

U. S. Rep.]

THE PENNSYLVANIA RAILROAD CO. V. WILLIAM KERR.

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as proof of negligence, we should not have been at a loss for a guide in this instance.

It results, from what has been said, that the rule for a new trial must be made absolute. If the point were a doubtful one, we should have preferred to let the record go for review to the court above. When, however, there is a moral certainty that the judgment will be reversed, it is due to the cause of justice, and the best interests of all concerned, that the issue should be tried again while the facts are still fresh in the memory of the witnesses.

*Rule absolute.*

—*Philadelphia Legal Intelligencer.*

### SUPREME COURT.

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A warehouse, situated near defendants' track, had been ignited by sparks emitted from a negligently placed locomotive of defendants; the burning warehouse in turn communicated fire to the plaintiff's building, distant some thirty-nine feet, destroying it. *Held:* That the proximate cause of plaintiff's loss was the burning warehouse; that the defendant's negligence was but the remote cause; and that therefore the defendant's were not liable to the plaintiff.

**Error to the Common Pleas of Huntingdon County.**

Opinion by THOMPSON, C. J. July 8th, 1870. —It has always been a matter of difficulty to judicially determine the precise point at which pecuniary accountability for the consequences of wrongful or injurious acts is to cease. No rule has been sufficiently defined and general as to control in all cases. Yet there is a principle applicable to most cases of injury which amounts to a limitation. It is embodied in the common law maxim, *causa proxima, non remota spectatur* —the immediate and not the remote cause is to be considered: *Pars. on Cont.*, Vol. III., p. 198, illustrates the rule aptly by the supposititious case of debtor and creditor, as follows: "A creditor's debtor has failed to meet his engagements to pay him a sum of money, by reason of which, the creditor has failed to meet his engagement, and the latter is thrown into bankruptcy and ruined. The result is plainly traceable to the failure of the former to pay as he agreed. Yet the law only requires him to pay his debt with interest. He is not held for consequences which he had no direct hand in producing and no reason to expect. The immediate cause of the creditor's bankruptcy, was his failure to pay his own debt. The cause of that cause was the failure of the debtor to pay him, but this was a remote cause, being thrown back by the interposition of the proximate cause; the non-payment by the creditor of his own debt." This, I regard, as a fair illustration of what is meant in the maxim, by the words "*proxima*" and "*remota*." See also *Notes*, same volume, p. 189.

In *Harrison v. Berkley*, 1 Strobh. S. Car. Rep. 548, Mr. Justice Wardlaw indulges in some reflections on this point worth referring to in this connection. "Every incident," says he, "will, when carefully examined, be found to be the result of combined causes; to be itself one of various causes, which produces other events. Accident or design may disturb the ordinary ac-

tion of causes. It is easy to imagine some act of trivial misconduct or slight negligence, which shall do no direct harm, but sets in motion some second agent that shall move a third, and so until the most disastrous consequences shall ensue. The first wrong-doer, unfortunate, rather than seriously blameable, cannot be made answerable for all these consequences."

It is certain that in almost ever considerable disaster, the result of human agency and dereliction of duty a train of consequences generally ensue, and so ramify as more or less to affect the whole community. Indemnity cannot reach all these results, although parties suffer who are innocent of blame. This is one of the vicissitudes of organised society. Every one in it takes the risk of these vicissitudes. Wilfulness itself cannot be reached by the civil arm of the law for all the consequences of consequences, and some sufferers necessarily remain without compensation. The case of *Scott v. Shepherd*, 2 Wm. Blac. R. 893, the case of the squib, is sometimes cited as extending the principle of the maxim, but it is not so. The doctrine of proximate and remote causes was really not discussed in that case. One threw a squib in the market place amongst the crowd. It fell on the stall of one who immediately cast it off to prevent it exploding there, and it struck a third person and exploded, putting out his eye. The question was, whether the defendant could be made answerable in the form of action adopted, which was trespass. Chief Justice De Grey held that the first thrower, the defendant, was answerable, for that in fact the squib did the injury by the first impulse. In this way the action of trespass was sustained. It is no authority against the principle suggested. There must be a limit somewhere. Greenl. in Vol. II., s. 256, touches the question thus: "The damages to be recovered must be the natural and proximate consequence of the act complained of." This is undoubtedly the rule. The difficulty is in distinguishing what is proximate and what remote. I regard the illustration from *Parsons* already given, although the wrong supposed arises *ex contractu*, as clear as any that can be suggested. It is an occurrence undoubtedly frequent, that by the careless use of matches, houses are set on fire. One adjoining is fired by the first, a third is by the second, and so on, it might be, for the length of a square or more. It is not in our experience that the first owner is liable to answer for all these consequences, and there is a good reason for it. The second and third houses, in the case supposed, were not burned by the direct action of the match, and who knows how many agencies might have contributed to produce the result? Therefore, it would be illogical to hold the match chargeable as the cause of what it did not do, and might not have done. The text books, and, I think, the authorities, agree that such circumstances define the word "*remota*" removed, and not the immediate cause. This is also Webster's third definition of the word remote. The question which gives force to the objection that the second or third result of the first cause is remote is put by *Parsons*, Vol. II., 180, "did the cause alleged produce its effects without another cause intervening, or was it made to operate only