point is exceedingly limited, there being only three cases* reported in which the question (independent of statutory regulations as in Massachusetts) has been presented for judicial determination in America, and not a single case in which it has been so presented in England. As Judge Hunt remarked in *Ryan* v. *N. Y. Central R. R. Co.*, 35 N. Y. 210, "it will not be useful further to refer to the authorities," and an examination of the subject upon principle, will be the only method which can evolve the true rule of law regulating cases of this character. It is true that the question cannot be called an *open one* in New York or Pennsylvania, nor possibly in Illinois; but in England, and in the great majority of the American States, it is not only novel, but unadjudicated—not only new but *open*. In New York and Pennsylvania not only has the distinction between proximate and remote injuries from fires communicated by locomotives, and a corresponding limitation of liability been recognized, but the courts have taken it upon themselves to declare where the line of demarcation shall be drawn. See cases cited *supra*. In Illinois, the Supreme Court, while acknowledging that such a distinction exists, holds that the question whether the damages are too remote is for the jury, thus leaving it to the judgment of these twelve men to determine the point at which the liability of the railway company shall cease. The order of the investigation will, therefore be this: 1, to determine whether the maxim, *causa proxima non remota spectatur* has any application whatever to cases like those under consideration; and, 2, to determine whether—conceding that the distinction between proximate and remote damages is admissible—the question whether the damages are too remote is for the court or the jury.

The existence of the maxim in the common law, *causa proxima non remota spectatur*, does not necessarily imply that it is universally applicable. It may or may not be applicable to railroads, found in the negligent commission of injuries. It is the general rule that a bailee of goods is responsible only for a *degree* of care and prudence in the execution of his trust. But railroads, as common carriers, are liable absolutely for the goods committed to them for carriage, with the dual exception of loss by the act of God or the public enemy. The rule, therefore, that private individuals are responsible only for the direct and proximate, or immediate consequences of injuries inflicted on others is only a *prima facie* argument that railroad companies are only so liable. Railroad companies are so constituted, and occupy such a peculiar and powerful position in the economy of life that special laws may be, and often are, demanded for their control and for their punishment. The special and enormous franchises, privileges and powers conferred upon these corporations, naturally require a correspondingly special and enlarged duty and liability to the public. And when railroads were first established in England, the question arose whether they were not liable *absolutely* for loss by fires communicated by locomotives. This liability was sought to be enforced on the ground of this special and enlarged power and privilege, which the legislature had conferred on railway corporations, but it having been judicially determined that they were only liable for the *negligent* use of fire in locomotives at an early date (*King* v. *Pearse*, 4 B. & Ad. 30), the liability of these corporations has continued thus modified until the present. But it must be conceded that the question of the extent of the liability, when it is once determined that the extent of the liability exists, is quite a different question from that of the existence of any liability at all.

A division of the damages consequent upon a careless or negligent management of a locomotive engine into proximate and remote, necessitates another modification of the rule of liability. Railroads may be the cause of injury to adjoining property in two modes, considered in reference to care or the want of it. For injuries to adjoining property, resulting from want of care, they are liable, according to the well established rule; for injuries occurring, notwithstanding the exercise of care, they are not liable, according to an equally well-established rule. Now, it has been proposed, and, as we have seen, in some states determined, to further divide the injuries occasioned by want of care into two classes—those which are remote and those which are proximate, for the former of which they shall not be liable, and for the latter of which they shall be liable, thus multiplying divisions, and throwing upon our courts the determination of a multitude of new questions arising from unprecedented distinctions. Inasmuch as the distinction sought to be enforced in reference to railways is comparatively new, it seems that those who advocate it ought to assume the burden of proof. But the only argument of any potency and pertinency used by either Judge Hunt in *Ryan* v. *New York Central R. R. Co.*, *supra*, or Judge Thompson in *Penn. R. R. Co.* v. *Kerr*, *supra*, is the rule of the common law, *causa proxima non remota spectatur*, as if all the force of this maxim had not been destroyed by long continued acquiescence both in England and America, in the negation of this distinction in cases of damage by fire from locomotives. The force of this maxim has been neutralized by this continuous acquiescence in the absence of the distinction, and the question is at present in the state in which it would be had the distinction been one altogether new in law, if the distinction contended for were thus new in law, it must be admitted that courts would be exceedingly loath to admit its pertinency in cases of negligent injuries by corporations possessing such immense powers and franchises as have been conferred upon railroads. Such corporations would

* *Ryan* v. *New York Central R.R.Co.*, 35 N. Y. 210; *Pen. R. R Co.* v. *Kerr*, 1 Am. Rep. 431, (62 Pa. 353); *Toledo, etc., R. R., Co.* v. *Pindar*, 5. Am. Rep. (53 Ill. 447.)