

grass on the railway bank had been already burned. Chief Justice Cockburn intimated that if the fire was carried indirectly by the dry grass on the bank to the wood, the defendant would be liable, but if it arose from the sparks not being carried to the bank but direct to the wood which was full of dry combustible material, the defendant would not be liable. It is thus well established, that one who owns land along a railway has a duty to perform in dry seasons when grass and weeds are liable to ignition. But by far the most important part of the discussion is included under the next and third division of cases, wherein the distinction between the direct and remote damages is made. A *resumé* of the discussion, and an observation of the course of decisions, both in England and the United States, will reveal the fact, that not until recently has this distinction been advanced in the courts. In fact, the decisions of England do not furnish a single instance of the distinction. So late as *Smith v. The London and South-Western R. R. Co.*, *supra*, (decided in 1870), in which fire was carried across a stubble field and a public road 200 yards to a cottage, it was held, without limitation, the plaintiff could recover, the jury having found negligence. In the United States the distinction has not been contended for or judicially recognized except in New York, Pennsylvania, and possibly in Illinois. In Massachusetts it has been ignored under their statute. *Berley v. Eastern R. R. Co.*, 98 Mass. 414. The leading case (and in fact the only case) in New York, which recognizes this doctrine is, *Ryan v. New York Central R. R. Co.*, 35 N. Y. 210. In this case it appeared that, by the negligent management of the engine, fire was communicated to a wood-shed of the company, and thence to the house of plaintiff which was destroyed; *held*, that the burning of the house was too remote a consequence of the company's negligence to render it liable therefor.

This case was followed and approved in *Penn. R. R. Co. v. Kerr*, 1 Am. Rep. 431 (62 Pa. 353). In this case a warehouse, situated near the railroad track, was set on fire by sparks from one of the company's locomotives, and the fire was communicated from the warehouse to a hotel which was also consumed. *Held*, that the company was not liable for the destruction of the hotel by reason of the injury being too remote. In *Toledo, P. and W. R. R. Co. v. Pindar*, to appear in 5 Am. Rep. (53 Ill. 447), it appeared that a building belonging to the company was set on fire negligently by a locomotive, and from the burning building, fire was blown across the street, and then communicated to the house of the plaintiff. *Held*, that the question whether the injury was too remote was for the jury. This is the extent of the reported adjudication on this most interested and complicated question of direct and remote damages. At common law, if a man build a fire on his own lands and allow it negligently to escape, he will be

liable for the injury resulting thereby to his neighbors. *Turbenville v. Stamps*, 1 Ld. Raym. 264; s. c., 1 Salk. 13; *Pantam v. Isham*, lb. 19; Com. Dig. Actions for Negligence, A. 6. But there must be a line somewhere, where the liability ends, else private individuals and corporations run hazards of which they little dream; and our courts, universally, may find an emergency in which they will be compelled to recognize some such doctrine as has been laid down *positively* in New York and Pennsylvania, and *conditionally* in Illinois.

Finally, we come to the adjudications upon the liability of railroads for damage from fire communicated by locomotives to goods in their charge as common carriers or warehousemen. In *Steinwig v. Erie R. R. Co.*, 3 Am. Rep. 673 (43 N. Y. 123) the plaintiff shipped goods over the defendant's railroad. By a clause in the bill of lading, the defendant was released from liability "from damage or loss of any article from or by fire or explosion of any kind." The goods were destroyed while on one of defendant's trains, by fire, which caught from a spark from the engine of the train. *Held*, that the defendants were not, by the stipulation in the bill of lading, released from liability for loss arising from its own negligence. In *Barron v. Eldridge*, 1 Am. Rep. 126 (100 Mass. 455), it appeared that flour in sheds and grain in elevators in the possession of defendant railroad company were burned by fire communicated by a locomotive of the company. It appeared further that the flour sheds were situated near the track and were of combustible material, that the fire was communicated first to these sheds and then to the warehouse or elevator, a distance of 250 feet. *Held*, that the company were guilty of negligence as to the grain in the elevators, but that it was a question for the jury whether they were guilty of negligence as to the flour in sheds. These latter cases are governed somewhat by the special contract or relation of carrier or warehousemen and patron. The great question which arises, however, on the liability of railroad companies for fires communicated by their locomotives has been when the relation is that of corporation to individuals independent of special contract, which we have already fully discussed.—*Albany Law Journal*.

FIRES COMMUNICATED BY LOCOMOTIVES—PROXIMATE AND REMOTE DAMAGES.

In a recent article (*ante*, p. 309) we took occasion to discuss in a general way the liability of railway companies for losses by fire, communicated from locomotives. We now propose to consider more definitely and thoroughly the question of proximate and remote, or direct and indirect injuries, in connection with the liabilities of railway companies. As we stated in the article above referred to, the adjudication upon this precise