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THE PENNSYLVANIA RAILROAD CO. V. WILLIAM KERR.

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through or by means of this intervening cause?" There might possibly be cases in which the causes of disaster, although seemingly removed from the original cause, are still incapable of distinct separation from it, and the rule suggested might be inapplicable; but of these when they occur. The maxim, however, is not to be controlled by time or distance, but by the succession of events.

The case on hand is a claim against the defendant under these circumstances, briefly: A warehouse of one Simpson, situate very near the track of the company's road, was set on fire by sparks emitted from a locomotive engine of the defendants, so negligently placed as to set it on fire. The burning of the warehouse communicated fire to a hotel building situated some thirty-nine feet from the warehouse, which, at the time, was occupied by the plaintiff as tenant, and it was consumed, with its furniture, stock of liquors and provisions, and for this the plaintiff sued and recovered below. Several other disconnected buildings were burned at the same time, but this is in no way involved in this case. No doubt the company was answerable for the destruction of the warehouse, resulting from the negligence of the company's servants in the use of the engine. The authority to the company to use steam on their road does not exempt it from liability for injury resulting from the negligent use of it: *Lackawanna and Bloomsburg R. R. Co. v. Doak*, 2 P. F. Smith, 379. The learned judge charged that the defendant was liable to the plaintiff to the extent of his loss, by reason of the burning of the hotel, although by fire communicated from the warehouse, if the latter was set on fire by the negligence of the defendant's servants, in the manner mentioned. To this charge the defendants excepted, and assign it for error, and this presents the question of this case.

This charge was of course the equivalent of holding, that a recovery for all the consequences of the first act of negligence of the defendants, was in law allowable. We are inclined to think in this there was error, for the reasons already given, and others that will be given. It cannot be denied but that the plaintiff's property was destroyed, but by a secondary cause, namely, the burning of the warehouse. The sparks from the locomotive did not ignite the hotel. They fired the warehouse and the warehouse fired the hotel. They were the remote cause,—the cause of the cause of the hotel being burned. As there was an intermediate agent, or cause of destruction, between the sparks and the destruction of the hotel, it is obvious that that was the proximate cause of its destruction, and the negligent emission of sparks the remote cause. To hold that the act of negligence which destroyed the warehouse, destroyed the hotel, is to disregard the order of sequences entirely, and would hold good if a row of buildings a mile long had been destroyed. The cause of destruction of the last in that case, would be no more remote, within the meaning of the maxim, than that of the first, and yet how many concurring elements of destruction there might be in all of these houses, and no doubt would be, no one can tell. So to hold, would confound all legitimate ideas of cause and effect, and really expunge from the law the

maxim quoted, that teaches accountability for the natural and necessary consequences of a wrongful act, and which should, in reason, be only such that the wrong-doer may be presumed to have known would flow from his act. According to this principle asserted, a spark from a steamboat, on the Delaware, might occasion the destruction of a whole square, although it never touched but a single separate structure. No one would be likely to have the least idea of such accountability, so as to govern and control his acts accordingly. 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 communicating to a single building. Were this the understanding of the extent of liability under such circumstances, it seems to me that there might be more desirable objects to invest capital in, than in the stock of such a railroad. But it never has been so understood or adjudged. Lowrie, J., in *Morrison v. Davis & Co.*, 8 Har. 171, illustrates the argument against such liability most strikingly, by reference to a well known fact. In the case he was treating, a horse in a canal boat team was lame, in consequence of which the boat was behind time in reaching the Juniata river, and in consequence of that was overtaken by a flood in the river which destroyed the boat with its freight. The carrier, the owner of the boat, was charged with being negligent in using a lame horse, the occasion of the delay. In treating of this as only the remote cause of the disaster, the learned Judge said: "There are often very small faults which are the occasion of the most serious and distressing consequences. Thus, a momentary act of carelessness set fire to a little straw, and that set fire to a house, and by an extraordinary concurrence of very dry weather and high winds, with this little fault, one-third of a city (Pittsburgh) was destroyed; would it be right that this small act of carelessness should be charged with the whole value of the property consumed?" The answer would and ought to be: No, it was but the remote cause of it. Innumerable occasions must have occurred in this commonwealth for asserting liability to the extent and upon the principle claimed here, yet we have not a solitary precedent of the kind in our books. This is worth something as proof against the alleged principle. It was Littleton's rule, "that what never was, never ought to be:" 1 Vern. 385.

The question in hand has not been adjudicated in this State, and but seldom discussed in any of the other States; yet we have a case decided in the Court of Appeals of the State of New York, in 1866, which is directly in point in support of the doctrine we have been endeavouring to advance above. It is the case of *Ryan v. The New York Central Railroad Co.*, (8 Tiffany,) 35 N. Y. 210. The facts in that case briefly were, that the defendant, by the carelessness of its servants, or through the insufficient condition of one of its locomotive engines, set fire to its own wood shed with a large quantity of wood therein. The plaintiff's house, situated some 130 feet from the shed, took fire from the heat and sparks of the burning shed and wood, and was entirely consumed. A number of other houses and buildings were destroyed by the spreading of the fire.