to innocent persons, except so far as it might happen to constitute a breach of some express undertaking. We have spoken of the rule as universal, but, in the case of one servant of the same employer being injured by the default of another, an unfortunate aberration of the courts, which started about two generations ago from small beginnings, was pushed to extreme results, and led to great hardship. A partial remedy was applied in 1880 by the Employers’ Liability Act; and in 1897 a much bolder step was taken by the Workmen’s Compensation Act (super- seded by a more comprehensive act in 1906). But, as the common law and the two acts (which proceed on entirely different principles) cover different fields, with a good deal of overlapping, and the acts are full of complicated provisos and exceptions, and, contain very special provisions as to procedure, the improvement in substantial justice has been bought, so far, at the price of great confusion in the form of the law, and considerable difficulty in ascertaining what it is in any but the most obvious cases. The Workmen’s Compensation Act includes cases of pure accident, where there is no fault at all, or none that can be proved, and therefore goes beyond the reasons of liability with which the law of torts has to do. In fact, it establishes a kind of compulsory insurance, which can be justified only on wider grounds of policy. A novel and extraordinary exception to the rule of responsibility for agents was made in the case of trade combinations by the Trade Disputes Act 1906. This has no interest for law as a science.

There are kinds of cases, on the other hand, in which the law, without aid from legislation, has imposed on occupiers and other persons in analogous positions a duty stricter than that of being answerable for themselves and their servants. Duties of this kind have been called “ duties of insuring safety.” Generally they extend to having the building, structure, or works in such order, having regard to the nature of the case, as not to create any danger to persons lawfully frequenting, using, or passing by them, which the exercise of reasonable care and skill could have avoided; but in some cases of “extra-hazardous ” risk, even proof of all possible diligence—according to English authority, which is not unanimously accepted in America—will not suffice. There has lately been a notable tendency to extend these principles to the duties incurred towards the public by local authorities who undertake public works. Positive duties created by statute are on a similar footing, so far as the breach of them is capable of giving rise to any private right of action.

The classification of actionable wrongs is perplexing, not because it is difficult to find a scheme of division, but because it is easier to find many than to adhere to any one of them. We may start either from the character of the defendant’s act or omission, with regard to his knowledge, intention and otherwise; or from the character of the harm suffered by the plaintiff. Whichever of these we take as the primary line of distinction, the results can seldom be worked out without calling in the other. Taking first the defendant’s position, the widest governing principle is that, apart from various recognized grounds of immunity, a man is answerable for the “ natural and probable ” consequences of his acts; *i.e.* such consequences as a reasonable man in his place should have foreseen as probable. Still more is he answerable for what he did actually foresee and intend. Knowledge of particular facts may be necessary to make particular kinds of conduct wrongful. Such is the rule in the case of fraud and other allied wrongs, including what is rather unhappily called “ slander of title,” and what is now known as “ unfair competition ” in the matter of trade names and descriptions, short of actual piracy of trade-marks. But where an absolute right to security for a man’s person, reputation or goods is interfered with, neither knowledge nor specific intention need be proved. In these cases we trespass altogether at our peril. It is in general the habit of the law to judge acts by their apparent tendency, and not by the actor’s feelings or desires. I cannot excuse myself by good motives for infringing another man’s rights, whatever other grounds of excuse may be available; and it is now settled conversely, though after much doubt, that an act not otherwise unlawful is not, as a rule, made unlawful by being done from an evil motive. This rule was known some time ago to apply to the exercise of rights of property, and such speculative doubt as remained was removed by the decision of the House of Lords in the leading case of *Allen* v. *Flood* (1898, A.C. 1). We now know that it applies to the exercise of all common rights. The exceptions are very few, and must be explained by exceptional reasons. Indeed, only two are known to the present writer—malicious prose­cution, and the misuse of a “ privileged occasion ” which would justify the communication of defamatory matter if made in good faith. In each case the wrong lies in the deliberate perversion of a right or privilege allowed for the public good, though the precise extent of the analogy is not certain at present.@@1 It must be remembered, however, that the presence or absence of personal ill will, and the behaviour of the parties generally, may have an important effect, when liability is proved or admitted, in mitigating or aggravating the amount of damages awarded by juries and allowed by the court to be reasonable. It may likewise be noted, by way of caution, that some problems of criminal law, with which we are not here concerned, require more subtle consideration. However, it is hardly ever safe to assume that the bounds of civil and criminal liability will be found coextensive. Perhaps we may go so far as to say that a man is neither civilly nor criminally liable for a mere omission (not being disobedience to a lawful command which he was bound to obey), unless he has in some way assumed a special duty of doing the act omitted.

We have already had to mention the existence of grounds of immunity for acts that would otherwise be wrongful. Such grounds there must be if the law is to be enforced and justice administered at all, and if the business of life is to be carried on with any freedom. Roughly speaking, we find in these cases one of the following conditions: Either the defendant was executing a lawful authority; or he was justified by extraordinary necessity; or he was doing something permitted by legislation for reasons of superior utility, though it may produce damage to others, and either with or without special provisions for compensating damage; or he was exercising a common right in matters open to free use and competition; or the plaintiff had, by consent or otherwise, disabled himself from having any grievance. Pure accident will hardly seem to any one who is not a lawyer to be a special ground of exemption, the question being rather how it could ever be supposed to be a ground of liability. But it was supposed so by many lawyers down to recent times; the reason lying in a history of archaic ideas too long to be traced here. Exercise of common rights is the category where most difficulty arises. Here, in fact, the point at which a man’s freedom is limited by his neighbour’s has to be fixed by a sense of policy not capable of formal demonstration.

As Justice Holmes of the Supreme Court of the United States has said, we allow unlimited trade competition (so long as it is without fraud) though we know that many traders must suffer, and some may be ruined by it, because we hold that free competition is worth more to society than its costs. A state with different economic foundations might have a different law on this, as on many other points. This freedom extends not only to the exercise of one’s calling, but to choosing with whom and under what conditions one will exercise it. Also the law will not inquire with what motives a common right is exercised ; and this applies to the ordinary rights of an owner in the use of his property

@@@1 It was formerly supposed that an action by a party to a contract against a third person for procuring the other party to break his contract was within the same class, *i.e.* that malice must be proved. But since *Allen* v. *Flood,* and the later decision of the House of Lords in *Quinn* v. *Leathem* (1901, A.C. 495), this view seems untenable. The ground of action is the intentional violation of an existing legal right; which, however, since 1906, may be practised with impunity in the United Kingdom “ in contemplation or furtherance of a trade dispute ” : Trade Disputes Act, § 3.