

these words had become entirely technical, and they had acquired various technical meanings. Dolus was used in the law of contracts for what we call fraud, and likewise in criminal law for malice. In the popular language, dolus retained the meaning of fraud, and in translating contract-dolus we used the English word for its original and popular meaning, whereby its acquired technical meaning was mainly lost; culpa we treated in the opposite way, disregarded its original meaning of guilt and adopted its acquired technical meaning of negligence. As we also adopted the word fraud as the technical name for certain criminal acts, we have become apt to apply a too strict interpretation to dolus, with a correlative too expansive interpretation of culpa. The Germans have suffered somewhat in the same manner. It is true that in civil matters, they have two words for what we call fraud, *Vorätz* and *Arglist*, which try to differentiate degrees of fraud, but still, both words imply intentional misrepresentation. On the other hand, both *Unachtsamkeit* and *Nachlässigkeit*, just as negligence, imply principally carelessness.

That fraud must carry with it responsibility in damages, appears self-evident; equally plain it is that mere carelessness cannot lead to any further duty than that of restitution. But there is, without doubt, a wide hiatus between intentional fraud and mere carelessness. In practical life, this must be bridged over, and it is quite natural, and in accordance with the rule (in *dubio pro mitius*), that negligence has been expanded to have an altogether too wide technical meaning.

In the modern legislation of various countries, attempts have been made to cover cases, not fraudulent, nor arising from simple carelessness, and to some extent place them on the same footing with fraudulent cases.

The German Civil Code⁵ says: *Fehlt der verkaufte Sache zur Zeit des Kaufes eine zugesicherte Eigenschaft, so kann der Käufer, statt der Wandlung oder der Minderung, Schadenersatz wegen Nichterfüllung verlangen . . .* (If, at the time of

5. (BGB) sec. 463.