and ignore the substance of a juridical situation. It has been attempted to justify the accepted rule on broader grounds, but these will be more conveniently treated in another place. (See XIII. post).

The hardship of the general rule is, in practice, a good deal mitigated by the various qualifications to which it is subject. These we shall now proceed to discuss.

V. The first two doctrines to be noticed are based on considerations which only affect a small proportion of the community.

(A). Any person who is injured by negligence in the performance of a public duty may recover damages from the person subject to that duty, although the contract which led to his being in the situation which exposed him to the risk of injury from such negligence may have been entered into by other parties.

The familiar principle that, "if a public officer abuses his office, either by an act of omission or commission, and the consequence of that is an injury to an individual, an action may be maintained against such public officer" (*a*), would, as respects duties which are public in the sense that they are undertaken by State functionaries, plainly involve the consequences indicated by this proposition, if such duties could legitimately be referred to an antecedent contract. But as this element is wanting in such cases, the rule as to public duties concerns us in the present connection only in so far as it relates to duties which are deemed public, because they arise out of the pursuit of a few occupations, the essential characteristic of which is that they imply a standing offer to perform certain services for any member of the community who may demand them. All the reported decisions seem to have reference to common carriers, whose liability for injury to persons or property who have once been received on the transporting vehicle, is, as is well settled, independent of contract (*b*), but the rule would presumably be applied in an action brought against an innkeeper or a farrier (*c*). A notary-public, however, whose

(*a*) Best, C.J., in *Henly* v. *Mayor, etc.*, 5 Bing. 91 (p. 107). See also Lord Holt's remarks in *Lane* v. *Cotton*, 1 Ld. Raym. 646 (p. 654) as the right of action against sheriffs.

(*b*) *Winterbottom* v. *Wright* (1842) 10 M. & W. 109; *Longmeid* v. *Holliday* (1851) 6 Exch. 761; *Foulkes* v. *Metropolitan R. Co.* (1880) 5 C.P.D. 157; *Marshall* v. *York, etc. R. Co.* (1851) 11 C.B 655; *Martin* v. *G.I.P.R. Co.* (1867) L.R. 3 Exch. 9; *Austin* v. *Great Western R. Co.* (1867) L.R. 2 Q.B. 442; *Dalyell* v. *Tyrer* (1858) El. Bl. & El. 899.

(*c*) See the opinion of Lord Holt in *Lane* v. *Cotton*, ubi supra.