

"Wherever the circumstances disclosed are such that, if the person charged with negligence thought of what he was about to do, or to omit to do, he must see that, unless he used reasonable care, there must be at least a great probability of injury to the person charging negligence against him, either as to his person or his property, then there is a duty shewn to use reasonable care (f)

In the same case Lord Justice Fry furnished a third formulary:

"One may lay down with some safety that, where a man without contract does something to another man, and the first man knows that, if he does the act negligently, that negligence will in all probability produce injury to the person or property of the second man, there the first man owes the second a duty to do the act without negligence."

These propositions, it will be observed, bring out with reasonable clearness the fundamental fact noticed at the beginning of this article that the likelihood of a certain person's being injured is as much within the scope of the natural and probable consequences for which a negligent person is liable as the likelihood that the physical event which constitutes the injury will occur. At present, however, it must be admitted that, logically unexceptionable as they appear to be, the opinion of the majority of the Court of Appeal in *Heaven v. Pender*, supra, as well as the reasoning in the case of *Caledonia R. Co. v. Mulholland*, (g) must be taken to shew that they are not yet accepted as correct statements of the law. That they could not be accepted without overruling at least a part of the cases cited above is manifest. In subsequent cases even Lord Esher seems somewhat to restrict the scope of his doctrine by declaring that the duty upon the breach of which an action for negligence is founded is that a man is bound not to do anything negligently so as to hurt a person near him, and that the whole duty arises from the knowledge of that proximity (h). Whether he really intended to recede from his original views it is not easy to determine, but evidently it would be necessary to strain this later language very considerably to make it cover the cases which are really the most troublesome of all, viz., those in which the injurious agency was not under the defendant's control at the time of the accident.

(f) *Cunningham v. Great Eastern R. Co.* (1883) 49 L.T.N.S. 392.

(g) (1898) A.C. 216.

(h) *Thomas v. Quartermaine* (1887) 18 Q.B.D. 685 (p. 688); *Le Lievre v. Gould* (1893) 1 Q.B. 491. Compare also the language used by Smith, L.J. in the latter case (p. 504).