

negligence, and in consequence the plaintiff, who was driving the coach, was injured, and the plaintiff was held to have no right of action against the defendant. That case the Divisional Court (Lord Alverstone, C.J., Wills and Kennedy, JJ.) in *Earl v. Lubbock*, considered to be good law, and dismissed the action. At the same time it is deserving of notice that *Winterbottom v. Wright*, as Kennedy, J., points out, was decided on a demurrer to a declaration which did not allege that the defendant knew that the plaintiff or other persons of the same class would necessarily or probably drive the van in question. How far the omission of this allegation of fact, influenced the decision, it is difficult to say.

The difficulty in threading one's way through this branch of law is increased by the conflict of judicial opinions, and the impossibility of ascertaining with precision the precise rule which governs any given case; for example, negligence in preparing an article bought, to the knowledge of the vendor, for the use of a third person who is injured thereby, will give the third person a right of action against the vendor though there be no privity of contract between them: *George v. Skivington*, supra; and negligence in constructing a staging intended to be used by a third person will give the third person a right of action for injury sustained in consequence of such negligence against the person guilty thereof: *Heaven v. Pender*, supra; but negligence in repairing a vehicle intended to be used by third persons will give such third person no right of action for injuries sustained in consequence of such negligence: *Winterbottom v. Wright* and *Earl v. Lubbock*, supra; and mere negligence (without actual fraud), in making a statement which a third person acts upon will give no right of action to such third person making the statement: *Peek v. Derry*, and other cases, supra; *Low v. Bouverie* (1891) 3 Ch. 82; *Dominion S. & J. Co. v. Kittridge*, 23 Gr. 631; *Moffatt v. Bank of U. C.*, 5 Gr. 374; *Cook v. R. C. Bk.* 20 Gr. 1. These appear to be self-contradictory propositions and yet all are good law according to the present state of the authorities.

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