doubtless be the very last to receive the benefit of the proposed distinction and the corresponding limitation of liability. It becomes, therefore, a grave question whether, admitting that the distinction is expedient and lawful in ordinary cases of injury by private persons, it is also expedient and lawful in cases of injury by corporations; and inasmuch as the rule of unlimited liability for negligent injuries has been almost universally acquiesced in for half a century, or since the advent of railways, and the rise of cases such as are comprehended within the scope of this discussion, some exceedingly potent reasons must be advanced to change the rule of liability. It is said that "a railroad terminating in a city might, by the slightest omission on the part of one of its numerous servants, be made to account for squares burned, the consequence of a spark communicated to a single building."*

Again, it is said: "To sustain such a claim as the present" (for remote damages) "and to follow the same to its legitimate consequences, would subject to a liability against which no prudence could guard, and to meet which no private fortune would be adequate.† But it appears that the argument of the learned judges is directed to the hypothetical consequences of the rule which they oppose. They also seem to consider that there is no difference in principle between the cases of a railroad company and of a private individual. Both of these modes of reasoning we deem unsound. The latter has been sufficiently referred to in the previous portions of this paper. Of the former we have to say that the realities of half a century of railway existence, the exigencies of great injuries occasioned by railroads to property adjoining, and the pecuniary answerability of railway companies, have never warranted any such hypothesis.

In establishing a rule, such as is proposed by what is called the consequential argument, it is acknowledged to be a great fallacy to refer to consequences which only by the most extraordinary coincidences could happen, or to events which are only in the range of possibility. It is *possible* that a spark from a locomotive should become the first of a series of causes which should burn a city, but the hypothesis has nothing to do with the formation of a rule of legal liability; because the nature of things and an observation of the past shows that such a result is *extremely improbable.* And when such a hypothesis is resorted to, to save a railroad company from liability for the indirect burning of a hotel or of a dwelling house, it seems like a misuse of the mode of calculating chances in establishing a rule of law. Railroads have existed, thriven and become the most potent and opulent agency in the whole domain of commercial —and we might add, political—life, under the operation of a rule of law which excludes any distinction between proximate and remote damages, or any limitation of responsibility based on these distinctions. Then why invoke a hypothetical and extremely improbable exigency in the process of establishing a rule of liability for those powerful corporations?*

But, for the purposes of the discussion, we have decided to concede that such a distinction as proximate and remote damages is admissible in fixing the liability of railroads for losses occasioned to adjoining property by fires communicated from locomotives. We shall then have arrived at the second part of the discussion. We have contended that the courts as a matter of law, ought to hold that the liability of railroads for negligent injuries to adjoining property, should be coextensive with those injuries. But it will be observed that the high courts of New York and Pennsylvania have gone to the other extreme. They not only hold that there is a limit to the liability, which is based on remoteness of result, but they go so far as to declare, in a given case, where that liability ends. *Ryan* v. *New York Central R. R, Co.. supra; Penn. R. R. Co.* v. *Kerr, supra.* This leaves nothing for the jury to do but to assess the amount of the damages. The Supreme Court of Illinois, however, takes a medium ground and holds that the question of remoteness also is for the jury. The question of the admissibility of the distinction between direct and indirect losses, and the line of demarcation between the two ought to be very well settled to warrant a court in judicially determining what is direct and what is indirect. The line of demarcation seems to be too complex and obscure and not sufficiently arbitrary to warrant a judge in taking the question of remoteness away from the jury entirely and putting his own version upon it. "Remote consequences" is a relative phrase just as "reasonable care" is relative; and the question of negligence in a railroad company, in case of injury to persons or property, is seldom or never taken from the jury, except in cases where a positive enactment has been violated.

The boundaries of proximate consequences have been very properly defined to be the natural, necessary and probable consequences arising from any act. Now the natural, necessary, and probable consequences of fire escaping from a locomotive may and must differ according to circumstances and periods. In a dry time with a high wind, the necessary, natural and probable consequences of the escape of fire from a locomotive would be not only the destruction of build-

* Judge Thompson in *R. R. Co.* v. *Kerr, supra.*

† Judge Hunt in *Ryan* v. *R. R. Co., supra.*

*In those extraordinary and exceptional instances where immense conflagrations should ensue from so slight a first cause as a spark from a locomotive negligently managed or constructed, the hardship of the rule of unlimited liability could be easily modified under some general principle like that which excuses a party from the performance of a contract or the discharge of a liability in case of war, superior force, public calamity and the like. So even the assumed necessity for the rule laid down in *Ryan* v. *New York Central R. R. Co.*, and *Penn. R. R. Co.* v. *Kerr, supra*, is merely suppositious and has no substantial existence or force.