

It is interesting, indeed, and profitable, to trace the gradual growth of the law of negligence in this respect and of the public policy which lies beneath it. The English law at first gave no general redress for negligence. That negligence was only actionable which was expressed in a direct and forcible tort and whose results were direct and proximate. There was no redress for the indirect results, even of forcible torts, nor was there any redress for the sins of omission. It was not until the reign of Edward III. that the action of trespass on the case was invented or created and that the law of actionable negligence really began to exist. With the invention of that writ a new right was created, the right to a relief in damages for injuries sustained through the failure of another, on whom the duty of care and protection was imposed, to perform that duty whether the negligence consisted in omission or commission. But there were questions even then to be settled and which are still largely unsolved. These questions are: "On whom is the duty of care and protection imposed," and "What are our real duties?" "Are we to any, and if so, to what extent, our brothers' keepers?" These questions must be fairly and squarely met. Do we, or do we not, owe to our fellowmen the duty of help and of protection in periods of dire distress when that assistance is easily within our power? Is there aught of Christianity in the law of the land?

Closely connected with the cases we have considered are those in which railway companies and manufacturers have been sought to be held liable for the value of the services of surgeons and of others which have been furnished persons whom they have injured, and it should be incumbent on the companies to procure such services. These cases on the whole point strongly to a new gospel of humanity. Their tendency is to make one believe that the law of negligence and the test of tort liability is to-day, as it always has been, progressive and is the expression of a growing judicial conscience, a conscience, it is true, which is limited by considerations of practicality and which is too regardful of precedents, but which is a conscience nevertheless.

"An implied power," says Judge Thompson in his *Commen-*