

REVIEWS

Negligence in Law. By Thomas Beven of the Inner Temple, Barrister at Law, London. Stevens and Haynes. 2 vols.

The publication of the third edition of "Negligence of Law" has put in the hands of the profession one of the most valuable treatises on the Law of Negligence that has yet appeared. The entire subject of negligence is most thoroughly analyzed and carefully arranged and the author's treatment is practical without being empirical. The late Lord Russell of Killowen once deprecated the fact that legal treatises are largely analyses of decided cases, legal arguments at the bar the discrimination of those cases, and the deliverance of judges but little more than able efforts to establish analogies or differences between the case in hand and reported authorities, and the remedy which he suggested was in having the law historically and systematically taught. Had the distinguished Lord Chief Justice had before him such a book as this last edition of Beven, he could scarcely have included it in his just criticism. The author deals with the statement of legal principles and definitions founded upon the decisions of the English and American Courts and inspired by that great source of the common law the *corpus juris civilis*, and while he recognizes, as Lord Coke did, that the whole common law resides in the breasts of the judges, he also makes it clear that "in welling from the sanctity of its source it is apt to flow into distinctly cross currents and to tinge itself with strong individual traces of the principal channel through which it is drawn," and that "to find the pure stream is a little difficult without the assistance of those methods which purge error in the realm of science or philosophy." See his preface, vol. I, p. v. That the author carries out this plan fully will be seen from an examination of his work. The opening chapter "on constitutive principles" which deals with the basic principles of the law of negligence, and chapter 3 "on limits of liability" and which is built upon the fundamental proposition of accountable agency, or that in order to found a liability there must be some *person* to whom legal liability may be imputed as distinguished merely from some agency or an unreasoning force, discuss fundamental questions from a point of view which we have never seen succinctly

stated elsewhere. Not the least valuable or important part of chapter 3 is the analysis of the leading case of *Hadley v. Baxendale*, 9 Ex. 341, and the subsequent applications and limitations of the doctrines of that case in the English and American Courts. Chapter 2 on "degrees of negligence" will be of inestimable value in connection with the legislation recently enacted by the American Congress and which, if it shall be held constitutional, will make the question of comparative negligence something more than academic or scholastic.

One cannot read carefully the chapter on the "onus of proof" without wondering why the legal import of the phrase *res ipsa loquitur* ever presented any difficulty. Equally valuable are the chapters on contributory negligence, Lord Campbell's act, the master's duty to his servant, the duty of a master to answer for the acts of others, the limitations on employer's liability where work is done under an independent contract, the disability of a servant to recover at common law for injuries received in the course of employment and the Employer's Liability Acts. All of these chapters referred to, as are the other chapters under which various branches of negligence are topically treated, are illustrated by the leading English and American cases. The valuable feature of the work to American practitioners is that the references to American cases are something more than marginal citations. The author follows out all through his work the idea stated in his preface that "the Americans have a genius for law," and that "the learning and brilliance of the judgments found in Johnson's or Metcalf's or indeed any of the best American reports on the historical development of the common law is such that no English writer can afford to neglect them." As he says "they are the supplement, sometimes the substitute for our own and must always have a place in English treatises ambitious of excellence." His discussion in his concluding chapter of estoppel by negligence, an expression which he says is usual but not accurate, since negligence prevents a right of action accruing, and an estoppel a right that has accrued from being set up, presents in the range of something more than fifty pages a practical discussion of questions which we do not find topically treated in any other treatise. The law of negligence is to-day one of the most practical questions which comes before the courts, and it is impossible to divorce it from the range of case law. Thompson's voluminous Commentaries on Negligence deal with 36,000 adjudicated precedents or thereabouts, and it is refreshing to find a book like this which recognizes that the law of negligence cannot be determined by

matching cases, and that it can only be successfully studied from the standpoint of comparative jurisprudence, and that the only value of reported cases is as statements of fundamental and controlling legal principles. The superlative excellence of Sir Frederick Pollock's great legal classic on Torts and which has given to the bar of England and America a compact statement of elementary principles, can never be overrated. Mr. Beven may be regarded as having supplemented this with a discussion of reported cases and statements of legal principles and definitions drawn therefrom. The book, to the legal practitioner seeking to know the real reasons underlying reported cases and their proper application to facts with which he has to deal, will be of immense practical value; to the student it will be fascinating and stimulating of the best thought.

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