

adduced in it find that the proximate cause of the injury done was the defendant's negligence?"

The first suggested simplification, therefore, in deciding actions for injuries is the elimination of most of the cases on "all fours" as to facts.

There is further a frequent confusion of ideas which added to the difficulty in presenting evidence in this class of action tends to cloud even more the issues in any particular case.

It is submitted that a mental catalogue of the main classes of action with some distinctions would help to clear up some of this confusion. Such a catalogue might be somewhat as follows:

1. Cases of injury where there is no negligence (or what is the same thing in law), no evidence of negligence causing the accident and where, therefore, there is no liability. Probably the leading modern case for this proposition is *Wakelin v. London & South Western Ry.* (1886), 12 App. Cas. 41. Under this heading we learn that not only must the defendant have been careless but his carelessness must cause the injury or it will not be negligence.

2. Cases where the carelessness is that of the person injured. This is not strictly "contributory negligence," but is a case of the injured person being the "author of his own wrong." It implied that the plaintiff alone is negligent and that the defendant is innocent. Instances of this are *Faucett v. Canadian Pacific R. Co.* (1902), 32 Can. S.C.R. 721, and *Andreas v. Canadian Pacific R. Co.* (1905), 37 Can. S.C.R. 1. This class of case frequently arises where there is some defect in the employer's plant due to the negligence of the employee who has been injured; and where such cases arise now under the heading "Master and Servant" the intricate legal problems with which we were formerly familiar are now happily solved by some species of Employers Liability Insurance. It is a pity that the distinctive terms for cases where the plaintiff's negligence "contributed" together with the negligence of the defendant in causing the injury and those where they were the sole cause of the injury have not been more carefully employed.

3. Cases where the combined negligence of plaintiff and defendant caused the injury. It is in cases of this character that the greatest difficulties arise.

Theoretically one might argue for various solutions, for instance: (1) The persons most to blame should suffer, or (2) Both being to blame they should share the loss, or (3) The persons last to blame should suffer regardless of the degree of carelessness on the part of either, or (4) The person injured should not recover if he is at all to blame.

The first of these has much to be said for it in theory and the last seems illogical and unfair, but in fact the degree of culpability is seldom an element in English common law except perhaps in assessing damages, 21 Hals. 361; and the last has had much influence upon it. The second like the first has no place in the common law and the third has from time to time emerged and in Canada since the judgment in the *Brenner* case has been digested under the caption "Ultimate Negligence."

Our law in endeavouring to solve these problems has for its main enquiry conducted a search for what it called the "Proximate Cause" and in theory the results should have been simple and satisfactory. Certainly some such limitation of the enquiry is necessary for "it were infinite for the law to consider the causes of causes and their impulsion one of another." Lord