

agreed to lease to the plaintiff, the removal having taken place without the plaintiff's knowledge after the agreement, and before he was put into possession. The plaintiff recovered £20 damages and in order to determine the scale of costs to which the plaintiff was entitled, it was necessary to determine whether the plaintiff's action was founded on contract or tort. The Court of Appeal (Collins, M.R. and Romer, L.J.) held that the action was founded on tort. Collins, M.R., admits that it is difficult to say whether a particular thing is a wrong or a breach of contract and that the distinction between tort and contract is not a logical one, but he is clear that a breach of duty arising out of a contract may be a wrong. The following is the distinction he draws between contract and tort. "If the claim of the plaintiff had been set out at large pointing to some particular stipulation in the contract, which stipulation had been broken, the action would be founded on contract, but where it is only necessary to refer to the contract to establish a relationship between the parties and the claim goes on to aver a breach of duty arising out of that relationship the action is one of tort."

NEGLIGENCE — INTERVENING ACT OF THIRD PARTY—EFFECTIVE CAUSE OF DAMAGE.

McDowall v. Great Western Ry. Co. (1902) 1 K.B. 618, was an action to recover damages occasioned by a vehicle being negligently allowed to run down an incline across a highway upon which the plaintiff was lawfully passing. The facts were that the defendants' servants shunted some cars on to a siding which was on the incline. The siding had a catch-point which would prevent the cars if set loose from running down the incline, but for the convenience of their shunting operations they did not place the cars beyond the catch-point, but screwed down the brakes and left them in a position where they would not have caused damage if not interfered with. Some boys trespassing on the siding released the brakes of the car which caused the injury. The defendants were aware that boys were in the habit of trespassing on the siding and meddling with the cars placed upon it, and took no steps to prevent their so doing. Under these circumstances Kennedy, J., held that the defendants were liable to the plaintiff in damages for the injury sustained by him.