

same weight, but, so far as the present writer is aware, has not even been discussed (4).

VI. The next two propositions exhibit the effect of doctrines which operate by carrying us altogether outside the characteristic principles of the law of negligence.

(C). The operation of the general rule that a person who creates a public nuisance is liable to anyone who, being in the exercise of his lawful rights, sustains special damage therefrom, is not restricted by the fact that the nuisance resulted from the negligent performance of a contract with a third person (a).

This rule amounts simply to a statement that, if the actual consequences of a person's negligence is the creation of a nuisance, his liability is measured by the standards appropriate to that offence, and is therefore really determined without any regard to the question whether he was or was not negligent. The lower offence, being, as it were, merged in the higher, it becomes quite immaterial whether the plaintiff was a stranger to the contract in the performance of which the nuisance was created. The circumstance that the material substances which constituted the injurious agency had passed out of the control of the negligent person at the time they inflicted the injury in suit also ceases to be defence under such circumstances, as is shown by the cases where a landlord is held liable for a nuisance which existed on the leased premises when they were demised (b).

The essential result of the rule, therefore, is that a negligent act which produces precisely the same physical conditions may render a person liable to a much wider range of persons in one case than in another, merely because the locality in which those conditions happen to be produced renders them a public nuisance,—a predicament which obviously cannot be justified on logical grounds.

(D). If A, in carrying a contract with B, is not merely negligent, but is also guilty of a fraudulent misrepresentation in respect to the subject-matter, a stranger to the contract, C, who is injured by his reliance upon

(4) See V. ante.

(a) *Longmeid v. Holliday* (1851) 6 Lxch. 761, where Parke B. instanced the case where a defective bridge is erected by a contractor on a public highway. To the same effect see *Collis v. Selden* (1868) L.R. 3 C.P. 495; *Winterbottom v. Wright* (1842) 10 M. & W. 109.

(b) *Rosenell v. Prior*, case 6, 2 Salk. 460, approved in *Cheetham v. Hampson*, 4 T.R. 318, per Buller, J., p. 320; *Rich v. Basterfield*, 4 C.B. 783, 16 L.J.C.P. 273; *Gandy v. Jubber*, 5 B. & S. 78, 9 B. & S. 15.