

In this article it is proposed to review some of the authorities which throw light upon this question of justification for trespass. That necessity is a good defence to many torts—or, rather, to acts which would amount to torts were it not for the defensive plea—is clearly shewn by the cases and the dicta of many duly qualified writers on our judicial system and our laws generally. This underlying principle outcrops in many places in our law. Speaking broadly, however, the authorities on the point which we propose to consider are not very numerous. Possibly this is a subject for congratulating ourselves as implying that our national character has a very large element of fairness in its composition—that the average British subject abhors the bringing of an action or even the raising of a complaint against some person who, with all the best intentions in the world, has caused the party whom the former intended to benefit some material harm.

Succour may be rendered on the spur of the moment in a way which, had there been an opportunity for maturer reflection, would have been discarded in favour of some other method of assistance. At the time, the party assisted will, no doubt, willingly recognize the good intentions with which the acts of assistance were proffered. Later, when he reflects on other methods which might have been taken by the party who came to his assistance, and finds that had those methods been adopted the benefits to himself would have been greater and the harm done less, his gratitude disappears and in place of it he fosters a feeling of annoyance which may culminate in his eventually suing his would-be benefactor for the damage. This leads to the question which is very far from having been clearly decided—how far the human element is to be taken into consideration in such a case, and how far the would-be benefactor is to be punished for negligence in applying the modes of assistance prompted by the spur of the moment.

In an old case tried at the beginning of the seventeenth century a ferryman had "surcharged" his barge. He had, presum-