

solely in consequence of his efforts to save the vessel during the storm, we would have had a different case to deal with. He was not responsible for the storm, and while it was raging his efforts to save the vessel were tireless and unceasing, and if he thus became mentally and physically incompetent to give the vessel any further care, it might be claimed that his want of care ought not to be attributed to him *as a fault*. In reference to such a case, we do not now express any opinion." *Williams v. Hays*, 143 N. Y. 442. After a new trial, this reserved question came before the Supreme Court, which held that, applying the principle stated by the Court of Appeals, it could make no possible difference how the defendant became insane, or "what caused the disease or mental condition that prevented him from exercising the care or skill that he was bound to exercise." *Williams v. Hays*, 37 N. Y. Supp. 708.

The position of the Supreme Court is undoubtedly logical and necessary. If the general rule holds liable one rendered insane by act of God, it would require an unwholesome exercise of ingenuity to make an exception in favor of one rendered insane by extra and commendable effort. The proposition laid down by the Court of Appeals, on the other hand, seems hardly defensible. It is a subject on which there is a wide disagreement of the authorities (see 10 *Harvard Law Review*, 65), and which therefore may well be settled in the pure light of reason. The Court of Appeals rested its decision on two grounds. First, that public policy required that a lunatic should be liable, which view appears to be largely fanciful; and second and chiefly, that "where one of two innocent persons must bear a loss, he must bear it whose act caused it." This last proposition clearly belongs to the doctrine of absolute liability, which was never to be defended with adequate reason, and which is now generally discredited. Even the Court of Appeals, in the principal case, while laying down a rule of absolute liability showed an unwillingness to stand squarely on such a doctrine by reserving opinion on a possible phase of the case before them. A theory, the advocates of which are forced to striking inconsistencies, does not commend itself to reason. The modern and enlightened view is thus stated by Beven, Vol. 1, p. 52, 2d ed.: "Liability for trespass is not absolute and in any event, but dependent on the existence of fault." (Also *Brown v. Kendall*, 6 Cush. 292.