the Admiralty case of *The Bywell Castle*,[4] where in a collision, the libelled vessel changed her course when "in her very agony," as James, L.J., put it, it was held that, if a ship, by wrong manœuvres, has placed another ship in a position of extreme peril, that other ship will not be held to blame, if in that moment of extreme peril and difficulty she happens to do something wrong, and is not manœuvred with perfect presence of mind, accurate judgment and promptitude, "although," observed Cotton, L.J., those before whom the case comes to be adjudicated, with knowledge of all the facts, are able to see that the course adopted was in fact not the best." As it is put in the American case of *Wesley City Coal Company* v. *Healer*,[5] where a party has given another reasonable cause for alarm, he cannot complain that the person so alarmed has not exercised cool presence of mind, and thereby find protection from responsibility resulting from the alarm. So, in *Collins* v. *Davidson*,[6] it was said by McCrary, J.: "In the case of sudden and unexpected peril, endangering human life, and causing unnecessary excitement, the law makes allowances for the circumstance that there is but little time for deliberation, and holds a party accountable only for such care as an ordinarily prudent man would have exercised under similar circumstances." But, in a recent case,[7] Bramwell, L. J., objected with much force to such a phrase as "What would a prudent man do?" saying that a prudent man might jump out of a fast train, if he saw imminent danger to his wife or child; [8] and the phrase should be taken to mean, "What would a prudent man do under ordinary circumstances?" The general rule, indeed, seems to be best formulated by Field, J., thus:

"If a person, by a negligent breach of duty, expose a person towards whom the duty is contracted to obvious peril, the act of the latter, in endeavoring to escape peril, although it may be immediate cause of the injury, is not the less to be regarded as the wrongful act of the wrong doer; [9] and this doctrine has we think, been rightly extended in more recent time to 'a grave inconvenience' when the danger to which the passenger is exposed is not in itself obvious." [10]

In such a case, said Lord Ellenborough in *Jones* v. *Boyce*,[11] "the proprietor will be responsible, though the coach was not actually overturned." But an able writer in the October number of the *American Law Register* is perfectly justified in stating that the rule is subject to this limitation,—that it is necessary that the situation of peril in which the plaintiff is placed, in order to make his act while there an excusable error of judgment, must be the result of the negligence of the defendant; [12] and where, therefore, the plaintiff has, by his own negligence, placed himself in a position of known peril, or where the act of the plaintiff causing his injury resulted from a rash apprehension of danger which did not exist, then, although in the excitement and confusion he makes a mistake in his attempt to escape from impending peril, and is exposed to greater danger, the consequences of such mistake cannot be visited upon the defendant, for no degree of presence of mind nor want of it has anything to do with the case, as it was negligence to be there. On this subject, no better illustration could be presented than the Irish case of *Kearney* v. *The Great Southern and Western Railway Co.*, decided in June last by the Queen's Bench Division.

The plaintiff there was a passenger on the defendants' railway from Lismore. At six o'clock, when the train was approaching Castletownroche station, the plaintiff felt a shock, and some pebbles struck the windows of the carriage, and the carriage, as the plaintiff thought, became filled with smoke. A man in the same compartment as the plaintiff looked out of the window, and cried out that the train was on fire. The train was moving very slowly at the time; the plaintiff was greatly frightened, and jumped out of the carriage, and was in consequence injured. It appeared that the coupling rod of the engine had broken, which caused water and steam to issue from the engine, which, it would seem, the plaintiff mistook for smoke. In fact, the carriage was not on fire, nor was the plaintiff, in fact, in any danger, when the accident happened. A brake was put on, and the train had nearly stopped when the plaintiff jumped out. O'Brien, J., who tried the case, was of opinion