# Chapter XII

## OTHER DEFINITIONS OF TORT

BEFORE other definitions of tort are considered, a few comments on the one proffered in these lectures are necessary. It was stated that "tortious liability arises from the breach of a duty primarily fixed by the law: such duty is towards persons generally and its breach is redressible by an action for unliquidated damages".[1]

The words "primarily fixed by the law" serve to distinguish liability in tort from that arising on breach of contract,[2] and from breach of bailment.[3]

The statement that the duty is "towards persons generally" marks off tort from contract,[4] bailment,[5] and quasi-contract.[6] But, while this element in the definition is important and is sufficiently workable in the majority of cases, it must be admitted that the vagueness of it is open to objection. Every one would concede that the duty not to commit an assault, or a trespass, or a slander, is towards persons generally; and so with all torts that have acquired specific names. Every one, on the other hand, would classify a contract as setting up duties towards a specific person, or specific persons. It would be no real denial of this to urge that there is a legal duty on everybody to carry out his contracts, no matter with whom they are made, and that the duty is, in this sense, general. But this is merely a loose way of saying that when once I have entered into a contract with anyone I must fulfil it. There is no duty which the law will enforce unless and until such a contract is actually created

[1] *Ante*, p. 32.
[2] *Ante*, p. 40.
[3] *Ante*, p. 99.
[4] *Ante*, p. 40.
[5] *Ante*, p. 99.
[6] *Ante*, p. 188.

with a definite person. You cannot get an injunction against me if, before I have contracted with you, I proclaim that I will not carry out any contract which I may make.

These examples, one on each side of the line, are plain enough; but troublesome intermediate cases are imaginable. Suppose that an Act of Parliament imposes upon *X* a duty towards the inhabitants of the parish of *Y*, a village with a population of twenty persons, and that breach of this duty is redressible by an action for unliquidated damages suable by any aggrieved inhabitant. The duty has every appearance of being one in tort except for the absurdity of describing it as being towards persons generally. The difficulty of course is that it is impossible to say accurately what the test of generality is, or who exactly are "persons generally". If we suggest that they are all members of the community who cannot, as parties to any legal relation, be identified individually at any particular moment while the legal relation subsists, we lay ourselves open to the criticism that the inhabitants of a parish as small as *Y* can easily be known at any particular moment, and that nevertheless any lawyer would describe *X*'s liability to them as tortious. With a large city like London the practical difficulties of identifying the inhabitants at any given moment would be so great as to justify us in regarding them as "persons generally". But here the problem might recur in another form. The duty might be towards the mayor and corporation of a large town, and the artificial individual thus described would be ascertainable with even greater ease than the twenty inhabitants of *Y*. These instances must be deemed exceptional and not of sufficient weight to force us to sacrifice the ingredient of generality in the definition. After all, problems of exactly the same type arise in connection with the distinction between rights *in rem*

and rights *in personam*, and one of them was discussed in the chapter on Tort and Breach of Trust;[1] yet those terms are far too fundamental to be abandoned on that account.

The last requisite in the definition is that tort is remediable by "an action for unliquidated damages". This distinguishes it from crime[2] and from breach of trust,[3] though, as has been already indicated, trusts are more conveniently separated from the law of tort by the historical gulf which lies between them and the Common Law rather than by the narrow line of a particular legal remedy. One example of judicial recognition of this factor of "damages" in tortious liability may be given. In *Hulton* v. *Hulton*,[4] a married woman brought an action against her husband for rescission of a deed on the ground of fraud. Now the Married Women's Property Act, 1882, s. 12, in general excludes husband and wife from suing each other in tort, and it was contended for the defence that this was an action in tort and was therefore not maintainable. The Court of Appeal, however, held that it was, because, though an action for damages for deceit would have been excluded by the statute as being an action in tort, yet an action for rescission of a deed was not of this nature.

Of course, an action for damages is not the only remedy for tort. Other remedies are self-help, injunctions, and actions for the specific restitution of property. The first and third of these are necessarily limited in scope and do not apply to all torts, but the second is more extensive than is commonly supposed. There are probably no torts which are not redressible by an injunction except assault and battery, false imprisonment, and malicious prosecution;[5] and, according to some authori-

1 *Ante*, p. 111. 2 *Ante*, p. 201. 3 *Ante*, p. 112.
4 [1917] 1 K.B. 813, 820, 822–823, 824.
5 Maitland, *Equity* (1909), 261.

ties, even apprehended assault can be prevented in this way, though it is doubted whether the court would ever exercise its jurisdiction in such circumstances. More probably it would tell the complainant to go to the justices of the peace and ask them to bind over the defendant to keep the peace.[1] Moreover, it would not be correct to say that the difference between an action for damages on the one hand, and self-help and injunction on the other, lies in the fact that the former is the primary remedy for a tort while the latter are only secondary remedies. If *X* finds *Y*, a trespasser, in his rooms, he is entitled to eject *Y* with reasonable force then and there without waiting to bring an action at law against him. So with an injunction. If any practising lawyer were asked "What is the civil remedy for nuisance?" he would reply "An injunction", and he might add "and an action for damages". And precedents are to be found in books of pleading in which the first claim in an action in tort is for an injunction.[2] The real reason why an action for damages is one of the

[1] Clerk and Lindsell, *Torts* (8th ed. 1929), 716–717.

[2] Bullen and Leake, *Precedents of Pleadings* (8th ed. 1924), 204–205, 431. Odgers, *Pleading and Practice* (10th ed. 1930), Precedents Nos. 50, 58; pp. 437–438, 443–444. Historically, it is interesting to note that long before injunctions or Chancery jurisdiction were known, the courts could prevent various wrongs to property quite apart from awarding damages; Holdsworth, *History of English Law*, ii, 247–249. Further, the writ of waste and the writ of prohibition against waste were examples of claims in which recovery or restitution was more sought after than any claim for damages; Coke, 2 Inst. 299. And the writ of estrepement, which originally lay after judgment in a real action and before possession had been delivered by the sheriff, to stop the vanquished party from committing any contemplated waste, was emphatically not a claim for damages; Blackstone, *Commentaries*, iii, 225–226. These examples need not now trouble us, for they represent obsolete law; and, so far as waste is concerned, they could scarcely be put under tort, independently of the fact that the claim was not for damages, for waste is an infringement of a duty owed to a specific person, and not of a duty towards persons generally. It is nevertheless treated in several books on tort as if it were a tort.

touchstones of tort is not that it is a primary remedy, but that the possibility of suing it is fettered by none of the conditions which attach respectively to self-help and injunctions. The granting of an injunction is notoriously a matter for the discretion of the court, acting on well-settled legal principles.[1] Again, self-help has always been reckoned as a perilous remedy owing to the stringent rules against its abuse. But there are no restrictions on instituting an action for damages for tort except such as apply to vexatious civil procedure in general. Subject to them, the courts must at least hear what the plaintiff has got to say, even if they come to the conclusion that the defendant has, in the circumstances of the case, nothing to which he need answer.

We can now pass to other definitions of tort, and begin with the analysis of that *maître d'armes* of the Common Law, Sir Frederick Pollock. The following are the main points in it. A tort is a civil wrong; it is a breach of a duty which is a general one, i.e. which is owed either to all fellow-subjects, or to some considerable class of them; it is fixed by the law and the law alone; and it is redressible by an action.[2] It is obvious that our own definition owes a great deal to this analysis. Sir Frederick adds:

> Again, the term (*sc.* tort) and its usage are derived wholly from the Superior Courts of Westminster as they existed before the Judicature Acts. Therefore, the law of Torts is necessarily confined by the limits within which those courts exercised their jurisdiction. Divers and weighty affairs of mankind have been dealt with by other courts in their own fashion of procedure and with their own terminology. These lie wholly outside the common law forms of action and all classifications founded upon them.[3]

Hence, unless an action were maintainable in the courts of King's Bench, Common Pleas, Exchequer (or

[1] Kerr, *Injunctions* (6th ed. 1927), chap. ii.
[2] *Torts* (13th ed. 1929), 1–3.
[3] *Ibid.* 5.

any one of them), as they existed before the Judicature Acts, it cannot be an action in tort. This rules out trusts, as they were within the province of the Court of Chancery; claims for salvage, which were appropriate to the Admiralty Courts; and matrimonial causes, which belonged to the old Ecclesiastical Courts and later to the Divorce Court.

It is very necessary that the historical side of the law of torts should be emphasized, and Sir Frederick Pollock shows clearly how the organization of our judicature on lines which have been simplified only within living memory has influenced the contents of this branch of the law. It might be argued, then, that our definition ought to conclude with "an action for unliquidated damages *in virtue of the Common Law jurisdiction of the court*". But, after some hesitation, it has been decided not to make this addition; for there are some qualifications upon it, even as a matter of history, which might make it misleading. Thus, it is true that during the greater part of our legal history breaches of trust could be redressed only in the Court of Chancery. Yet it seems that at one time a defaulting trustee could be sued for damages in the Common Law Courts, for breach of an implied contract. No doubt the courts were acting outside their sphere in entertaining such actions, but still they did exercise such jurisdiction once.[1] Again, no doubt at the date of the Judicature Acts an action for damages against the co-respondent in a divorce suit was maintainable only in the Divorce Court. It was not then, and it is not now, an action founded on tort. But, until 1857, it was represented by an action for criminal

[1] Lewin, *Law of Trusts* (12th ed.), 15 (this note has been omitted in the current edition). Pollock and Maitland, ii, 232! Spence, *Equitable Jurisdiction* (1846), i, 442, note (*c*); but his reference to Y.B. 4 Ed. IV, f. 8, does not support his statement that "feoffee to uses could maintain an action of trespass against his *cestui que trust*"; indeed, the case is the other way.

conversation which was suable in a Common Law Court. Nowadays, breach of trust and adultery by a co-respondent are better placed outside the pale of torts for other reasons—the former on grounds which have already been stated,[1] the latter because it is the breach of a duty towards a specific person, and not of one towards persons generally; for the claim upon it is merely ancillary to a claim which the injured party must make in the first instance against the adulterous spouse, i.e. the claim against the co-respondent is always tacked to the suit for divorce, and that suit is for breach of a duty owed only to the petitioner and not to persons generally. Again, other matters of ecclesiastical jurisdiction make the procedural test somewhat embarrassing. Before the Judicature Acts, at least one writer of respectable authority could see no reason why a wrong should not be a tort even if it were remediable only in an ecclesiastical court. He spoke of torts as either "temporal" or "ecclesiastical", examples of the latter being mere imputations of fornication, adultery, drunkenness, or other immorality, punishable only in the spiritual courts unless it could be averred and proved that actual temporal damage, such as loss of the society of one or more particular persons, had ensued.[2] Then the historical side of injunctions also makes the pro-

[1] *Ante*, pp. 113–115.

[2] Chitty, *Practice of the Law* (2nd ed. 1834), i, 13. In spite of the great dwindling of the civil jurisdiction of Ecclesiastical Courts in modern times, some civil actions are still cognizable there, e.g. those relating to the fabric and ornaments of the church, the churchyard and churchwardens. So far as can be ascertained, they lack one essential of actions in tort. They do not claim, or result in, pecuniary damages. The procedure for making good dilapidations resulted, apart from statute, in disciplinary measures only, and now under the Ecclesiastical Dilapidations Act, 1871, is so peculiar in the case of parochial clergy that it cannot be styled an action for unliquidated damages. Phillimore, *Ecclesiastical Law* (2nd ed. 1895); ii, 828, 959, 1254 *seq.*, 1271 *seq.* 11 *Laws of England* (Halsbury), §§ 985 *seq.*

cedural test an awkward one. It was possible at one time to sue for them only in the Court of Chancery. Such actions were therefore not founded on tort. But the Common Law Procedure Act, 1854, gave the Common Law Courts power to issue prohibitory injunctions at any stage of the proceedings, and now every Division of the High Court can grant an injunction. Bearing this in mind and also the fact that an injunction is often the primary remedy claimed for a tort, it would seem odd to define a tort by reference to a jurisdiction which once had no power to grant an injunction, but which in fact is now able to do so.

Take, again, Admiralty jurisdiction. Claims in respect of collision of ships are founded on tort, for though the cognizance of such cases was, and still is, exercisable by Admiralty Courts, yet it was, and still is, also exercisable by the Common Law Courts. In fact, until the law was altered by statute, the Common Law jurisdiction was wider than that of the Admiralty, for it extended everywhere, while in Admiralty it was confined to the high seas. Legislation has made Admiralty jurisdiction wider with respect to collisions, and it is the more popular of the two because of the advantages given by the process *in rem*. But the Common Law jurisdiction remains, and the same measure of damages is allowed in whichever court the action is brought. By the Supreme Court of Judicature (Consolidation) Act, 1925, the jurisdictional test of tort is made even more artificial. Sect. 22 gives the High Court "admiralty jurisdiction" over (*inter alia*) "any claim for damage done by a ship" and "any claim...in tort in respect of goods carried in a ship".

Enough has been said to shew that the inclusion in a definition of any reference to the Common Law jurisdiction of the court would not tend to greater clarity, however necessary it may be to explain the historical

anomalies which still appear in the fabric of the law of tort.

Sir John Salmond's definition, as slightly amended by his learned editor, Mr Stallybrass, who adds that no satisfactory definition of a tort has yet been found, is as follows:

> A civil wrong for which the remedy is a *common law* action for *unliquidated* damages, and which is not exclusively the breach of a contract or the breach of a trust or other merely equitable obligation.[1]

The words italicized represent Mr Stallybrass's alterations. We have just shewn cause against the embodiment of the jurisdictional element in the definition. Further, it would appear possible to frame it less negatively than to say that a tort "is not exclusively the breach of a contract or the breach of a trust or other merely equitable obligation".

So far, the definitions considered have approached the topic from the starting-point of breach of duty. But others prefer to look upon tort as a breach of right. A definition which we have taught experimentally for several years and have abandoned with a good deal of reluctance is:

> A tort is a civil wrong which infringes a right *in rem* and is remediable by an action for damages.

More briefly, but on the same lines, Sir Hugh Fraser, without committing himself to a definition, regarded the following as a good description for practical purposes:

> A tort is an infringement of a general right or right *in rem*.[2]

The objections to these definitions are partly formal, partly substantial.

It may be said that the phrase "right *in rem*" is none

[1] *Torts* (7th ed. 1928), p. 7.

[2] *Torts* (11th ed. 1927), 1. So too Innes, *Torts* (1891), § 6. For other authors, see 30 *Harvard Law Review* (1917), 251, note 5.

too well-known in the law courts and has the prejudice of unfamiliarity against it. But there seems to be nothing in this criticism. While the terms used in definitions of legal topics ought not to be outlandish, there is a limit to the concessions which must be made to sheer conservatism, and, unless he has scamped his legal education, every practitioner must be well aware of the antithesis "right *in rem*—right *in personam*", though he might be excused for staring at "quasi-contract" and gasping at "quasi-delict". Perhaps a more valid formal objection is the tendency of legal classification to take as its basis duties in preference to rights.

On substantial grounds the difficulty is that, though the definition will cover most of the ground, yet it will not include some wrongs which are, or ought to be, reckoned as torts, but which are breaches of rights *in personam*. Such is the refusal of an innkeeper to receive a guest,[1] or of a common carrier to take goods for carriage.[2] My rights against such persons are rights *in personam*. They avail against specific persons, and not against persons generally, as do rights *in rem*. The difficulty does not arise if breach of duty is made the foundation of tortious liability, instead of breach of right. If torts be regarded as breaches of duties towards persons generally, then they include these refusals of the innkeeper and the common carrier.[3] Their duties might be styled "*in rem*", but the right of the prospective guest at the inn or of the prospective consignor of goods for carriage is not a right *in rem*.

Most other definitions of tort which bear any relation to the facts of English law[4] are variations of those

[1] Salmond, *Jurisprudence* (7th ed. 1924), § 169 (4).

[2] 30 *Harvard Law Review* (1917), 252.

[3] *Ante*, pp. 151 *seq*.

[4] Some of them bear very little; e.g. "Every person who on any occasion is required to use reasonable care and omits to use such reasonable care commits a tort". Markby, *Elements of Law* (6th ed. 1905),

which have been examined.[1] All of them are workable in practice, but with a certain amount of creaking which is incidental to our own definition quite as much as to them.

Other writers, however, take the Sadducean course of denying that it is possible to define tort at all. This pessimistic or negative school of thought includes scholars of considerable repute.[2] Their opinion is based on the assertion that there is no common affirmative characteristic which can be predicted of all torts.

> The word "torts" is used in English law to cover a number of acts, having no quality which is at once common and distinctive.[3]

> It is impossible to define the general term otherwise than by an enumeration of particulars...it is impossible to lay down any general principle to which all actions of tort may be referred.[4]

> A tort, in English Law, can only be defined in terms which really tell us nothing....To put it briefly, there is no English Law of Tort; there is merely an English Law of Torts, i.e. a list of acts and omissions, which, in certain conditions, are actionable.[5]

These are fair specimens of this particular attitude towards the Law of Tort.

It may be said at once that we respectfully disagree

§ 715. The idea of a man omitting to use reasonable care when he seduces *A*'s daughter or calls *B* a swindler, knowing that *B* is an honest man, is grotesque.

[1] E.g. Clerk and Lindsell (8th ed. 1929), 1.

[2] Addison, *Torts* (8th ed. 1906), 1. Jenks in 30 *Harvard Law Review* (1916), 8–9; but editorially he accepts the definition of Sir John Miles in Jenks, *Digest of English Civil Law* (2nd ed. 1921), § 722. Markby, *Elements of Law* (6th ed. 1905), §§ 670, 713; but this did not prevent him from attempting the singular definition cited in the note, *supra*. For other writers who take the same view, see 30 *Harvard Law Review* (1917), 252–254.

[3] Markby, *op. cit.* § 713.

[4] Clerk and Lindsell, *op. cit.* 1, 3.

[5] Jenks, cited in 30 *Harvard Law Review* (1917), 253.

with the thesis that there is no English Law of Tort, but only an English Law of Torts, and that we have already given reasons for adopting a contrary view.[1] For the rest, it is not easy to understand this counsel of despondency. What ground is there for saying that the definition put forward in these lectures (which is substantially the same as that selected by many other authors) yields no common characteristic of torts? If it be applied to any of the nominate torts, where does it break down? As to innominate torts, i.e. those which are still in process of creation, or which are yet unborn, they depend on the principle that all harm done by a man to his fellow-subject is, in the absence of lawful justification, actionable. Of such wrongs it is impossible to prophesy exactly the detailed conditions subject to which the courts will allow redress, but why should it be denied that their broad outlines will conform to the general definition which has been adopted?

Probably two causes, neither of which is valid, have been responsible for the theory that definition of tort is impossible. The first is the tendency to speak of the law of tort in terms that would have been more appropriate two generations ago than now. If the historical sketch in an earlier chapter shewed anything, it was the late separation of the law of tort from other parts of the law. Until the net of procedure which enmeshed it had been cut by nineteenth-century legislation, nothing else could be expected. The important question for any plaintiff was "What action can I sue?" The number of actions was limited and the scope of several of them (e.g. *assumpsit*) took in claims which might equally well have been described as in contract or in tort. Hence, any attempt to define a tort must have been a cross-section through actions, the contents of which had scarcely been considered at all in scientific fashion. Even now we are

[1] *Ante*, pp. 32 *seq*.

not sufficiently liberated from these historical influences to ignore them in the law of tort, but we are free enough of them to make a tolerably correct definition of tort not only possible but also advisable. It is not without significance that in some of the treatises in which this is denied, modern editors merely continue to repeat opinions of their authors which had some weight seventy years ago, but which are obsolescent in the light of more recent developments.[1]

Secondly, some definitions of tort have been so negative in character as to justify the complaint that they afford no affirmative test. They tell us rather what a tort is not than what it is. "A favourite method of defining a Tort is to declare merely that it is not a contract. As if a man were to define Chemistry by pointing out that it is not Physics nor Mathematics!"[2]

However, there are many definitions which give positive tests, and there the objection fails.

We have been considering a theory which is really retrograde, chiefly because it has the dead hand of history upon it. We must now take account of one which is revolutionary. Like the first, it starts with the hypothesis that all existing definitions of tort are inadequate, but it does not stop there. It suggests that salvation can be found:

1. By discarding the former custom of grouping together under the general head of tort cases of liability without fault.

2. By recognizing the existence of the modern common law rule—that, generally, fault on the part of the defendant is requisite to constitute a tort. If this view is carried out to its logical result, the use of the term tort would be confined to cases of fault, and cases of liability without fault would be classed under the

[1] The first edition of Addison's *Torts* was published in 1860.

[2] Wigmore, *Select Cases on the Law of Torts* (1912), vol. i, Preface, vii.

distinct head of absolute liability. Then it would be possible to state a common affirmative characteristic of actionable torts.[1]

Such was the line taken and pursued by Jeremiah Smith with his customary skill and energy in the *Harvard Law Review*.[2]

He explained "fault" in the expression "liability without fault" to mean "conduct which involves either culpable intention or culpable inadvertence",[3] and the main heads of his "absolute" (we prefer "strict"[4]) liability were:

*Division* 1. Cases of absolute liability which hitherto have usually been classed under tort. These include:

(*a*) Liability for non-culpable mistake.

(*b*) Liability for non-culpable accident.

(*c*) Vicarious liability for the wrongful acts of others.

*Division* 2. Cases of absolute liability which hitherto have been regarded as more nearly akin to breach of contract than to tort.[5] These are quasi-contractual in nature.[6]

Any suggestion originating from such a source deserves great respect. But, so far as current English law is concerned, we have put forward reasons in the chapter on Tort and Quasi-delict for thinking that the premises on which the theory is founded cannot be accepted. "Fault" has never been an essential ingredient in defining tort in English law.[7] Sometimes it is relevant to liability, sometimes (at least superficially)[8] it is not, but the contents of the law of tort have been determined without making the presence or absence of fault a prime factor. This, however, does not conclude the matter.

[1] 30 *Harvard Law Review* (1917), 254.

[2] "Tort and Absolute Liability", *ibid.* 241–262, 319–334, 409–429.

[3] *Ibid.* 259.

[4] Indeed, the learned author was not satisfied with the accuracy of "absolute". *Ibid.* 256.

[5] *Ibid.* 325.

[6] *Ibid.* 426.

[7] *Ante*, p. 216.

[8] *Post*, p. 243.

Jeremiah Smith was writing as a reformer and he admitted that he cherished no illusion as to the speedy adoption of any suggested changes of classification, though he said that some of them were based upon distinctions already recognized in some legal treatises.[1] We are therefore bound to estimate his suggestions without much regard to any jolt that they may give to established associations.

Division 2 had better be taken first, for it seems possible to dispose of it shortly by urging that Quasi-contract is almost sure to become a separate branch of English law and that the contents of it will probably be determined on the lines laid out in a previous chapter.[2]

The advisability of adopting Division 1 is somewhat doubtful from the teaching point of view. To separate torts of strict liability from other torts is not such a smooth affair as it might appear to be. At least two points need further explanation before a decision one way or the other is taken, and they both affect the proposed change at its very root, which is that strict liability depends on absence of fault, i.e. on absence of intention or inadvertence.

In the first place, all torts of strict liability do not exhibit the same degree of strictness. Thus, in the rule in *Rylands* v. *Fletcher*[3] the defendant is not allowed to plead that he took reasonable care to prevent the injury, but in the rule in *Indermaur* v. *Dames*,[4] the defendant is excused if he used reasonable care to prevent damage to the plaintiff from unusual danger of which he knows or ought to know; yet his duty is reckoned as a strict one, because he is liable for the default of an independent

[1] 30 *Harvard Law Review*, 241–242.

[2] *Ante*, chap. vii.

[3] (1868) L.R. 3 H.L. 330. Pollock, *Torts* (13th ed. 1929), 501 *seq.* Salmond, *Torts* (7th ed. 1928), § 88.

[4] (1866) L.R. 1 C.P. 274, 2 C.P. 311. Pollock, *op. cit.* 527 *seq.* Salmond, *op. cit.* § 122 (9).

contractor. Here, then, we have an example of strict liability which requires some sort of inadvertence on the part of the wrong-doer. Where is it to be classified under the new system? Is it to go under the ordinary law of tort or under the new department of the law which is to take in cases of strict liability?

Secondly, an equally puzzling question arises in connection with the rule in *Rylands* v. *Fletcher* itself. No stronger example of strict liability could be cited. Yet among the exceptions to the rule is the defence that the harm was caused by the act of a stranger. But that defence might just as well be described by saying that there is no inadvertence on the part of the defendant. If you state that John Smith is not liable for the act of William Jones, who, as a mere stranger, lets loose something of John Smith's which injures Henry Brown, you are in effect stating that John Smith is, in these circumstances, free from liability because there is neither unlawful intention nor unlawful inadvertence on his part. Nor is this the only exception to the rule in *Rylands* v. *Fletcher*, and nothing demonstrates more clearly the inaccuracy of calling such liability "absolute" than the existence of these exceptions.

It may be that these difficulties can be explained away, but at present the revolutionary school seems scarcely to have realized where its proposed reforms are likely to take it, while the pessimistic school has gone to the other extreme of overlooking the progress which has been made in the law of tort during the last half century.