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DONOGHUE v. STEVENSON's 60th ANNIVERSARY*

FRANCO FERRARI**

I. INTRODUCTION

On 26 May 1932, the House of Lords decided a case that has been defined not only as "revolutionary"[1] and "[the] single most important decision in the history of the law of torts",[2] but even as the "most important decision in all the common law".[3] Of course, one refers to the so called "Snail Case"[4] or "Snail in the Ginger Beer Case",[5] *i.e.*, to *Donoghue v. Stevenson*[6] which has not only influenced English[7] product liability law but (above all) the English law of torts.[8]

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1. 173 LAW TIMES 411 (1932).

2. A. M. Linden, *The Good Neighbour on Trial: A Fountain of Sparkling Wisdom*, 17 U.B.C. L.REV. 67 (1983).

3. Joseph C. Smith & Peter Burns, *The Good Neighbour on Trial: Good Neighbours Make Bad Law*, 17 U.C.B. L.REV. 93 (1983). *See* also, Alan Rodger, *Mrs. Donoghue and Alfenus Varus*, 41 CURRENT LEGAL PROBLEMS 1, at 2 (1988), where the author states that "[*Donoghue v. Stevenson*] is, after all, probably the most famous case in the whole Commonwealth world of the common law."

4. As for the use of this expression, *see, e.g.*, Frederick Pollock, *The Snail in the Bottle, and Thereafter*, 49 L.Q.R. 22 (1933).

5. This expression has been used, for example, by the PAISLEY AND RENFREWSHIRE GAZZETTE, 28 May 1932. The decision at issue is known in a few different ways. *See, e.g.*, *The Daily Express*, 27 May 1932, which called it "Food Purity Test Case." Linden, *supra* note 2, 67, at 68, prefers to speak of the "snail in the bottle case."

6. *Donoghue v. Stevenson*, (1932) A.C. 562.

7. However, *Donoghue v. Stevenson* has not only influenced the English product liability law. In 1983, Linden, *supra* note 2, 67, at 82, referring to Canada, wrote that "to this day . . . the rule Lord Atkin laid down still governs the relationships between producers and consumers of goods in this country." Of course, Linden, too, was aware that "[c]ertain legislatures [such as Saskatchewan and Brunswick], however, have responded to the calls of the reformers and have enacted strict liability claims," Linden, *supra* note 2, 67, at 85.

8. The importance of *Donoghue v. Stevenson* was recognized not only "among the

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Despite the celebrity of the decision under review[9], it may be useful to summarize what *Donoghue v. Stevenson*[10] actually decided, since there has been some confusion on this subject[11]. In the case under review, the House of Lords had to decide whether Mrs. Donoghue[12], the pursuer in the Court of Session, should be authorized "to go to trial to prove her case"[13]: Mrs. Donoghue suffered a severe shock upon seeing the remains of a decomposed snail floating out of a bottle of ginger beer she had begun to drink. Furthermore, she alleged that she suffered gastroenteritis as a result of having drunk some of the ginger beer[14].

The House of Lords, by a majority of three[15] to two[16],

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torts professors of the day, . . . [who] had to tear up the old notes they had been reading from in their torts lectures for years," Linden, *supra* note 2, 67, at 67, but also by some newspapers. THE SCOTSMAN, 27 May 1932, considers *Donoghue v. Stevenson* as being a "novel point" which "should be welcomed by the public." The (1933) 3 FORTHNIGHTLY L.J. 24, speaks of "one of the most important decisions of the century." For the press reaction, *see* also Linden, *supra* note 2, 67, at 67-69.

9. *Donoghue v. Stevenson* has been treated in several papers; *see, e.g.*, DONOGHUE V. STEVENSON AND THE MODERN LAW OF NEGLIGENCE - THE PAISLEY PAPERS (Peter Burns ed. 1991); Franco Ferrari, *Produkthaftung und Negligence: Sechzig Jahre Donoghue v. Stevenson*, ZEITSCHRIFT FÜR EUROPÄISCHES PRIVATRECHT 354 (1993); R. F. V. Heuston, *Donoghue v. Stevenson In Retrospect*, 20 MOD. L. REV. 1 (1957); Florence O'Donoghue, *A half-century of neighborliness: Donoghue v. Stevenson reconsidered*, LAW & JUSTICE 4 (1984); Alan Rodger, *Lord MacMillan's Speech in Donoghue v. Stevenson*, 108 L.Q.R. 236 (1992); Reinhard Zimmermann, ". . . *his soul goes sliding on forever*, ZEITSCHRIFT FÜR EUROPÄISCHES PRIVATRECHT 435 (1993).

10. Even though the decision under review is best known as *Donoghue v. Stevenson*, there has been some uncertainty about how to quote it. In fact, while in (1932) A.C. 562 it is referred to as *M'Alister (or Donoghue) (Pauper) v. Stevenson*, the ALL ENGLAND REPORT, (1987) 2 All E.R. 14, refers to it as *Mrs. Donoghue (or M'Alister)*. For a more detailed examination of this problem, *see* Rodger, *supra* note 3.

11. In fact, in *Donoghue v. Stevenson* the House of Lords *did not* have to decide whether Mrs. Donoghue should be awarded the sum of money she claimed in damages, as was erroneously stated in the DAILY HERALD, 27 May 1932. "This mistake can probably be explained by the fact that in her pleadings [Mrs. Donoghue] had claimed pound 500 in damages, which the journalist wrongly assumed she had been granted", Linden, *supra* note 2, 67, at 68.

12. As for information on Mrs. Donoghue, as well as for information on the other persons involved in *Donoghue v. Stevenson*, *see* Rodger, *supra* note 3. Further information on "the woman whose alleged misfortune was to transform the Common Law", Rodger, *supra* note 3, 1, at 3, can be found in some columns in THE SUNDAY TIMES COLOUR MAGAZINE, 8 February 1976, p. 30, which "[u]nfortunately . . . contain elements of sheer fantasy so that Mrs. Donoghue's life becomes a Gothic Romance." Id.

13. Linden, *supra* note 2, 67, at 68.

14. *See Donoghue v. Stevenson*, (1932) A.C. 562, 563.

15. Lord Atkin, Lord MacMillan and Lord Thankerton were the judges in the majority.

16. The two Law Lords who dissented were Lord Buckmaster and Lord Tomlin,

stated, in spite of a contrary decision in a similar case[17], that "Mrs. Donoghue's pleadings were 'relevant', that is, that they disclosed a cause of action."[18]

II. *DONOGHUE v. STEVENSON*: ITS INFLUENCE ON PRODUCT LIABILITY

This decision, which some authors consider as being linked to the industrial revolution,[19] influenced, as mentioned *supra*, not only product liability law, but the law of torts as well. Up until the beginning of the 20th century, English product liability law was based upon the same principles as the law of tort, *i.e.*, holding the manufacturer liable required not only the proof of his carelessness, but also proof of a "breach of a particular duty of care owed . . . to the victim."[20]. And it was this specific duty

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who later were decribed as "timorous souls", *Per* Lord Denning in *R. H. Candler v. Crane, Christmas & Co.*, (1951) 2 K.B. 164, at 178 (C.A.), and who were accused of being timid and "less courageous", Pollock, *supra* note 4, 22, at 22.

The differences between the majority and the dissenters has been described as an example of "[the] working of two antagonistic schools of interpretation; namely, the conservative and legalistic, the liberal and sociological," Vincent MacDonald, *Torts - The Liability of Manufacturer to the Ultimate Consumer*, 10 CAN. B. REV. 478, at 478, quoted according to Linden, *supra* note 2, 67, at 80.

17. *See Mullen v. Barr & Company*, (1929) S.C. 461, in regard to which Linden, *supra* note 2, 67, at 72, stated that "Lord Moncrieff . . . felt that he was not bound by *Mullen v. Burr & Company*, a case with almost identical facts involving a mouse, on the basis that it had proceeded upon the footing that negligence had not been proved . . . [However,] Mr. Stevenson appealed Lord Moncrieff's decision to the Second division of the Court of Sessions, where the Lord Justice Clerk (Lord Alness), Lord Ormidale and Lord Anderson held that they were bound by their previous decision in *Mullen v. Barr & Company*, holding that no cause of action was disclosed."

18. *Id.*

19. It has often been argued that both the English and the American law of negligence were linked to the industrial revolution, but this thesis does not seem to be tenable. Indeed, as far as the American tort of negligence is concerned, one must note that its leading case, *Brown v. Kendall*, 60 Mass. 292 (1850) "did not involve industry, but was instead a case growing out of the actions of private persons engaged in separating two fighting dogs," Peck, *Negligence and Liability without Fault in Tort Law*, quoted according to JAMES HENDERSON & RICHARD PEARSON, THE TORTS PROCESS 322 (3rd ed. 1988). And as far as the English law of negligence is concerned, one must note that *Donoghue v. Stevenson* occurred after the industrial revolution, *i.e.*, when there was no necessity to believe "that the development . . . under a system of private enterprise would be hindered and delayed as long as the element of chance exposed the enterprisers to liability for the consequences of pure accident, without fault of some kind," Charles Gregory, *Trespass to Negligence to Absolute Liability*, 37 VA. L. REV. 359, at 365 (1951). For a critic *see* also Franco Ferrari, *Comparative Ruminations on Liability for One's Own Acts*, 15 LOYOLA OF LA INT'L & COMP. L. J 813, 827 et seq.

20. *See, e.g.*, 2 KONRAD ZWEIGERT & HEIN KÖTZ, INTRODUCTION TO COMPARATIVE LAW

of care which, up to the beginning of the 20th century, prevented the possibile application of the law of torts to the manufacturer, "since it was thought that whereas a person who manufactured - or repaired goods of any kind - was under a duty of care towards his purchaser or customer, he owed no such duty to any third party with whom he had no contract."[21] Consequently, the consumer could claim damages on neither a contractual nor a tortious basis,[22] even if he could prove the carelessness of the manufacturer, since the latter did not owe a duty of care to the consumer.[23] As far as product liability is concerned, *Donoghue v. Stevenson*'s importance consisted in rejecting this "fallacy",[24] a tendency which had been initiated in America by *MacPherson v. Buick Motor Co.*[25] and in Canada by *Buckely v. Mott.*[26] Indeed, *Donoghue v. Stevenson* laid down the principle according to which "manufacturers did owe a duty of care to the ultimate consumer not to create risks of harm through the manufacturing process."[27]

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306 (2d ed. 1987).

21. *Id.*

22. As far as this principle is concerned, Joseph C. Smith, *Economic Loss and the Common Law Marriage of Contracts and Torts*, 18 U.B.C. L. REV. 95, at 96 (1984), pointed out that "this line of cases seems to stem from a misapplication of *Winterbottom v. Wright*, (1842) 10 M. & W. 109, 152 E.R. 402 (Ex.). For a similar statement, *see* also, Linden, *supra* note 2, 67, at 85.

23. The relationship between carelessness (negligent conduct) and duty of care has been emphasized very clearly by Lord Esher in *LeLievre v. Gould*, (1893) 1 Q.B. 491, 497, quoted according to ZWEIGERT & KÖTZ, *supra* note 20, at 306: "A man is entitled to be as negligent as he pleases towards the whole world if he owes no duty to them."

24. This expression has been used for example by Harold Evans, *A certain lawyer stood up -Donoghue v. Stevenson 50 years on*, NEW ZEALAND L.J. 159, at 159 (1982), where the author proclaims that "*Donoghue's Case* produced . . . also the rejection of the fallacy that, *because* there was no contractual liability on the manufacturer's part to the plaintiff, *therefore* there could be no liability in tort."

25. *See MacPherson v. Buick Motor Co.*, 217 N.Y. 382, 111 N.E. 1050 (1916). It has been said that on the basis of this decision, "there was a gradual relaxation of the severe rule that even the proven carelessness of a manufacturer did not expose him to any tort liability towards third parties who had no contract with him," ZWEIGERT & KÖTZ, *supra* note 20, at 306.

26. *See Buckley v. Mott*, (1920) 50 D.L.R. 408 (N.S.S.C.), in regard to which Linden, *supra* note 2, 67, 83, proclaimed that "[it] is ironic indeed that, despite the undoubted significance of *Donoghue v. Stevenson* on the development of the Canadian negligence law dealing with products, a judge in Nova Scotia came actually to the same conclusion 12 years earlier in *Buckley v. Mott*." And it is only "[b]ecause of the absence of penetrating analysis and the modesty of prose [that] *Buckley v. Mott* has been largely ignored," Linden, *supra* note 2, 67, at 84.

27. Smith, *supra* note 22, 95, at 96. According to ZWEIGERT & KÖTZ, *supra* note 20, at 306, *Donoghue v. Stevenson* laid down the principle that "the manufacturer owes the consumer a duty of care at least when, through the intermediary of a dealer, he delivers

However, since *Donoghue v. Stevenson*, product liability has changed: most legal systems belonging to the common law area have substituted strict liability for fault liability.[28] And even though the importance of this decision "is likely to be reduced and eventually eclipsed. . . that does not mean that we shall forget *Donoghue v. Stevenson*",[29] above all if one considers "[its lasting] impact on the general principles of the law of negligence and on tort law theory generally."[30]

III. *DONOGHUE v. STEVENSON* AND THE LAW OF TORTS

The contribution of the "McAllister's Case"[31] to the law of torts is even more important and lasting than its contribution to product liability, even though on *Donoghue v. Stevenson*'s 25th anniversary Professor Heuston predicted that on its 50th anniversary in 1982 the "Snail Case" would be of little more than antiquarian interest[32]. He was wrong. *Donoghue v. Stevenson*'s influence will last forever, since "[it] revolutionized the law of negligence"[33], by attributing to the concept of "negligence", in the sense of an independent type of tort,[34] a new meaning. This

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to the consumer goods whose freedom from defect neither the dealer nor the consumer was in any position to ascertain."

28. *See*, for a similar affirmation, *e.g.*, Linden, *supra* note 2, 67, at 85, quoted *supra* note. *See* also, ZWEIGERT & KÖTZ, *supra* note 20, at 307.

29. Linden, *supra* note 2, 67, at 86.

30. *Id.*

31. This appellation is used in 174 *Law Times* 399 (1932).

32. *See* Heuston, *supra* note 19, 1, at 1. Professor Heuston was convinced *Donoghue v. Stevenson* would soon become a mere "repository of ancient learning", *Id.*, "because he thought that tort law would likely be abolished and replaced by a social insurance scheme by that time", Linden, *supra* note 2, 67, at 67.

33. Rina Harber, *Snails, snails and more snails*, 66 LAW INSTITUTE J. 201, at 201 (1992) (reviewing DONOGHUE V. STEVENSON AND THE MODERN LAW OF NEGLIGENCE - THE PAISLEY PAPERS (PETER BURNS ed. 1991)).

34. As it is known, "negligence is both a way of committing various torts and a tort on its own," GLANVILLE WILLIAMS & B. A. HEPPLE, FOUNDATIONS OF THE LAW OF TORT 88 (1976). *See* also, WINFIELD AND JOLOWICZ ON TORT 25 (W. V. H. Rogers ed. 1975), where it is stated that negligence not only constitutes an element of fault, "it also has the further meaning of an independent tort, with the specific name of 'negligence'." A similar distincion has also been made earlier by Winfield, *The History of the Law of Torts*, 42 L.Q.R. 184, at 196 (1926): "Negligence in the law of torts has a double meaning; it may signify a) a definite tort (the tort of negligence) . . . b) a possible mental element in the commission of some other (but by no means all) torts."

However, more recently CHARLESWORTH, ON NEGLIGENCE 1 (1971), argued that "in current forensic speech negligence has three meanings. They are 1) a state of mind . . .,

meaning bears some similarity to a general clause known in some civil law systems,[35] at least as far as torts based upon negligent conduct are concerned.

Before the decision of the House of Lords under review, the English tort of negligence and its procedure was characterized, not unlike the law of the nominate torts, by "[that] it was first asked whether the causing of the harm fell within one of the existing categories of torts."[36] If there was no "breach of a legally recognized duty of care",[37] the plaintiff would not recover,[38] *i.e.*, "prior to 1932, negligent conduct only could give rise to liability in limited, specific circumstances."[39]

As has often been pointed out, the importance of *Donoghue v. Stevenson* consisted in widening[40] the scope of application of

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2) careless conduct, and 3) the breach of a duty to take care . . ."

35. For a similar evaluation of the tort of negligence after *Donoghue v. Stevenson*, *see* also some Italian writers, as Paolo Gallo, *Tipicità ed atipicità dell'illecito in common law*, *in* ATLANTE DI DIRITTO PRIVATO COMPARATO 145, at 153 (Francesco Galgano & Franco Ferrari eds., 1992); Antonello Miranda, *The Negligence Saga: Irragionevolezza edingiustizia del danno nel risarcimento delle pure economic losses*, RIV. DIR. CIV. 387, at 403 (1992). In English literature, *see* above all, Joseph C. Smith & Peter Burns, *Donoghue v. Stevenson - The not so Golden Anniversary*, 46 MOD. L. REV. 147, 149 (1983), where the authors use the expression "general principle".

However, even though there may be some similarities between the English tort of negligence and the unintentional torts of some civil law systems based upon a general clause, they are not comparable since the scope of application of the latter is broader. The possible danger of comparing the common law's tort of negligence with the civil law's unintentional tort has been recognized by several authors. *See*, *e.g.*, ANDRÉ TUNC, INTRODUCTION, *in* 11(1) INT. ENC. COMP. L. 54 (1974), where the author states that "at first sight, we may be tempted to say that the tort of negligence comes extremely close to the concept of faute as elaborated in the French-based legal systems, and by French CC art. 1382 in particular."

36. Smith & Burns, *supra* note 35, 147, at 149.

37. Smith & Burns, *supra* note 35, 147, at 150.

38. For an example of the application of the aforementioned principle, *see*, *e.g.*, *Simpson v. Thomson*, (1877) A.C. 279, 290: "[T]he ground upon which I will ask your Lordships to reject this contention of the Respondent's counsel is this-that upon the cases citied no precedent or authority has been found or produced to the House for an action against the wrongdoer." For this problem, *see* also, Paolo Gallo, *Il Tort of Negligence: Dalla responsabilità per ipotesi tipiche alla regola del neminem laedere*, RESP. CIV. PREV. 15, at 23 (1986).

39. Joycey Tooher, *Still Silvery on its Diamond Jubilee?, On the Trial of that elusive snail (Donoghue v. Stevenson)*, 66 LAW INSTITUTE J. 378, at 379 (1992).

40. Of course, while the supporters of *Donoghue v. Stevenson* insist on its importance for having widened the area of the tort of negligence, the opponents criticize this element. *See*, *e.g.*, Heuston, *supra* note 19, 1, at 23, where the author proclaims that *Donoghue v. Stevenson* "has been overemphasised by both its supporters and its opponents. It was not intended to be, and cannot properly be treated as being, a general

the principles of the tort of negligence,[41] *i.e.*, in freeing the possibility 'to prove one's case' from its dependence on a precedent. After 1932, this should be looked upon as an example of the scope of application of the tort of negligence.[42] *In extremis*, this results in a general principle[43] according to which "the categories of negligence are never closed."[44] Consequently, nowadays the starting point in a tort of negligence case is no longer constituted by precedents, but by *Donoghue v. Stevenson*.[45] Lord Reid pointed this out very clearly, when he stated that "[*Donoghue v. Stevenson*] ought to apply unless there is some justification or valid explanation for its exclusion."[46]

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formula which will explain all conceivable cases of negligence . . . It is indeed a sign of poverty of thought about the law of torts in this country that the proposition should have been called upon to bear a weight so manifestly greater than it could support." Other legal writers tried to "curb the generality of Lord Atkin's wider principle, [too]," W. E. P. DeRoche, *Torts - Negligence - Duty of Care - Liability of Contractor to Third Person*, 13 CAN. B. REV. 112, at 114 (1935). *See, e.g.*, SALMOND ON THE LAW OF TORTS 546-547 (8th ed. 1934), where the author suggests to confine the "Snail Case" only to food and drink manufacturers. However, as has been pointed out by Linden, *supra* note 2, 67, at 81-82, "[t]he prize for the narrowest view of *Donoghue v. Stevenson* . . . goes to the *Solicitors Journal* which, in apparent seriousness, suggested that 'There might be a distinction between draft and bottled beer, the former falling without and the latter within the present case.' "

41. *See, e.g.*, WILLIAMS & HEPPLE, *supra* note 34, at 90, where the authors proclaim that "[the decision's most innovative element] was its insistence upon the expansible nature of the action of negligence."

42. In this sense, *see* Lord Atkin in *Donoghue v. Stevenson*, (1932) A.C. 562,: "I content myself with pointing out that in English law there must be, and is, some general conception of relations giving rise to a duty of care, of which *the particular cases in the books are but instances*."

43. *See*, Smith & Burns, *supra* note 3, 93, at 99, where it is stated that the rules laid down in *Donoghue v. Stevenson* "can be the source of a *general principle* for all negligent causing of harm," (italics added).

44. *Per* Lord MacMillan in *Donoghue v. Stevenson*, (1932) A.C. 562, 619.

45. For a similar affirmation, *see, e.g.*, Smith & Burns, *supra* note 35, 147, 150: "Over the ensuing years the courts have gradually shifted their approach from that of ascertaining a specific duty of care for each kind of situation or class of relationships, to that of starting from the position of the general duty of care as enunciated in *Donoghue v. Stevenson*."

46. *Per* Lord Reid in *Home Office v. Dorset Yacht Co.*, (1970) A.C. 1004, 2027 (H.L.), where Lord Reid also stated that "[a]bout the beginning of this century most eminent lawyers thought that there were a number of separate torts involving negligence, each with its own rules, and they were most unwilling to add more . . . In later years there has been a steady trend towards regarding the law of negligence as depending on principle so that, when a new point emerges, one should ask not whether it is covered by authority but whether recognised principles apply to it. *Donoghue v. Stevenson* [1932] A.C. 562I may be regarded as a milestone, and the well-known passage in Lord Atkin's speech should I think be regarded as a statement of principle."

However, since "acts or omissions which any moral code would censure cannot in a practical world be treated so as to give a right to every person injured by them to demand relief,"[47] the general principle of *Dononghue v. Stevenson*, which brought English law into line with the American law,[48] must be restricted by a rule "which limit[s] the range of complaints and the extents of their remedy."[49] This rule, which is based upon Professor Pollock's teachings, is known as the "neighbour principle"[50] according to which "[one] must take reasonable care to avoid acts or omissions which . . . can . . . injure . . . persons who are so closely and directly affected by my act that I ought reasonably to have them in contemplation as being so affected when I am directing my mind to the acts or ommissions which are called in question."[51]

And it is this principle, by the means of which "one of the basic teachings of Christianity - that you should love your neighbour - [has been transformed] into the central principle of negligence law,"[52] from which the decision under review derives its

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47. *Per* Lord Atkin in *Donoghue v. Stevenson*, (1932) A.C. 562, 580.

48. *See*, for this affirmation, Pollock, *supra* note 4, 22, at 22, where the author not only defines *Donoghue v. Stevenson* as a "notable step", but also praises it "[for bringing English law] into the line with the prevailing opinion . . . of our American learned friends." In fact, *Donoghue v. Stevenson* brought English law into line not only with the American product liability law at that time based upon *MacPherson v. Buick Motor Co.*, *supra* note 25, but also with the American leading case of the law of negligence, *Brown v. Kendall*, 60 Mass. 292 (1850). This "reunification" was necessary, because "in 1850 . . .the two systems (England and America) split asunder Chief Justice Shaw's leading opinion in *Brown v. Kendall*," E. F. Roberts, *Negligence: Blackstone to Shaw to? An Intellectual Escapade in a Tory Vein*, 50 CORNELL L.Q. 191, at 201 (1965).

49. *Per* Lord Atkin in *Donoghue v. Stevenson*, (1932) A.C. 562, 580.

50. In 1889, FREDERICK POLLOCK, THE LAW OF TORTS 12 (1889), stated the principle according to which "Thou shalt do no hurt to thy neighbour. Our law of torts, with all its irregularities, has for its main purpose nothing else than the development of this precept." *Au fond*, this means to affirmatively answer the question whether the English "law of torts consist[s] of a fundamental general principle that it is wrongful to cause harm to other persons in the absence of some specific ground of justification or excuse", JOHN SALMOND, LAW OF TORTS 8-9 (1910), *i.e.*, it means to reject the opinion according to which the law of torts "consist[s] of a number of specific rules prohibiting certain kinds of harmful activity, and leaving all the residue outside the sphere of legal responsibility," *Id.*

51. *Per* Lord Atkin in *Donoghue v. Stevenson*, (1932) A.C. 562, 580.

52. Linden, *supra* note 2, 67, at 86. For a very similar statement which, however, contains some criticism, *see* Smith & Burns, *supra* note 35, 147, at 148, where it is stated that "[w]hile some of the recent developments in the law of negligence are, in general, encouraging, the final formulation of the "neighbour principle" alters the grounds of legal liability by transforming the Christian precept of loving one's neighbour into a legal

"immortality".[53] And this immortality will last, although *Donoghue v. Stevenson* has been criticized both by legal scholars[54] and judges,[55] since "[the] neighbour principle play[s] an important part in humanizing humanity."[56] Furthermore, *Donoghue v. Stevenson* will survive, since it "can and does provide a magnificent vehicle to enable us to discuss what is acceptable and proper conduct and what is unacceptable and improper conduct . . . and so let us salute [and pay tribute to] *Donoghue v. Stevenson* on its [60th] anniversary . . . for helping to continue breathing new life in the law of torts."[57]

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responsibility for one's fellow man. Thus the separation between law and morality, which is essential for the autonomy of law as a social institution, is being seriously eroded in this area."

53. *See* Linden, *supra* note 2, 67, at 86: "[It is] the 'neighbour principle', which is the greatest glory of *Donoghue v. Stevenson* and gives it immortality."

54. Apart from Heuston, *supra* note 19, *Donoghue v. Stevenson* has been criticized by Smith & Burns, *supra* note 35, 147, 148, where the authors stated that "the poverty of thought about the law of torts, which Professor Heuston decried 25 years ago, is even more evident today." For a criticism, *see* also, BAKER, TORT 63 (1972); BELL, POLICY ARGUMENTS IN JUDICIAL DECISIONS 41 (1983); DIAS & BASIL S. MARKESINIS, THE ENGLISH LAW OF TORTS: A COMPARATIVE INTRODUCTION 30 (1976); JAMES, INTRODUCTION TO ENGLISH LAW 262 (1976). For further information, *see* the literature listed in Gallo, *supra* note 38, 15, at 21 note 32.

55. Some judges avoid applying the "neighbour principle" laid down in *Donoghue v. Stevenson* by considering it, such as in *Farr v. Butters Brothers and Company*, (1932) 2 K.B. 606, a mere *obiter dictum* instead of a *ratio decidendi*. As for this method of opposition to *Donoghue v. Stevenson*, *see*, *e.g.*, STREET, ON TORTS 107 (6th ed. 1976): "If the court wishes to deny a duty it will usually hold that it is not bound by the dictum of Lord Atkin or else ignore it altogether . . . If the court views the plaintiff's pleadings favourably it may accept the dictum of Lord Atkin as binding and apply it directly." A similar statement can also be found in POLLOCK'S TORTS 329 (LANDON ed. 1951): ". . . wherever the Court wishes to find for the Plaintiff, that doctrine will be invoked, just as it will be disregarded where the defendant is the favoured party."

56. Linden, *supra* note 2, 67, 89.

57. *Id.*, at 89-90.