

whether the act of some other person conduced or contributed to the injury, or for that matter may have been the immediate cause of the injury. . . .

[Reference to *Scott v. Shepherd*, 2 W. Bl. 89, 1 Sm. L.C., 11th ed., p. 454.]

If I am right in applying this principle in this action, can it be properly held, upon the facts here, that the intoxication of the deceased caused by his drinking to excess in the hotel was the proximate cause of his death? . . . I am of opinion that the deceased never recovered from such intoxication, and that to the very end it continued to operate as a weakening and debilitating influence upon the mind and body of the deceased.

The proper conclusion is, that the intoxication of the deceased from the drinks furnished to and drunk by him to excess in the defendant McGuire's hotel was, within the principle of *Scott v. Shepherd*, the proximate cause of the death. . . .

While sec. 122 declares the defendants "liable to an action as for personal wrong," upon certain facts being established, it may be fairly argued that the legal effect of the enactment is to impose upon the defendants liability as insurers of the life of a person intoxicated, under the circumstances therein stated, against the contingencies mentioned in it.

If this is a proper interpretation of the effect and purpose of the section, the fact of the condition of the deceased when he left the defendant McGuire's hotel being established as coming within the Act, the question of the defendants' liability depends upon whether the evidence leads to the conclusion that the deceased came to his death owing to causes insured against by and within the limitations and conditions specified in the section. . . .

Assuming the fact to be . . . that it was the act of the deceased in drinking to excess out of the bottles that was the immediate cause of his death, that was clearly an irrational and dangerous act committed by the deceased, which I would attribute to his impaired mental and physical condition caused by the original intoxication; and, therefore, within the words of the Act, the death was "caused by such intoxication."

In the result, therefore, whether the defendants are to be treated as wrongdoers or as insurers, I find upon the facts that they are liable; and I assess the sum to be recovered as \$500, with costs on the High Court scale.