

entry of trespassers, be they adults or infants, nor to take precautions to keep them off his premises or protect them after entry and in restricting the doctrine to turntables alone as so many of the courts upholding it do, they refuse to follow it to its natural and logical consequences. Inasmuch as there is no common law doctrine then permitting such a discrimination against railroads the courts in upholding such a doctrine are, in the absence of express statutory authority, exceeding their powers and are directly encroaching upon the peculiar province of their legislatures in violation of their constitutions. If such discrimination be necessary, the legislature can change the common law as far as may be necessary to regulate the use of turntables and other dangerous appliances and leave untouched the common law rights of the ordinary landed proprietor. The New Jersey Court in *Delaware, etc., Ry. Co. v. Reich*, 40 Atl. 682, says that the doctrine, if followed to its logical conclusion would require a similar rule to be applied to all landowners in respect to all structures, machinery or implements maintained by them, which presented a like attractiveness and furnished a like temptation to children. He who leaves his mowing machine, or dangerous agricultural implement in his fields would seem to be amenable to this duty.

There is no controversy that the legal principle is correct which requires a person to owe some duty to another before his negligence shall be the basis of a cause of action against him. The "turntable" cases all acknowledge that. The weakness of the *Stout* case lies in the fact that it sought to impress on railroad companies, and did so, liability for negligence in leaving the turntable unlocked before it had established any duty on the part of the company toward the plaintiff. In order for a plaintiff to recover in negligence cases, it must appear that the defendant owed him some duty which it failed to discharge; for where there is no duty there can be no negligence giving rise to a legal action, *Walker's Admir. v. Potomac, F. & P. Ry. Co.*, supra. If, then, the railroad owed Stout no duty what difference could it make whether the turntable was locked or not?