis of empirical conceptions, which, as Kant points out^(d), can only be *explained* and not *defined*, it is not to be expected that in any branch of the philosophy of the law we can start out with the synthetical exactness of mathematical science. But even Kant concedes that propositions or statements, which are properly speaking not definitions but merely approximations thereto, may be used with advantage in philosophy; and, as the subject in hand demands some attempt at a concise statement of the elements of negligence in law, the following is predicated upon the

(a) Campbell's "Science of Law," p. 200.

(b) Paul., Dig. 50, 16, 226.

(c) Shearman & Redfield on Negligence, 5th ed., vol. 1, § 1.

(d) Kritik der reinen Vernunft (Method) § 1. In mathematics, Kant says, definition belongs ad esse, in philosophy ad melius esse.