determine the tendency, nature, and quality of the place or object involved. To determine these accurately, it is essential to apply the practical test of common experience. *Phelps* v. *R. R. Co.* (1887) 37 Minn. 487. Failure to realize the true evidentiary purpose and that negligence or due caution are, at best, merely indirect inferences, has led to much of the confusion of the cases, which a neglect of two simple conditions of admissibility has not lessened.

In the first place, to make the evidence of prior effect *legally* relevant in an action where its present effect is at issue, an underlying similarity of conditions must be shewn. *Aurora* v. *Brown* (1882) 12 Ill. App. 131; *Bailey* v. *Trumbull* (1863) 31 Conn. 581. In the absence of such proof, the evidence is of too indirect a character to be of practical probative value. *Sullivan* v. *D. & H. Canal Co.* (1900) 72 Vt. 353. Secondly, the more recent evidence of injury at the given place, the more strongly does the presumption of a continued similar condition operate. Where the accident occurred at too distant a date, evidence of it has often been excluded, on the theory, seemingly, that while ordinarily it is merely the *weight* of the evidence which varies inversely as the remoteness increases, still, at a certain point the evidence itself becomes too unimportant to be legally material, a fortiori, competent. The conditions of modern trial by jury afford an explanation. Oftentimes these two grounds of exclusion are confused, but that there are two distinct inferences involved, is clear. Cf. *Gillrie* v. *Lockwood* (1890) 122 N.Y. 403. At what precise stage the exclusionary principles should operate is a question for the trial court to determine. (Thayer, Prel. Tr. Evid., 517: "In such cases it is a question of where lies the balance of practical advantage.") Necessarily, the question must be largely one of judicial discretion; but that, it is submitted, in no way justifies an inflexible rule of exclusion. *Bemis* v. *Temple* (1894) 162 Mass. 342, 4.

In the first American case in point, *Collins* v. *Dorchester* (Mass. 1850) 6 Cush. 396, an injury occurred on a highway through an alleged defect in a railing. The Massachusetts