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THE DOCTRINE OF NEGLIGENCE.

The rights, which municipal law proposes to guard from wrong, or to repair, when injured, by a pecuniary consideration, are usually stated under the primary division of the Rights of Persons, and the Rights of Property, of which, for the sake of method, a brief synopsis may be attempted here.

The first class consists of LIFE; BODILY SECURITY, embracing health and freedom from injury by mechanical force, so far as either condition of the citizen may be affected by causes under the control of others; LIBERTY OF LOCOMOTION; and REPUTATION, or that esteem and confidence of our fellow-men, in matters pertaining to the necessary pursuits and ordinary comforts of society, which we may really deserve by our conduct or qualities.

The last class comprises those various relations of exclusive possession and enjoyment, as declared and sanctioned by law, which we hold to certain material objects, adapted to the wants of our existence; and those, also, which we hold to the required space upon the surface of the earth, so far as space is in the nature of things a necessary condition, for the exercise of our personal and other rights. This last subdivision of property expresses in its radical form the idea of *real estate:* being the right, as declared by

law, to the exclusive occupation of a certain allotment of ground in the territory of the State; and the free and undisturbed enjoyment within its limits of the physical elements, the use of which properly pertains to such space.

The former subdivision expresses what is denominated *personal property*, comprising all material objects adapted to our use—for of such only can we rationally suppose the idea of appropriation—which are movable in their character, transferable from place to place or hand to hand.

In the close, compact net work of social relations, the rights of no one individual can be conceived, as insulated from the rights of others, and rounded out to the fullness of enjoyment, which we might imagine of a solitary state, if, indeed, such a state be supposable for any purpose. Like the cells of a honeycomb in an humbler, but well-ordered, commonwealth, each loses its several perfection under the pressure of those with which it is in contact. In any survey of civil relations, not only do we find every right closely pressed on every side by adjoining and independent rights of equal force, but often moving together or meeting each other under conditions of time and place, which are common to all, and when, except by the relation of precedence, which springs instantaneously from the circumstances, neither can be regarded as superior to the other.

With willful violations of right we have nothing to do in this discussion. Our aim is to ascertain how far, and by what principles, and under what limitations, the law will hold us responsible for the *infirmities* of our nature, as distinguished from its *evil passions;* for our indolence; for our procrastination; for our folly, in assuming tasks we are not qualified to properly perform; for our proneness to forget the stern cares of business, involving the rights of others, in a weak love of ease and pleasure; for a dull and drowsy appreciation of our obligations; for evil habits of mind or body, impairing our capabilities to cope with the duties incumbent upon us; for our lack of a dutiful, steadfast vigilance in trusts committed to our hands: in a word, for our want of knowledge, where we

ought to know, and for our want of action, where we were bound to act.

In every case of alleged negligence, the party complaining must, to repeat an old *formula* of the law, show these three things, as essential constituents of a cause of action, viz:

1st. The existence of the *right* in question;

2d. The *fact* of injury to that right, by the unskillful or negligent management of agencies which were under the defendant's control; and,

3d. That the operation of these agencies upon the subject matter of the injury was not induced by any *negligence of the plaintiff* on the occasion, in exposing, or carelessly suffering to remain exposed, his person or property to damage.

The first duty of the lawyer, therefore, will always be to scrutinize the facts of the case, to see if the plaintiff adequately fulfilled his own duties at the time and place of the happening of the supposed wrong. For, as we must again persistently remind the reader, every right in a social state can only be conceived as existing under certain essential conditions and limitations, and as accompanied by, or, rather incorporated with, certain incidental duties. If not exercised in conformity with these conditions, it furnishes to its possessor no immunity in contests with others, and no cause of legal action, if infringed.

Thus, although in every place of social order, we know the territory of the State is divided into certain definite pieces or parcels, and exclusive possession of some one or more of such divisions assigned to each citizen, yet this fundamental right of exclusive possession and dominion is held subject to the habits and exigencies of society, with which it may sometimes be incompatible. In this view, the general right of the owner to exclude at will others from ingress upon his premises, must yield to public or private necessity: as, for instance, in the case of officers of the government, going thither necessarily in the discharge of their public duties; or even of private individuals, in certain cases, seeking for or repossessing themselves

of their property, left, or lost, or thrown by the elements, or feloniously taken, or strayed within the enclosure of a neighbor.

In the same view, also, the right to exclude others from the space specially allotted to us by the State, must be reasonably—never wantonly—exercised. It is foreseen by the great Lawgiver, that, in the ordinary course of things, and notwithstanding all the institutions of the government to prevent it, trespasses by one upon another, sometimes accidental, sometimes willful, with or without appreciable damage, *will* occasionally occur. And hence, blending with his guardianship of rights a humane tenderness for human infirmities, he forbids the proprietor of land to defend it by a resort to dangerous agencies, of such a nature as not to operate under the control of his own discretion, and which are likely, if encountered, to produce indiscriminate injury to the innocent and guilty, and to every shade of guilt. As an instance, every lawyer will readily call to mind the case of *Bird* vs. *Holbrook*, 4 Bingham, 628, where, it appeared, the defendant had placed a spring gun in his garden, and the plaintiff, going thither to reclaim a stray fowl, was wounded; on which state of facts the trespasser was permitted to recover his damages.

Speaking in general terms, every citizen has an equal right with every other citizen at any time to use the means of PUBLIC COMMUNICATION, as streets, roads, bridges, navigable waters; and to temporarily occupy such places within the jurisdiction of the State as are dedicated to common use. Inasmuch as rights of this description are to be affirmed of all alike, we cannot say in advance of the occasion on which the question may arise, that at any given time any particular individual has an exclusive right to be at any particular point or locality in the common space.

The nature of his right is modified by the concurrent and simultaneous rights of all others. Thus, in cases of collisions upon roads or navigable waters, this consideration is always invoked, and frequently in very perplexing forms, to characterize the conduct of the several parties, and determine their mutual responsibilities.

The natural elements are the most important, because the most constant and universal conditions of human existence and enjoyment. They are instinctively recognized as matters of common right, and incapable of fixed and permanent appropriation. But, in dense settlements, or in situations of close proximity to each other, one man upon his own land may originate or give a mischievous direction to causes which will disturb his neighbor in the use of those elements, either as means of health and comfort, or as agencies for mechanical or other useful purposes. It is not possible that any one should enjoy those rights with the same entire freedom from all restraint and all inconvenience, as if dissociated from his fellows. The upper riparian proprietor may and often will diminish perceptibly the volume of water in a running stream, or so deliver it to his neighbor below, as to make it in some degree less advantageous to him than in the course of nature it might have been.[1] My next door neighbor may intercept my view of the landscape by his new house; or he may interrupt my accustomed quiet by some noisy occupation. But, no discomforts or vexations, short of the standard of a nuisance, will give me a ground of action. If the employment be one permitted by law, and its agencies and operations are confined within his own lines, I cannot complain to the courts of its annoyances. On the threshold of any theory of social relations, we are to suppose mutual proximity, and an infinite diversity of interests, pursuits, tastes, habits, and local circumstances. In the progress of mechanical inventions, agencies more dangerous than the primitive agencies used by man will be introduced to promote the great ends of speed, power, precision, and uniformity. Steam power is the most striking illustration. Those living in the neighborhood of the seats or tracks of these agencies must necessarily be exposed to the constant presence of this danger, with its anxieties and incidental evils. The paramount interests of the race, however, or, to speak with just emphasis, its *destiny*,

[1] *Mahan* vs. *Brown*, 13 Wend. 261; *Lamb* vs. *Stone;* 11 Pick. 527; Broom's Legal Max. 93.

imperatively demands those improvements; and the civil policy of every State, moving in the line of civilized progress, adapts its regulations to the inevitable march of events. The relations of civil right are incessantly modified to suit the age; not, of course, by any change of the eternal principles on which they depend, but by the very development of those principles.

Physical agents may be imagined so dangerous, in certain localities, that the law of society cannot tolerate them even under the guard of strict police regulations. The public safety at last must always be the paramount rule. This will not necessarily debar the introduction of agencies which, comparatively speaking and in common parlance, are dangerous. To incur the sentence of total banishment from the community, experience must have shown that, with all the precautions which can reasonably be expected, the risks of mischief are too great and too terrible to be compensated, even in a wide view of the general good, by the advantages which they promise.

But, obviously, the use of agencies, which are in their nature dangerous, devolves the duty of proportionate care and skill upon those who employ them. If, in their construction or operation, prefessional art and knowledge are required, as, indeed, is always the case in some degree, then the law pronounces with rigor that, whoever for his own profit employs them or undertakes to govern them, is bound to exercise that measure of skill, attention, and precaution which the occasion calls for.

The usual terms employed in legal disquisitions to express the proper manner of fulfilling those duties, in respect to which negligence is imputed, are "care," "caution," "prudence," "discretion," "diligence," "attention," "circumspection," "foresight," "skill." The emphasis with which they are used is modulated by the adjectives, "great," "slight," "ordinary," "reasonable," and others of similar force. By a nice philological criticism, these terms will no doubt be found to have different shades of meaning; but all, with the obvious exception of the last, are applied in the discus-

sions of the courts, and even by most writers, as signifying substantially the same thing. It is important here to consider their import with some scrutiny, and define it with as much distinctness as possible. And, first, of "skill."

"SKILL" denotes that peculiar measure of knowledge and facility of operation, in any branch of business pursued among men, which may be, and usually is, only acquired by special study and continued practice. Every occupation involves, in greater or less degree the exercise of intelligence, or the faculties required in adapting means to a proposed end; but this term is commonly employed with reference to those occupations which involve professional learning and expertness, as distinguished from the simpler, coarser forms of manual labor.

This class of employments, moreovor, comprehends a wide range of gradations, running from the point where it blends with mere mechanical force up to an elevation which seems on the ultimate limit of human power. Every profession, every art, and every occupation, in the very fact of its institution among men, proposes to accomplish certain things for the good of its employers. The accomplishment of these objects, thus voluntarily undertaken, implies a certain adequate degree of skill in the agent, proportioned, of course, to the simplicity or complexity of the operations involved. But, in marking this degree as a strict measure of responsibility in law, the jurist does not forget that perfection can neither be demanded nor hoped from any man. Nothing is so well done by the most expert hand in its happiest mood—but we may suppose, and the next year may prove, it could have been better done; nothing is so well known to the best-endowed intellect but it might be better understood. The only rule, then, is this: that whoever engages in a business which, from its nature, demands professional skill and science, and who thus solicits and obtains public confidence, is to be held bound on any occasion of employment to exhibit that *quantum* of skill which common experience leads us to expect from the *class* of persons in question—not that degree which some eminent

member of the class may have shown to be possible to *him*, but such as is found within the compass of the majority.

This common standard of qualifications advances *pari passu* with the gradual advance of the arts and sciences. At each successive epoch, the mechanic, the machinist, the physician, the surgeon, the manufacturer, the architect, the seaman, the engineer, is summoned by the law of the land to avail himself of that aid in his chosen sphere of social duty which the brighter lights, kindled in the seats of learning, can afford him. He is called at once by the voice of the law and of professional emulation to repair to the great public reservoirs of knowledge, and draw from thence those means of improvement which an age of progress has accumulated for his use. He is not, indeed, commanded by the law-giver or the judge to mount to the lofty heights of inventive genius, and become a discoverer or a martyr. The glories and rewards, and, by a most manifest equity, the corresponding responsibilities of such distinctions are reserved for the gifted few; but, to use a popular expression of the day, he must not "be behind the age." He must not sink below the general level, nor lag behind the common pace of his order.

The degree of skill to be enacted from one in a given employment, is logically proportioned to the character and exigencies of that employment. In whatever concerns the personal safety of men, their lives, their limbs, or their health, the instincts and sympathies of the race anxiously and earnestly enjoin the very highest measure. Other injuries admit of satisfactory compensations; these of none. Professional pride and emulation, the spur of ambition, and, let us not fail to add, the still more honorable motive of benevolence may be much relied on to insure research, assiduity, expertness, zeal, and skill. But over these, as a sterner guaranty, the law hangs the threat of its severest penalties for ignorance and negligence. The truth is, however, and always will be, that accidents and mistakes will continually happen among men. For *inevitable* accidents, of course, no one can be held responsible, upon any principle of justice, except as an insurer; nor do we find him responsible even for all which are not inevitable in the strict sense

of the term. Indeed, it is somewhat difficult to declare positively what are to be so denominated. Few are clearly so, unless directly and suddenly occasioned by the overwhelming force of the elements. And even of these it may not unfrequently be said, on a closer analysis, that the injury complained of was really the result of remote or primary carelessness on the part of the sufferer himself in placing his person or property in a condition to be exposed to the cause of injury. Scarcely any case of accident can be conceived which might not possibly have been prevented by using the very utmost pitch of care and foresight, of which man, from some rare examples, may be supposed capable. Yet no good ruler will frame his standard of civil responsibilities upon such considerations. Designed for all, and not for a part, it must be adjusted to the prevailing condition, habits, and capabilities of the people, because it would be useless and worse, unless leveled to the range of general obedience. He can never fail to consider the infirmities inherent in our nature; the unavoidable vicissitudes in our mental and bodily condition; the strange fluctuations in our health and vigor when best guarded; the temporary mists which sometimes steal over the clearest understandings; the confusion and amazement which ensue upon sudden shocks of surprise and alarm; the distraction and perplexity induced by a simultaneous onset of difficulties and cares; the mistakes consequent upon extreme nervous agitation; the insidious torpor of habitual confidence overcoming our vigilance, and finally putting it to sleep; the occasional delusions and gross misapprehensions to which the most scrutinizing minds are liable; in short, the inherent frailty which, by the fate of man, blends not only with every excellence of his heart, but every faculty of his brain. While, in view of these considerations, he will avoid the very absurd extreme of severity intimated, he will, on the other hand, be careful not to reduce his standard too low. The search of every jurist has been and will be to find the middle ground between the two extremes, and, if possible, from the nature of the subject, to denote it by setting up accurate demarcations.

A word here on the subject of *definitions:* No student of the

law will be unmindful of the cautious admonition—"*omnis definitio in jure civili periculosa est, parum est enim, ut non subverti possit.*" Certainly no task is more bold or responsible than to ask the public to acquiesce in a general proposition of truth in any science. Always a hazardous experiment, it is peculiarly so in jurisprudence, comprehending for its subject-matter all the infinite vagaries of the human will and all the infinite varieties in human affairs. A definition must be an expression at once brief and significant, by which many particular facts or cases—all differing from each other at every point in *specific* qualities—are comprehensively indicated by some one or more general truths which are affirmed to be common to them all. It must not be too general, for that would be to make it practically useless to the student; nor, on the other hand, too complex, for that involves the risk of failing to be of universal application. Yet definitions are to be recognized as the natural and inevitable growth of philosophy. The development of a rule in science is very obvious. The practitioner observes, the historian or reporter records his observations, and, at length, when the field of experience has become sufficiently broad and diversified for the purpose, Human Reason, by an instinctive function, surveys the whole, compares, classifies, distinguishes, grasps the now-revealed analogies, and confidently announces the fundamental law.

What we want here are clear definitions, if we can get them. We have undertaken to deduce—not, indeed, from abstract speculations on the subject, but from judicial decisions, and other authoritative expositions of the law, collated, however, upon the thread of a methodical plan—the general principles upon which the duties of care and skill in the various situations of life are to be defined, classified, and graduated; and upon which the neglect or the negligent performance of those duties is to be measured, redressed, or punished. To give a rule for each particular case is palpably impossible. Any doctrine, however, restricted in its scope must, necessarily, embrace a class of cases more or less numerous, and involve to some extent the doubts attending any attempt at generalization. Yet the evolutions of general principles is the business before us; and it may

be hoped that a careful analysis of the books will afford us some guides to survey, at least, the prominent boundaries, if not to trace the precise lines of demarcation.

Every case brought in court for an alleged want of skill implies that the agent in the operation in question was under a duty by law to do certain acts in a certain mode, in order to produce certain effects touching the rights of the party who makes the complaint. It must be remembered here, that when the particular act or mode of acting, or course of practice is not laid down by agreement or by statute, forming an express rule in the case, when the discretion of the agent is left free to work out some proposed result by such apt and proper means as he may devise, his duty can never be stated as a duty to absolutely *consummate* the object proposed. Eventual success cannot be the criterion by which he is to be tried; and he is, therefore, not to be considered as under an inflexible bond to do those things which, on a subsequent review of the case, it might very satisfactorily be shown would, if done, have ensured success. He is rather only bound in law to do those things, which that degree of science and experience, supposable of his profession generally, and so of himself as a member of that profession, would indicate as reasonably *likely* to accomplish the desired result. But science, in its widest and most natural generalizations, we know, can furnish no infallible rules. The ripest and amplest experience can contain but comparatively few examples. In the most common and familiar classes of cases, such as the general experience of mankind shows, to admit of an almost mechanical uniform course of action—take, for example, the practice of a physician in an epidemic, he daily meets among his patients with subtle idiosyncracies, mysterious conditions, which eventually modify the character of the disease, and the true rules of treating it. Thus, we often see what, from its leading symptoms, appears to be a common fever of the country, utterly baffling the force of medicines, which, in a large majority of cases, have proved sure to effect certain results. The disease hides away from the remedy sent to arrest it behind some secret shelter in the mazes of the animal system. In the course of scientific pro-

gress, these occasional anomalies, when they have at length become sufficiently numerous for the purpose, are mustered together by a philosophic generalization, and forced to unveil their hidden links of analogy, and confess their mysterious law.

But in the most familiar tasks of every profession and employment, there must be much which is untried and unexplored; and the practitioner, even on its oldest and best beaten highways, must, at every step, be beset with the risk of error.

Moreover, every occupation involving skill, is sometimes summoned to deal with occasions which are novel in their character—out of the ordinary run of practice—beyond the scope of the clear lights of experience and precedent, and, therefore, requiring new modes, plans, and combinations. Some, indeed, are of a character which are constantly concerned with exigencies of this sort, such as arise with little or no previous notice, have to be suddenly encountered, and frequently under circumstances which demand the instantaneous union of the highest moral faculties with the promptest professional skill. The issues which most perplex judicial tribunals arise in this range of cases.

Professional skill we may now define to be the capacity acquired by study and practice to contrive, combine, modify, and apply the means necessary to achieve the class of objects which it is the business of the profession in question to undertake. The adaptation of these means always demands a fore knowledge, more or less extensive, of the chain of cause and effect. In no case, implying the exercise of skill, can we conceive that the line of causation is perfectly obvious. Contingencies are to be estimated—risks are to be provided against—chances to be calculated—probabilities to be weighed. When the thing to be done is something designed to protect the interests of another from future harm, the danger is found to run through all degrees, from that which experience proves to be common, down to the remote point of a bare possibility.

An engineer, for instance, is employed by A to plan a structure, which, from its relative position, may affect the land of B;—let it be a railroad embankment, with a culvert to discharge the water which it will confine. Now, he is manifestly bound not only to study the

shape of the surrounding country—its hills, declivities, streams, and the ordinary volume and current of its waters, but to make far more comprehensive provisions. Common observation will make known to him that at or about a certain period every year there is a flood. He must provide against that. A few old settlers will inform him that once in about every period of ten years, for half a century, there has been in that region an extraordinary inundation, far surpassing the annual freshet in violence. He is contriving a permanent structure, and he must obviously guard against this decennial invasion of the elements. But there is in some repository of information, which though not known to the public generally, a professional man ought to know, a record, that fifty years ago a tremendous flood produced a *land slide* from a neighboring height. If another of like character should happen in the vicinity, his plan would be utterly unavailing to answer its purpose. Now, is he in reason and law bound to shape the details of his project with reference to this remote contingency, or where shall he be permitted to rest in his precautions? Our purpose, of course, does not require us to discuss the particular case supposed. But this mode of stating it will sufficiently illustrate the idea under consideration.

Now, he who voluntarily undertakes to meet the exigencies of any occasion of professional skill, is bound not only to know what is present and perceptible to the senses, but in some measure to penetrate the future and foresee and guard against events yet unseen. The question always is, what is that measure in the case on trial?

The common standard of skill in any profession is fixed with reference to the general nature of its business, the delicacy of its customary operations, the importance of their consequences to the persons to be affected by them, the magnitude of the dangers to be encountered by the practitioner, the evils to result from mistakes and mal-practice. Whoever holds himself out to the world as a member of that profession, assures his employers that he is qualified to perform its characteristic offices with skill and success. The community, whose confidence and patronage he thus invites, cannot be presumed to know the peculiar grade of qualifications possessed by any particular member, but only the general capacity of the

class with which he is connected. As before observed, this standard of general qualifications advances with the march of progress, and at any given era is adjusted to the stage of improvement then attained in theory and practice.

It follows, that no particular member of a professional class is responsible for any greater degree of skill than any other member. This, indeed, is only another way of saying he is responsible only for that ordinary degree which by the public may be supposed to belong to all.

The question, whether any professor of skill has exhibited this degree, in any case proposed for consideration, is determined not by the *event*, successful or unsuccessful, but by the reasonable *probabilities* of success, calculated according to common experience.

In operations of frequent occurrence and of a familiar character, unless there are manifest special circumstances to modify them, he can only be held liable as far as knowledge and practice of those arts which have generally been found sufficient in such cases. He will not be accountable for failures and mistakes which may be attributed to anomalous or fortuitous causes.

In operations which though of an unusual character, yet lie within the province of his art, demanding a high degree of care and skill, if he voluntarily undertakes them, he is bound to exhibit the degree, whatever it may be, which the occasion may require. That degree of skill may be affirmed to be within the sphere of the profession, which, in like cases, has been shown by its most expert practitioners, and which may be deemed feasible with the aid of the most perfect instruments, combined with the utmost scrutiny and vigilance, and the assistance to be derived from all accessible sources of information.

Of the other terms mentioned in the beginning of this article, "care" is the one most familiarly and habitually employed, in legal discussions, to signify the predominant idea which is common to all, that idea to which negligence stands opposed, in popular acceptation, as the negative. For every practical purpose, we may then consider it as embracing the essential meaning of the entire catalogue. Indeed, a very cursorary analysis will show that the others but serve

to express some peculiar form or modification of the main idea. The performance of any act of duty requires, in greater or less degree, "*attention*," to notice even visible causes; "*foresight*," to look beyond the immediate present and comprehend that which, although not seen, is yet likely to be; "*prudence*," to repress a too bold and precipitate encounter of hazards; "*discretion*," to elect, in emergencies of doubt, the better course, the wiser expedient; "*caution*," to penetrate delusive appearances and rouse up confidence from the perilous slumber to which it is ever tending; "*diligence*," to prompt to timely, continued, or repeated action; "*circumspection*," to survey the whole group of attendant circumstances, and not merely that which may lie obviously in the path before us. This review of the terms under consideration makes it sufficiently manifest that, whatever distinctions may be possible to the sharp criticism of the philologist, the term "*care*," though often needing the aid of the others as auxiliaries, to make the expression apt and emphatic, will yet be found generally sufficient as an opposite antithesis antagonist of negligence, in the language of the forum.

The legal and popular sense of the term "care" entirely accord. Defining it with precision, it signifies that manifestation of our faculties in some relation of duty, by which we are enabled to discern what is necessary to be done or to be avoided in any given case, to prevent impending mischief to the person or property of another, and to use seasonably and fitly the means required to attain the desired end.

No two conjunctures in human affairs, however similar, are alike. No two occasions, in the most monotonous employments, exactly coincide in circumstances. No two predicaments in our social intercourse demand from us precisely the same exercise of our faculties. A close analysis will always show us that, in cases most nearly resembling each other, and, to a cursory glance, seeming to be identical, different courses and modes of action and different manifestations of care were really required at our hands.

Again, we remark that mankind are all very differently constituted, tempered, trained, and educated, and perform their parts in

life under an infinite diversity of circumstances, which shift and change at every turn and every step. Amongst our neighbors we find no two alike in powers of mind or body, in perseverance, endurance, industry, habitual watchfulness, sagacity, fertility of invention, promptitude of decision, breadth of comprehension.

Yet to each of these various occasions, and to each of these innumerable individuals in a State, its jurisprudence annexes certain definite obligations of duty, to be measured and enforced under a general system, in which nothing is to be left to the dangerous discretion of judges or jurors, which can safely be prescribed by law.

Courts are organized to listen to complaints, and to decide authoritatively whether the parties in any case presented for adjudication performed their respective duties. The great end of a refined jurisprudence is to circumscribe the sphere of judicial discretion within the narrowest limits practicable; and requires that the rules of conduct, by which the responsibilities of the citizen are to be tried, shall, to the very utmost, be clearly defined and plainly proclaimed.

Questions of negligence, admitting of any fair dispute at all, must always hinge in a great degree upon particular facts and circumstances in the case incapable of generalization, and must, therefore, be delivered by the advocate one by one, as they arise, to the determination of juries. And yet mountains of reports, to which each year adds a vast accumulation, forcibly demonstrate that judicial wisdom is incessantly employed in an unwearied effort to develop, by the rapidly multiplying lights of experience, the barren general maxim, that every man should do his duty, into specific practical formulas, adapted to particular relations, occasions, and employments among men. And the high aim of the philosophic jurist will ever be to perfect a standard of duty, of wide range, plainly marked, which he can set up firmly between the bench and the jury box, for the guidance and control of both.

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