TOWN OF PRESCOTT (DEFENDANTS)..APPELLANTS; 1893

AND *Mar. 12, 13.

THOMAS A. CONNELL (PLAINTIFF)....RESPONDENT. *June 24.

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO.

Negligence—Proximate cause—Danger voluntarily incurred.

C. having driven his horses into a lumber yard adjoining a street on which blasting operations were being carried on left them in charge of the owner of another team while he interviewed the proprietor of the yard. Shortly after a blast went off and stones thrown by the explosion fell on the roof of a shed in which C. was standing and frightened the horses which began to run. C. at once ran out in front of them and endeavoured to stop them but could not and in trying to get away he was injured. He brought an action against the Municipality conducting the blasting operations to recover damages for such injury.

Held, affirming the decision of the Court of Appeal, Gwynne J. dissenting, that the negligent manner in which the blast was set off was the proximate and direct cause of the injury to C.; that such negligent act immediately produced in him the state of mind which instinctively impelled him to attempt to stop the horses; and that he did no more than any reasonable man would have done under the circumstances.

APPEAL from a decision of the Court of Appeal for Ontario (1) affirming the judgment of the Chancery Division in favour of the plaintiff.

The facts of the case are sufficiently set out in the above head-note.

Meredith Q. C. for the appellants. The rule of law as to proximate cause of injury is stated in Addison on Torts (2); Pollock on Torts (3); and Cooley on Torts (4).

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* PRESENT:—Sir Henry Strong C.J. and Fournier, Taschereau, Gwynne and Sedgewick JJ.

(1) 20 Ont. App. R. 49.
(2) 6 ed. p. 43.
(3) 3 ed. p. 28.
(4) 1 ed. p. 69.

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The following cases note the distinction between efforts to save life and those to save property. *Anderson* v. *Northern Railway Co.* (1); *Eckert* v. *Long Island Railroad Co.* (2).

The learned counsel cited also *Cook* v. *Johnston* (3); *Marble* v. *City of Worcester* (4); *Hay* v. *Great Western Railway Co.* (5); *Cox* v. *Burbidge* (6) and *Lee* v. *Riley* (7).

Hutcheson for the respondent referred to *Sword* v. *Cameron* (8).

THE CHIEF JUSTICE and FOURNIER and TASCHEREAU JJ. concurred in the judgment of Mr. Justice Sedgewick.

GWYNNE J.—The question which arises in this case is not (as it appears to me to have been treated) whether the plaintiff has been, by any contributory negligence of his own, deprived of a right of action for an injury which, apart from any such contributory negligence, the evidence sufficiently shows to have been caused by some negligence of the defendants, but whether the plaintiff's own statement of the manner in which he sustained the injury of which he complains, and the evidence in support of such statement, do sufficiently show that the negligence with which the defendants are charged was the proximate cause of the injury sustained by the plaintiff. The question whether a plaintiff has been, by his own contributory negligence, deprived of his right of action for an injury charged to have been caused by the negligence of the defendants can never arise until the liability of the defendants has been sufficiently established by evidence apart

(1) 25 U. C. C. P. 301, 313.
(2) 43 N. Y. 502.
(3) 58 Mich. 437.
(4) 4 Gray 395.
(5) 37 U. C. Q. B. 456.
(6) 13 C. B. N. S. 430.
(7) 18 C. B. N. S. 722.
(8) 1 Sc. Sess. Cas. 2. Ser. 493.

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from the question of contributory negligence; that is to say, until it is sufficiently shown in evidence that the negligence of the defendants was the proximate cause of the injury complained of. If it was not the defendants are not liable, and no question of contributory negligence arises. Now in the present case the sole question, as it appears to me, is: Whether the act which is charged as negligence upon the part of the defendants, assuming it to have been proved, can upon the evidence be said in law to have been the proximate cause of the injury which the plaintiff has sustained. It is no doubt a matter of considerable difficulty in many cases to draw a precise line between the proximate and the remote causes of anything, but in the present case I must say that, in my opinion, the act charged as the defendants' negligence, regarding it as proved, cannot be said to be in law the proximate cause of the injury sustained by the plaintiff. We have been referred to several cases, chiefly in the American courts, and almost all arising upon a question as to contributory negligence, and none of which can, I think, be said to be conclusive in favour of the maintenance of the present action. In *Liming* v. *Illinois Central Railway Company* (1) the case arose upon demurrer and upon an article of the Code of Iowa which enacted that:

> Any corporation operating a railway shall be liable for all damages by fire that is set out or caused by operating any such railway.

The petition of claim alleged that a fire, caused by defendants' engines, set fire to a barn of plaintiff's neighbour, and that while the plaintiff was assisting his neighbour in getting his horses out of the stable in which they were the fire seized the stable, and that the plaintiff in escaping therefrom was injured by the fire, through which, in order to escape, he had to pass.

(1) Iowa 1890, 47 N.W.R. 67.

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Now in that case, upon the pleadings which, by the demurrer, were admitted, it could not be doubted that the injury sustained by the plaintiff was directly caused by the fire which was caused by the defendants, and for all damages arising from which they were made liable by statute, so that the fire was clearly alleged to have been the proximate cause of plaintiff's injury, and it was decided that the plaintiff, having been injured by such fire, it could not be said as a proposition of law that his voluntarily assisting his neighbour deprived him of his right of action which sufficiently appeared upon the pleadings. The authority of the case seems to be limited to this, that a question of contributory negligence cannot be raised by demurrer.

In *Twomley* v. *Central Park Railroad Co.* (1) the question was also one of contributory negligence. The jury found that, and there was no doubt that, the negligent and reckless conduct of the defendant's servants had placed the plaintiff in such a position of imminent peril for his life between two hazards viz., a dangerous leap from the moving car or to remain in the car at certain peril. The jury found that the plaintiff upon the instant jumping from the car whereby he was injured acted as a person of ordinary prudence naturally would do in such circumstances, and that he had not therefore been guilty of contributory negligence. In *Wasmer* v. *Delaware and Lackawanna Railway Co.* (2), the train which killed the intestate was the undoubted proximate cause of death; that train was running at a speed much in excess of the rate prescribed by statute in towns (the accident having occurred in a town). So that, apart from contributory negligence, there was quite sufficient to constitute the defendant's negligence the proximate cause of the death, and the question left to the jury was whether the deceased having crossed

(1) 25 Am. Rep. 162. (2) 80 N. Y. 212.

the track in front of the approaching engine after his horse which frightened by the engine had got on the track was or was not under the circumstances in evidence contributory negligence so as to deprive his administratrix of her right of action. Whether the decision upon the question as one of contributory negligence is one of which we can approve I do not express an opinion; for my purpose it is sufficient that the question was one of contributory negligence and not of proximate cause. So in *Rexter* v. *Starin* (1) the question was one of contributory negligence also. There was no doubt that the collision between the canal boat of the plaintiff and the barge of the defendant by which collision the plaintiff was injured was the direct and proximate cause of the plaintiff's injury; there was no question or doubt that the collision was caused by the negligence of the defendant's servants; but the contention and question was as to whether the plaintiff had lost his right of action for the injury which he had received from the collision by reason of contributory negligence of his own; what he had done was, being in another boat, when he saw the collision about to take place he ran to his own boat to try and prevent the collision and this was held and beyond all question rightly not to have been contributory negligence. It seems to me difficult to conceive how such a question could in such a case be raised for the contributory negligence related to the cause of the injury which the plaintiff had sustained, namely, the collision, and not to the consequences resulting from the collision which beyond all question was caused by the negligence of defendant's servants. In *Donahoe* v. *Wabash St. Louis and Pacific Railway Co.* (2) the law as to a person voluntarily exposing himself to danger in order to rescue another person whose life is exposed to danger from an approaching railway train is thus stated—

(1) 73 N. Y. 601. (2) 53 Am. Rep. 594.

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It is only when a railroad company by its own negligence creates danger to, or through its negligence is about to strike a person in danger that a third person can voluntarily expose himself to peril in an effort to rescue such person and recover for an injury he may sustain in that attempt. For instance, if a man is lying on the track of a railway intoxicated or asleep but in such a position that he could not be seen by the men managing an approaching train and they had no warning of his situation, and another seeing his danger should go upon the track to save his life and be injured by the train he could not recover unless the trainmen were guilty of negligence with respect to the rescuer occurring after the beginning of his attempt. If the railroad company is not chargeable with negligence with respect to the person in danger the case of the person who attempted to rescue him and was injured must be determined with reference to the negligence of the company in its conduct towards him in his making the attempt. In other words the negligence of the company as to the person in danger is imputed to the company with respect to him who attempts the rescue and if not liable for negligence as to such person then it is only liable for negligence occurring with regard to the rescuer after his efforts to rescue the person in danger commenced.

Assuming this to be a sound exposition of the law I fail to see what support it can afford to the plaintiff's action in the present case. If a person, attempting to rescue another from danger impending from an approaching train, can only have an action against the railroad company for an injury received by him in his attempt in the case where the person attempted to be rescued, if injured by the impending danger, would have had an action against the company, or in case of negligent injury committed to himself personally after the commencement of the attempt to rescue, the principle involved in that case cannot, I think, govern a case where a person voluntarily rushes into danger in the manner the plaintiff did, not to save a person, nor even his horses, from any danger impending from any approaching act of the defendants, but to prevent his horses running away, even though their starting to run was attributable to fright occasioned by some past

negligent act of the defendants. The question whether the past negligence can in law be said to be the proximate cause of the injury sustained by the plaintiff in the present case still remains, and must, I think, be determined upon other considerations than those involved in the above case, assuming the judgment therein to be sound.

In *Linnehan* v. *Sampson* (1) all that was determined was that the question in that case, viz., whether the injured man exercised due care, was a question for the jury—that also was a question of contributory negligence. For in the absence of such negligence, it is clear the owner of the bull would be liable for all injuries committed by it when being led in a public place, without the use of means sufficient to prevent its doing injury to persons. In *Woods* v. *Caledonian Ry. Co.* (2), a young woman was killed by a railway train as she was crossing a railway where it crossed a highway, and it was held that as she had gotten upon the railway through the negligence of the defendants' servants in not keeping gates across the highway shut, as they were obliged by statute to do, that negligence was sufficient proximate cause of the accident. Sufficient proximate cause is there defined to be, "a cause, of which the accident was a sufficiently natural and to be looked for consequence." In *Harris* v. *Mobbs* (3), the wrongful leaving of the van and plough in the highway, which caused the mare which the deceased was driving to kick, whereby deceased was killed, was held by the court, though not without considerable hesitation, to be, within the meaning of the law, the proximate cause of the accident, that is to say, that the kicking which caused the death was the natural and necessary consequence of the act complained of, and

(1) 126 Mass. 506.

(2) 23 Sc. L. R. 798.

(3) 3 Ex. D. 268.

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that as the driver of the mare was not aware she was a kicker, and was not shown by his driving to have been guilty of contributory negligence, his executors were entitled to recover. In *Rigby* v. *Hewitt* (1) the plaintiff was a passenger on the top of an omnibus which was struck by an omnibus of the defendants, which was driven with such violence and in such a manner that the omnibus on which the plaintiff was was forced against a lamp post, by which means the plaintiff was thrown off with considerable violence and injured. The jury was directed to ascertain whether the accident arose from the negligence of the driver of the defendant's omnibus, and they found that it was. Upon a new trial being moved for on the ground that the learned judge who tried the case refused to charge the jury that if the accident was in part occasioned by the misconduct of the person driving the omnibus on which the plaintiff was the plaintiff could not recover, the facts being that both omnibusses were being driven at a great and excessive rate, the court refused a new trial, saying that while, generally speaking, where an injury occurs from the misconduct of another the party injured has a right to recover from the injuring company all the consequences of that injury, there could be no doubt that every person who does a wrong is at least responsible for all the mischevous consequences that may reasonably be expected to result, under ordinary circumstances, from such misconduct.

In *Firth* v. *Bowling Iron Co.* (2) the plaintiff's cow was killed by swallowing with the grass some shreds of wire rope which the defendants used for fencing their premises from the plaintiff's fields, and which from long use had decayed and broken off and fallen into the plaintiff's grass. That was a clear case of injury the direct proximate cause of which was the neglect

(1) 5 Ex. 240.

(2) 3 C. P. D. 254.

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of the defendants to maintain the wire fence in a good and safe condition.

In *McMahon* v. *Field* (1) the question arose upon contract which involves some elements of inquiry different from those involved in cases where negligence on the part of the defendant is charged as being the cause, that is to say, the proximate cause of the injury complained of; and in that case, following *Hadley* v. *Baxendale* (2), it was held that it was for the court to determine whether, upon the evidence and finding of the jury upon the points of fact properly determinable by them, the breach of contract established was in law the proximate cause of the injury. *Woods* v. *Caledonia Ry. Co.* (3) and *Harris* v. *Mobbs* (4) were cases of injury charged to have been caused by negligence of the defendants, and there also the court assumed the duty of determining whether the acts of negligence established could in law be held to be the proximate cause of the injuries complained of. In the former of these two cases it was held as already shown that the killing of the girl by the train on the railway on which she had gotten by the wrongful and negligent conduct of the defendant's servants in not keeping the gate across the highway closed, as by statute they were required to do, was a sufficiently natural and to be looked for consequence of the neglect as to make such neglect the proximate cause of the accident. So in *Harris* v. *Mobbs* (4) the conclusion at which the court although not without considerable hesitation and doubt arrived, was that the kicking by the mare of the person driving it was the continuous, natural and necessary consequence of the van and plough being in the highway, so as to make the negligence of the person who left them the proximate cause of the kicking by which the driver was killed. The circumstances

(1) 7 Q. B. D. 591.
(2) 9 Ex. 341.
(2) 23 Sc. L. R. 798.
(4) 3 Ex. D. 268.

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of those cases were very different from those of the present case. So likewise was the case of *Twomley* v. *Central Park Railroad Co.* (4), if that case should be regarded as a decision upon the question of proximate cause and not upon that of contributing negligence. The person who jumped from the train there did so for the purpose of endeavouring thereby to escape from a more imminent and certain peril to his life if he had remained where he was, while in the present case the plaintiff was injured by his exposing himself when in perfect safety to the peril of suffering the injury which he did suffer. The jury have found that the defendants' servants were guilty of negligence in not properly covering their blast when blasting in the street, and that the plaintiff exposed himself in trying to save his property, but that they considered such his action justifiable. What they meant by saying they considered his action in trying to save his property justifiable does not appear to be quite clear. What the plaintiff was trying to do was to stop his horses which were starting to run away. What the jury meant may possibly have been that they thought that the plaintiff may justifiably have expected that he might succeed in stopping the horses without suffering any injury, but what the jury may have meant does not appear to me to be important. The question to which this latter answer was given and the answer itself relate to the question of contributory negligence which no doubt would have been a question for the jury if the act of negligence of which the defendants were guilty as found by the jury could in law be said to be the proximate cause of the injury, but whether it can or not is a question for the court upon the evidence, and is as it appears to me the sole question in the present case.

(4) 25 Am. Rep. 162.

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Now as to the evidence upon which that question turns there is no dispute, assuming as I do that the negligence found by the jury in the blast not being properly covered caused the plaintiff's horses to start to run. His horses and another team of horses of another man were in a lumber yard near which the blast took place, standing in a narrow space between a shed and the piles of lumber in the yard. The plaintiff was in the yard or shed conversing with the owner of the yard and lumber, having left his team in charge of the other man who thus had the two teams, his own and that of the plaintiff to look after; immediately upon the blast taking place the plaintiff's team or both of the teams started to run and the one man was unable to manage both. The plaintiff then, while in safety where he was, rushed forward to try and catch his own horses; to do so he had to get round the team of the other man; this, however, he was unable to do and almost immediately upon his rushing out from where he was to try and stop his horses he was knocked down by the other team, and was run over by it and injured. The question now is: Can the negligence of the defendants' servants as found by the jury be said to be in law the proximate cause of the injury sustained by the plaintiff? and I am of opinion upon principle and in perfect consistency with the authorities that it cannot.

It is said that the persons engaged in the blasting should reasonably have expected that there might be teams standing in the lumber yard, and that stones from the blast if not sufficiently covered might reach the shed and that thereby horses standing there might naturally be expected to run away, but whether such expectations would or would not be natural and reasonable expectations, I do not think we can impute as reasonable expectations to be entertained by the

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defendants or their servants engaged in the blasting, that the owner of one of the teams being there should, as the plaintiff said, leave his team in charge of another person having a team of his own to look after, or that having done so he should voluntarily expose himself to such imminent peril of injury to himself as the evidence shows that the plantiff did. If the court in *Harris* v. *Mobbs* were justified in having had considerable difficulty in arriving at the conclusion which they did in that case, that the negligence complained of there was a sufficiently proximate cause of the injury, we should, I think, without difficulty arrive at the conclusion in the present case that the defendants' negligence as found by the jury cannot in law be said to have been the proximate cause of the injury sustained by the plaintiff.

The appeal, I think, should be allowed with costs and the action dismissed in the court below.

SEDGEWICK J.—This action is brought to recover damages for injuries alleged to have been sustained by the respondent through the negligence of the appellants in conducting certain blasting operations in the town of Prescott. The appellants' servants were constructing a drain in one of the streets of the town, in which work it was necessary to blast rock by means of gunpowder. In making these blasts care was not taken (as found by the jury), to confine the broken rock to the trenches, and it happened that on the occasion in question a shower of stones was thrown up into the air which, in falling upon the roof of an adjoining building, frightened the plaintiff's team of horses which caused them to run away eventually doing the injury which the plaintiff complains of.

The plaintiff who is a farmer had driven into the town his span of horses and wagon and had proceeded

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to the lumber yard of one Elliott, entering by a gate at the east side of the yard on George Street, and after driving along a lane or passage way which extended to a gate opposite to the one by which he had entered he stopped his team, and handed the lines to one Bennett who had also driven in in the same way and was standing in front of his span of horses and wagon in the lane or passage way. The lumber yard is bounded on the north by Wood Street where the blasting operations were being carried on, and it was upon the roof of a shed built on this street and part of the lumber yard that the stones fell. As soon as the horses began to run the plaintiff who was in the shed observed them, and ran out in front of them for the purpose if possible of stopping them. He, however, found this impossible and in endeavouring to get away was in some way struck by them and thrown down and injured. If he had remained in the shed where he was, leaving the horses to their fate, while they may have been injured and possibly done injury he would have remained uninjured and the particular damage complained of would not have happened.

The case was tried before the Hon. Mr. Justice Street and a jury at Brockville. The jury found that the defendants were guilty of the negligence which caused the injury to the plaintiff; that the negligence consisted in not properly covering their blast; and that the plaintiff's action in exposing himself to danger for the purpose of saving his property was justifiable; and they assessed the damages at $3,000.

Upon an appeal to the Chancery Division before the learned Chancellor and Mr. Justice Meredith the defendants' appeal was dismissed. Upon appeal to the Court of Appeal for Ontario the appeal was likewise dismissed, Mr. Justice Burton dissenting.

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The finding of the jury upon the question of the defendants' negligence in connection with their blasting operations was hardly questioned before us at the argument, nor did we think it could be questioned. The defendants were bound to use those ordinary appliances which are well known for the purpose of preventing what happened in the present case. There are appliances in ordinary use for this purpose and the failure of the corporation to use them was in law negligence.

The main argument, however, upon which the defendants claimed immunity from liability was that their negligent act was not the *proxima causa* of the damage to the plaintiff; that it was the act of the plaintiff himself in voluntarily rushing from a place of safety to a place of danger that caused the accident.

The rule upon the question of proximate cause is stated by Addison (1) as follows:—

> The general rule of law is that whoever does an illegal or wrongful act is answerable for all the consequences that ensue in the ordinary and natural course of events, though those consequences be immediately and directly brought about by the intervening agency of others, provided the intervening agents were set in motion by the primary wrong-doer, or provided their acts causing the damage were the necessary or legal and natural consequence of the original wrongful act. If the wrong and the legal damage are not known by common experience to be usually in sequence and the damage does not, according to the ordinary course of events, follow from the wrong, the wrong and the damage are not sufficiently conjoined or concatenated as cause and effect to support an action.
>
> Where there is no reason to expect it and no knowledge in the person doing the wrongful act that such a state of things exists as to render the damage probable, if the injury does result it is generally considered that the wrongful act is not the proximate cause of the injury so as to render the wrong-doer liable to an action.

Pollock in his work on Torts, (2) says:

> The view which I shall endeavor to justify is that for the purpose of civil liability those consequences and those only are deemed immediate,

(1) Addison on Torts 6 ed. p. 40. (2) 3 ed. p. 28.

proximate, or to anticipate a little natural and possible which a person of average competence and knowledge, being in like case with the person whose conduct is complained of and having the like opportunities of observation, might be expected to foresee as likely to follow upon such conduct.

Cooley in his work on Torts, (3) says:

When the act or omission complained of is not in itself a distinct wrong and can only become a wrong to any particular individual through injurious consequences resulting therefrom, this consequence must not only be shown, but it must be so connected by averment and evidence with the act or omission as to appear to have resulted therefrom according to the ordinary course of events, and as a proximate result of a sufficient cause.

Each of these statements, I apprehend, contains a substantially accurate definition of the law as applied to the present case, and the question is, whether the accident may be considered to be the "necessary," "legal" or "natural" consequence of the original wrongful act. Was it the natural or probable result of that act? Did it follow upon it in the ordinary course of events?

Pollock, in another place (4), refers to the standard of duty as being "the ideal behaviour of a reasonable man," and the determination of this case depends upon the view that that ideal man would take as to the probable consequences of the defendants' wrong-doing were he an eye-witness of it. Were he from some safe point observing it his reflections would be, I think, somewhat as follows:—"These workmen are making a great mistake in not covering that blast. Why don't they stop the stones from flying in the air? They may fall upon people using the streets, and do damage; they may fall upon adjacent houses and do damage; they may fall upon horses standing upon the street of the neighbourhood and do damage. If they don't fall, the noise they make may frighten them and

(3) 3 ed. p. 69.

(4) P. 36.

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they will run away. The person in charge will naturally rush to stop them, and damage may happen to him."

Any or all of these events the observer would think of as possible or likely to happen in consequence of what they were doing. Speaking from my own knowledge and observation a person in charge of horses naturally and instinctively rushes to save them or stop them when he sees them frightened and trying to run away. It is as natural and likely that he, without thinking of consequences, will rush to their rescue as that they themselves will be in a condition of alarm. The fright of the horses, as well as the efforts of the coachman to regain control, are both events which naturally followed upon the noise produced by the falling stones.

The present case, therefore, is one, in my judgment, which comes within the rule above stated. The accident followed upon the negligent act in a natural order of sequence. It was an event likely to happen, probable to happen, natural to happen, as the direct and immediate result of that negligent act.

But the appellants urge that it was the plaintiff's own wilful act that was the immediate cause of the accident, namely, his voluntarily leaving the place of safety in which he was at the time of the explosion and exposing himself to danger, and they invoke the principle that if between the agency setting at work the mischief and the actual mischief done there intervenes a conscious agency which might or should have averted the mischief the original setter in motion of the mischievous agency ceases to be liable. But in the present case it was the negligent act of the defendants that immediately produced in the plaintiff that state of mind which instinctively, as I believe, impelled him towards his horses; he did no more than any reasonable man,

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under the circumstances, would have done; his attempt was futile; it may have been a rash thing for him to attempt; but he did what any other man, reasonable or otherwise, situated as he was and in the same state of mind in which he was, might have been expected to do, that situation and that state of mind having been immediately and directly caused by the defendants' act. In the leading case of *Scott* v. *Shepherd*(1)—the Squib case—the ground of the decision was that the act of the intermediate persons who threw the squib was involuntary, unpremeditated and without distinct and independent volition, and therefore, as the act was instinctive, the actual proximate agent of the injury was not the responsible agent. It was the act of the defendant that placed these intermediate persons in such an excited or peculiar state of mind that they naturally threw from them the instrument which occasioned damage to the plaintiff. Persons who in a sudden emergency are distracted by terror, and thus between two causes choose the wrong one, are not disentitled to recover. The very state of incapacity to judge calmly is produced by the defendant's negligent act. To hold that a plaintiff is disentitled to recover in such a case would be to hold that the defendant, having aggravated his negligence by those circumstances of terror which deprived the plaintiff of his power to avoid the consequences, or which, irresistibly by the plaintiff, drove him upon the danger, could set up a state of terror produced by his wrongful act as a protection against the consequences. Beven on Negligence (2). *Jones* v. *Boyce* (3). The principle is thus laid down by Johnston J. in the New York Court of Appeals in *Coulter* v. *The American Merchants' Union Express Company* (4).

(1) 1. Sm. Lead. Cas. 9th ed. 480.
(2) P. 137.
(3) 1 Starkie 493.
(4) 56 N. Y. 585.

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There can be no rule of law which imposes it as a duty upon one over whom danger impends by the negligence of another to incur greater danger by delaying his efforts to avoid it until its exact nature and measure are ascertained. The instinctive effort on the part of the plaintiff to avoid a danger did not relieve the defendant from responsibility.

It is not necessary in the present case to consider those American cases which were discussed at length at the argument in which it would appear to have been held that any person was justified in exposing himself to danger with a view of saving either life or property. If I while walking on the sidewalk see a pair of horses running away, I, for my part, would not feel called upon to incur the risk of attempting to stop them. That, however, is not the present case. It is not, it seems to me, necessary to cite authorities other than those already given in support of the general principles above laid down. The question in each case has been: Was the damage the natural result of the defendants' act, notwithstanding there may have been agencies intervening between the act or omission complained of and the damage sustained, or was the damage naturally referable to some cause altogether independent of the defendants' act? A few cases, however, may be considered. In *Hill* v. *New River Co.* (1) the defendant company had caused a stream of water to spout up in the middle of a highway without making any provision, such as fencing or watching, for the safety of persons using the highway. As the plaintiff's horse and carriage were being driven along the road the horses shied at the water, dashed across the road and fell into an open excavation on the road side which had been made by persons and for purposes unconnected with the Water Co. It was argued that the proximate cause of the injury complained of was not the unlawful act of the Water Co. but the neglect of

(1) 9 B. & S. 303.

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the contractors who had made the cutting in leaving it open and unfenced, but the court held that the proximate cause was the first negligent act which drove the carriage and horses into the excavation; in fact it was a natural consequence that frightened horses should bolt off the road; it could not be foreseen exactly where they would go off or what they might run against or fall into, but some such harm as did happen was probable enough and therefore the defendants were liable. In *Lynch* v. *Nurdin* (1) the owner of a horse and cart left them unwatched in the street. Some children came up and began playing about the cart and as one of them (the plaintiff in the case) was climbing into the cart another pulled the horse's bridle; the horse moved on and the plaintiff fell down under the wheel of the cart and was hurt; but the owner who had left the horse and cart was held liable for this injury. It was contended that the one who immediately caused the accident was the child who pulled the horse's bridle and thereby set it moving, but the court thought it strictly within the provision of the jury to pronounce upon all the circumstances, whether the defendant's conduct was wanting in ordinary care and the harm to the plaintiff was the result of it as might have been expected. So, too, in the the case of *Clark* v. *Chambers* (2) the *chevaux de frise* case. The defendant without authority set a barrier partly armed with spikes across a road subject to other persons' right of way. An opening was at most times left in the middle of the barrier and was there at the time when the mischief happened. The plaintiff went after dark along this road and through the opening by the invitation of the occupier of one of the houses to which the right of using the road belonged, and in order to go to that house some one, neither the

(1) 1 Q. B. 29. (2) 3 Q. B. D. 327.

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defendant or any one authorized by him, had removed one of the *chevaux de frise* barriers and set it on end on the foot-path. Returning later in the evening from his friend's house the plaintiff, after safely passing the central opening above mentioned, turned on to the foot-path; he there came against the *chevaux de frise* (which he could not see, the night being very dark) and one of the spikes put out his eye. After a verdict for the plaintiff the case was reserved for further consideration and the court held that the damage was nearly enough connected with the defendant's first wrongful act, namely, obstructing the road with obstructions dangerous to people lawfully using it, for the plaintiff to be entitled to judgment. Cockburn C. J. says:—

> A man who unlawfully places an obstruction across either a public or private way may anticipate the removal of the obstruction by some one entitled to use the way as a thing likely to happen, and if this should be done the probability is that the obstruction so removed will, instead of being carried away altogether, be placed somewhere near—if the obstruction be a dangerous one, wherever placed it may (as was the case here) become a source of damage from which injury to an innocent party might occur, the original author of the mischief should be held responsible.

I am of opinion that the appeal must fail and that the plaintiff is entitled to maintain his verdict.

Appeal dismissed with costs.

Solicitor for appellants: *J. K. Dowsley.*

Solicitors for respondent: *Hutcheson & Fisher.*