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The Proximate Cause

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Jurisprudence "is a rational science,founded upon universal principles of moral rectitude but modified by habit and authority."---Lord Mansfield.

"Let us consider wherein the law consists and we shall find it to be,not in particular instances and precedent,but in the reason of the law."---Lord Holt.

Introduction.

Maxims have always been considered a necessary part of the law. It has been said by some writers that they are of the same force as acts of Parliament, when they have received judicial sanction. In order to receive this judicial sanction it would seem that the maxim should pass through a certain probationary stage of formation, as it were, and have proved its merit and value.

Maxims abounded in the common law, but on account of statutory modifications, changes in the mode of procedure and a multiplication of the reported decisions, many of the maxims have passed into disuse. Among those that are still intact is this one under discussion: In jure non remota causa, sed proxima, spectatur. It is the first of Lord Bacon's "Maxims of Law"

The origin of the maxim is uncertain. No trace of it can be found in the early civil law. Bacon intimates that some of the maxims in his work are original with him, and very probably this is one of them. It has been suggested by some authorities that Bacon drew the text of it from certain philosophical discussions by Aristotle, which were in the hands of nearly all

thinking people at that time. This is doubtless the true source from which the maxim was drawn.

When Bacon wrote the maxim several methods of investigating truth were used by philyosophers,and it was Bacons purpose to prove that these methods were erroneous. He declared that the true method was by a search for causes;that no one questioned. He went still further and taught that the proximate cause was to be searched out,and the remote causes to be neglected. This mode of searching for truth has become firmly established in legal jurisprudence.

The meaning of the maxim is explained by Bacon in the following manner,he said "It were infinite for the law to consider the cause of causes,and the impulse one from another, therefore it contenteth itself with the immediate cause;and judgeth of acts by that without looking to any other decree."

The maxim was first employed by the courts as an authoritative rule in cases of insurance. Gradually its use has increased,and now it is used in certain cases where common carriers are parties,and in actions for negligence and breach of contract,when it is sought to determine the defendants liability for damages. On account of the different business and social relations which exist between the plaintiff and defendant in these different classes of cases,the line of reasoning which

should be persued in attempting to determine the proximate cause in a case which falls in any one of these divisions, should be different than that used in either of the other two. It is the purpose of this discussion to illustrate and set forth as clearly as possible the meaning and application of the maxim in these various branches of the law.

Application of the maxim.

A. In the law of Insurance.

Insurance is "a contract whereby for a stipulated consideration,one party undertakes to indemnify the other against certain risks." Philips on Ins.§ 1.

When the contract is made the basis of a suit to recover for loss sustained,it must be shown that the loss was the proximate cause of the peril insured against. In Waters v.Ins.Co. 11 Peters 213,the court said "We must interpret this instrument according to the known principles of the common law.It was a well established principle of that law that in all cases of loss we are to attribute it to the proximate cause and not to any remote cause."

Before proceeding further let us examine the nature of the contract. It is a contract of indemnify made in the interest of trade,and covering large amounts of property. In interpreting it the words used,the intent of the parties,and the public bearing of the questions are to be taken into consideration. The courts should give the policy a liberal construction. Robertson v.French,4 East,135.

The policy is the evidence of the intention of the parties. It names the perils insured against and the

terms upon which the risks are assumed. If the parties agree that loss from certain perils are excepted,the policy so s states. From this it is evident that the intention of the parties as expressed in the policy and blended with public welfare, ought to be the ground upon which the courts should base their argument when deciding whether or not the loss sued for was caused proximately by peril insured against.

In some few instances the courts have,unfortunately,fallen into the error of reasoning metaphysically, utterly disregarding the intent of the parties. Although the logic used in deciding may have been faultless,yet the decisions rendered have worked hardship because the intent of the parties was not included in the premises.

In the case of Ins.Co.v. Sherwood,14 How.361, the court said "It should not be forgotten,that .... the science of insurance law has been made and kept a practical system by avoiding subtile and refined reasoning,however logical it may seem to be,and looking for safe and practical rules."

When a loss is occasioned by a peril mentioned in the policy,but such peril being immediately connected or caused by a peril not mentioned,or one by expressterms excluded from the policy,the question of proximate cause often becomes a very difficult one. As has already been shown there

are certain principles which the court ought to take notice of in arriving at a decision. One of the early cases, De Vaux v. Salvador, 4 Ad.& El.420, illustrates the error into which some of the courts have fallen.

In that case it appears that the master of the Salvador had insured her against perils of the sea. While pursuing her voyage she collided with a steamship, without negligence on the part of either. The conflicting claims of damages were laid before an arbitrator at Calcutta. The arbitrator decided, that in accordance with the law of nations which was in force at that place, each should pay half of the joint loss. The master of the Salvador brought suit against the underwriters for the sum he was obliged to pay, claiming that the collision, a peril of the sea, was the proximate cause of the loss. The court held, however, that the law of Calcutta was the proximate cause. Reasoning that there had intervened between the collision and the loss for which suit was brought, an efficient and independent cause, to wit: the law of Calcutta, and that therefore the collision was the remote cause.

This case has been expressly overruled and the reasoning disapproved of, by the case of Peters v. Warehouse Ins. Co. 14 Peters, 99. The facts were similar to those of the case just mentioned. The plaintiff insured the ship Paragon against

perils of the sea. In sailing down the Elbe she collided with a galliot, and the latter was sunk. The master of the galliot libeled the Paragon, while the latter was lying at Hamburg. It was decreed, that according to the law of Hamburg, the collision being without the fault of either, each should pay half of the joint loss. The master of the Paragon brought suit against the underwriters for the sum paid. The defendant argued that the law of Hamburg was the proximate cause, citing De Vaux v. Salvador. Story J. in the opinion said, "This is an over refinement and savors more of physical than legal reasoning..... The law, as a practical science, does not indulge in any such niceties. It seeks to administer justice according to a fair interpretation of the parties; and deems that loss to be within the policy which is a natural and necessary consequence of the peril insured against. In a just view of the matter, the collision was the sole proximate cause of the loss, and the decree of the court did but ascertain and fix the amount of charges upon the Paragon, and attached thereto at the very moment of the collision. The maxim causa non remota spectatur, is not without limitation, and has never been applied in the matter of insurance to the extent contended for, but that it has been constantly qualified and constantly applied in modified practical sense, to the peril insured against."

In Potter v.Ins.Co.3 Sumner,27. Story J. remarked that "In cases of this sort it will not do to refine to much upon metphysical sublities. If a vessel is insured against peril only,and is burned to the waters edge and fills with water and sinks,it would be difficult in common sense to attribute the loss to any other proximate cause than the fire, and yet the water was the proximate cause of the submersion. If a vessel is insured against barratry of the master and crew and they fraudulently bore holes in the bottom and thereby she sinks,in one sense she sinks from filling in of water, but in a just sense the proximate cause is the barratorious boring of holes in the bottom."

In the case of the Ins.Co.v.Transp.Co.12 Wall. 194,it appeared that the plaintiffs had insured their vessel against loss by fire. On her voyage a collision occurred,and as a consequence a fire was started which caused the vessel to sink. The court held that the fire was the proximate cause of the loss. It was remarked by the judge writing the opinion, that "Before any policy was issued,the transporters were the insurers against collision and fire,no matter how caused. They sought protection against some of the probable consequences of those risks,and they obtained a policy insuring them against all losses by fire,except fire caused by certain

things of which fire by collision was not one. Against every other consequence of a collision than fire,they remained their own insurers,but the risk by fire was no longer theirs."

In Butler v.Wildman,3 B.& A.398. The facts were substantially these;the owner of a vessel insured her against loss by the enemy. On being attacked by the enemy, the captain threw overboard a large quanity of Spanish dollars to prevent their falling into the hands of the enemy. Bailey J. said, "It was the duty of the master to prevent anything which could strengthen the hands of the enemy from falling into their possession. Now as the money would strengthen the enemy,it was the duty of the master to throw it overboard. .....I think the enemy was the proximate cause of the loss."

In Magoun v.Ins.Co.1 Story,157,the court said, "All the consequences naturally flowing from the peril insured against,or incident thereto,are properly attributable to the peril itself. If there is a capture,and before the vessel is delivered from that peril,she is afterwards lost by fire,or accident or negligence of the captors, I think it is clear that the whole loss is properly attributable to the capture. It would be an over refinement and metphysical sublity to hold otherwise,and would shake the confidence of the commercial world in the supposed indemnity held out by policies

against the common perils."

See Levie v.Janson 14 East 648.

Price v. Homer 12 Mass.230.

Brown v.Ins.Co. 11 Johns.14.

The correct line of reasoning and in applying the maxim is illustrated by cases where the property insured is placed in such a position by negligence or barratry of the master or crew,that it is acted upon by the peril insured against. In those cases the peril insured against is the proximate cause of the loss, unless injury caused by negligence or barratry of the master or crew is expressly excluded by the terms of the policy. In the latter case,the negligence or barratry of the master or crew is the proximate cause of the entire loss;otherwise no force would be given to the exception.

Ins.Co.v.Laurence 10 Peters 507.

Waters v.Ins.Co. 11 Peters 213.

In the opinion of the last case cited Story J. remarked, "If we look at the question upon mere principle without reference to any authority,it is difficult to escape from the conclusion,that a loss by a peril insured against, and occasioned by negligence is a loss within a marine policy unless there be some other language in it which repels that conclusion."

The same general principles which should govern the application of the maxim in marine insurance, should be observed in fire insurance. A few illustrative cases will be sufficient to show the use of the maxim in that branch.

When a fire occurs it is usually surrounded by various elements, such as thievs, breakage in removing goods to places of safety, explosion, etc. Which aid in causing loss. Whether or not a claim for loss occasioned by any of these can be sustained against the insurance company, depends upon construction the courts put upon the policy. If it should appear that the parties intended the policy to cover all such losses, the fire is considered the proximate cause, and these elements as simply incidents. But if, on the other hand, the courts find that it was the intention of the parties to exclude damages by these intervening causes, then the fire is the remote cause of any damage that the excepted causes may have occasioned.

In white v. Ins. Co. 57 Me. 91, the insurance company was held liable for goods stolen during the progress of the fire. In Ins. Co. v. Corlis 21 Wend. 376, for loss caused by the proper authorities blowing up a building to prevent fire; and for many other losses traceable directly to an accidental fire, as injury from cinders or smoke. 6 Q.B.N.C. 319.

See Greenwald v. Ins. Co. 3 Phila. 323.

in case of removal of goods or destruction of property to prevent further progress of the fire, there must have been an apparent necessity for such action. The necessity need not be actual, but the acts should be such as an ordinarily prudent man would have authorized in view of all the surrounding circumstances. White v. Ins. Co. 57 Me. 91. If such necessity was apparent, the courts hold the fire was the proximate cause. If there was no such necessity the fire was the remote cause. The courts reason something like this; if there was no real or apparent necessity for the action taken in a common sense view of the matter a new cause has intervened between the fire and the loss, viz: the unwarranted action of the person whose property is insured. But if the assured, or person in authority had reasonable grounds for the belief that such action was necessary to save the property on account of the proximity of the fire, looking at the matter from a practical point of view, the fire is the proximate cause and the insurer is liable.

In the case of Everetts v. Ins. Co. 19 C.B. 120, The facts were substantially as follows; a large powder magazine situated in London exploded. The concussion caused great destruction to buildings situated in the neighborhood. Among those injured was one owned by the plaintiff. The clause in

his policy was that the insurer "would only make good such loss as was occasioned by fire." Earl C.J. said, "What was the meaning of the parties under the contract?" He came to the conclusion that the loss was not within the meaning of the policy. In substance he stated that to hold otherwise,injury occasioned to a building by an earthquake,which was usually attributed to a subterranean fire,or the shattering of window-glass by the firing of artillery at a review,would be damage by fire. Miller J. remarked, "In these insurance cases we are bound to look to the immediate cause. In this instance it cannot be siad that the loss was occasioned by fire,it was occasioned by a concussion caused by fire,and we must therefore go to the cause of causes before we arrive at the origin of the loss,but this was not was intended by the parties."

The danger of arriving at a conclusion by philosophical reasoning and then holding as a logical sequence that such conclusion was the intention of the parties,without discussing the facts with regard to such intention,is illustrated by the case of Ins.Co.v.Tweed,7 Wall.44. The facts in that case were these; an explosion occurred in a warehouse situated directly across the street from one owned by the plaintiff.A fire ensued which was communicated to the plaintiffs warehouse which was burned.The policy of the plaintiff

excluded loss by explosion. The plaintiff brought suit on the policy. Miller J. said, "The question is to ascertain whether any new cause has intervened between the fact accomplished and the alleged cause. If a new force or power has intervened, sufficient to stand the cause of the misfortune, the other must be considered the remote. In the present case we think there is no such new cause. The explosion undoubtedly produced and set in motion the fire which burned the plaintiffs property. The fact that it was first carried to the warehouse by burning another building supplies no new cause or force which caused the burning." He then said that this was in accordance with the intention of the parties. Possibly it was but I do not think that the learned justices line of reasoning to reach such conclusion is entirely free from criticism. It does not seem to me to be a logical statement to say, that because in a physical sense the explosion was the approximate cause, therefore it was the proximate cause within the intention of the parties. There would seem to be no ground for the learned justices assuming, as he must have, that the parties intended to have the contract interpreted from a physical standpoint. It might have been that the parties only intended to exclude loss by an explosion in the building; or that they only intended to exclude loss caused by concussion, and yet

include loss if ignition followed in consequence of such explosion. The line of reasoning used by the learned justice will not admit the discussing of these questions. It might easily have been that the burning of an intervening building would have been considered a new cause within the intent of the parties. In my opinion he ought to have first to have decided, that it was the plain intention of the parties as expressed in the policy, to exclude all loss caused by an explosion if no new physical cause intervened. This, of course, would call into discussion the general intention of parties in introducing such clauses. A decision arrived at by this method would be much more likely to give voice to the true intention of the parties, than the one used.

From this examination of the cases, it becomes fully apparent that the application of the maxim in this branch of the law ought to be a natural and practical one. As was said by one of the judges, the maxim has been limited and moulded by the courts so that expression may be given to the intention of the parties. As a rule persons making these contracts do not take into consideration refined and subtile reasoning, and therefore the less metaphysical and the more practical the reasoning, the greater the justice that will be rendered to all persons concerned.

B. In the law of common carriers.

We will now discuss the maxim as applied to the law of common carriers.

A common carrier may be defined as "one who, by virtue of his calling, holds himself out to the public as a transporter of goods for hire, for all those who choose to employ him." Prof. Burdick's Lectures on Carriers.

By common law he is an insurer of all goods placed in his possession for transportation. This liability is founded upon public policy. It was contrived by the policy of the law for the safety of all persons who, by the nature of their affairs, were obliged to trust him. Coggs v. Bernard, 2 Ld. Ray. 909.

The carrier is not, however, an insurer against loss from all causes. If he can show that the loss or injury was occasioned by the act of God, the public enemy, act of the shipper or defect of the article itself, he will be relieved from responsibility. In order to have the first two defences prevail he must show that they were the proximate and not the remote cause of the loss.

New Brunswick v. Tiers 24 N.J.L. 697.

Merchant v. N.Y.C.R.R. Co. 30 N.Y. 567.

As has already been said the common carriers liability is founded upon public policy. With this fact in view it is a natural and logical proposition, that is from the standpoint of public welfare that the courts should view the facts, when called upon to determine whether ot not any of the exceptions memtioned were the proximate cause of the loss. Some of the courts, for some reason, have disregarded this underlying principle and have reasoned from other points of view when applying the maxim. As a consequence their decisions have occasioned much confusion in this branch.

A line of cases in Pennsylvania and in Massachusetts holding one way on a certain question, reasoning from standpoints other than that of public policy; and the New York Court of Appeals and the United States supreme court holding directly opposite, founding their decisions on the general welfare of the public, illustrates the erroneous and correct method of reasoning. The question involved in each case was substantially, whether in a case where goods having been placed in the possession of a common carrier for transportation, and by his negligence placed in such a position that they were destroyed or damaged by act of God, the act of God or the negligence should be considered the proximate cause of the loss.

The question first arose in the case of Morrison v.Davis & Co.20 Pa.St.171. In that case it was shown that the defendants canal boat containing the plaintiffs goods, was wrecked at a certain point in the canal by an extrordiniary flood; that if the defendant had not negligently started out with a lame horse the boat would have passed the point in safety before the flood occurred. The defendant argued, and the court held that the act of God was the proximate cause of the loss. The erroneous ground taken by the court will be shown by quoting a single sentence. The court said, "They (the carrier) are answerable for the ordiniary and proximate consequences of their negligence, and not for those that are remote and extrordiniary." The court here uses reasoning that is proper in cases involving the negligence of an ordiniary person and not that of a common carrier.

The Massachsuetts courts followed this decision shortly afterwards in the case of Denny v.N.Y.C.R.R.Co. 13 Gray,481. In this case the defendant received plaintiffs goods at Suspension Bridge to transport to Boston. The goods were delayed at some place between Syracuse and Suspension Bridge through the negligence of the defendant. While in Albany they were damaged by an extrordiniary flood. Merrick J. said, "The rise of the water in the Hudson which did the mis-

chief,occurred at a subsequent period and consequently was the direct and proximate cause to which mischief is to be attributed. The negligence of the defendant was the remote;it had ceased to operate as an active,efficient and prevailing cause as soon as the wool had been carried beyond Syracuse,and cannot therefore subject them to responsibility for any injury to the plaintiffs property resulting from a subsequent intervening accident,which was the proximate cause by which it was produced. It is the latter only to which the loss sustained by him is attributable.See Hoadley v.Transp.Co. 115 Mass.304.

Here again we find that the court says nothing as to what application of the maxim public policy would dictate. In the eye of a philosopher perhaps a new cause had intervened between the negligence of the carrier,but had any new cause intervened in the eye of public policy?

The New York courts and the United States supreme court have not followed these cases,but have rendered decisions directly opposite;founding their reasoning on the true basis public policy. They hold that in such cases the negligence of the carrier is the proximate cause and the carrier is therefore liable.

In New York this rule was adopted by the case of Reed v.Spaulding,30 N.Y.630. Davy J.said, "If the goods therefore had been forwarded from New York to Albany with

reasonable diligence,and the injury had happened to them as it did,by an act of God,then the defendant would have been excused and exempted from liability for the damage of the goods so entrusted to him.....The policy of the law is to hold carriers to a strict liability and this policy for a wise and just purpose ought not to be departed from....This principle.. is founded alike on good sense and good morals."

The United States supreme court has apparently followed the New York doctrine in the case of R.R.Co.v.Reeves, 10 Wall.176. This case has sometimes been cited as following the Pennsylvania and Massachsuetts cases,but upon careful examination it would seem,at leat,as if there was nothing in the decision rendered that is opposed to the New York rule. Goods belonging to the defendant in error were left in such a position by the plaintiff in error,that they were destroyed by an extrordiniary flood. The court held that the proper charge to the jury was the one requested by the plaintiff in error,viz. "Where the damages shown to have resulted from the immediate act of God,such as sudden and extrordiniary flood,the carrier would be exempted from liability unless the plaintiff should prove that the defendant was guilty of some negligence in not providing for the safety of the goods.That it could so do must be shown by the plaintiff or must appear in the facts of

the case." The meaning of this charge is made somewhat clearer by a remark made by the judge in the case of Halliday v.Kenard.

He said, "We do not mean to be understood as laying down a different rule than the one which was laid down by this court in the late case of R.R.Co.v.Reeves namely,that ordiniary diligence is all that is required of the carrier to avoid or remedy the effect of an overpowering cause."

The rule adopted by the New York courts,and indicated by the United States Supreme Court is undoubtedly the best. If the carrier wishes to excuse himself for any injury to goods placed in his possession for transportation, caused by an "overpowering cause",he must handle the goods with ordiniary diligence. The rule works equitably and justly with both parties,and keeps the carrier from being negligent.

Enough has been said to show that when the question of proximate cause arises in connection with the law of common carriers,the maxim ought to be applied with an intent to render a decision which will be the most beneficial to public welfare. If the courts of Pennsylvania and Massachsuetts had reasoned from the standpoint of public policy and then arrived at the conclusion that the welfare of the public would be in no way injured by holding that the negligence was

the remote cause,their decisions would not be open to such severe criticism as they are.

It is clear that unless the development of the law of common carriers is founded upon the basis of public policy,it will become a confused,conflicting and uncertain. As a consequence the welfare of the public will be greatly injured.

C. In actions for negligence and breach of contract.

In a general way the application of the maxim in these two classes of cases is the same. In either case the defendant is only liable for the natural and probable consequences of his acts. In law the defendants acts are considered the proximate cause of such natural and probable results.

As the reasoning used in applying the maxim in actions for breach of contract is so similar to that used in actions for negligence, it will only be necessary to discuss the latter.

When a suit for damages caused by negligence comes before the courts, they examine the facts for the purpose of ascertaining whether there exists between the damage complained of and the acts of the defendant a certain causual relation, to wit; that the damage was the natural and probable consequence of the wrongful act. If there exists such a relation between the two, then the negligence is the proximate cause of such loss and the defendant is liable.

In the case of Gerdhart v. Bates, 3 Ell.&.Bl.490. Lord Campbell states the matter in this way, he said "If the wrong and the legal damage are not known to common experience to be a usual sequence, and the damage does not according to

the ordiniary course of events, follow from the wrong, the wrong and the damage are not sufficiently con-joined or connected as cause and effect to support an action." The same rule was substantially laid down by Agnew J. in McGraw v. Stone, 53 Pa. St. 436. "We are not" he said "to link together as cause and effect, events having no probable connection in the mind, and which could not by prudent circumspection and ordiniary thoughtfulness be foreseen as likely to happen in consequence of the act in which we are engaged."

Yet it may be that the injury would not have occurred had it not been for the negligence of the defendant. But it would be manifestly unjust for a person to be compelled to make good all possible loss that might under any circumstances result from his act, no matter how far removed. The courts have decided that there must be the connection between the two, already described. If there is not then the acts of the defendant are the remote cause and therefore he is not liable.

Let us not get an erroneous idea of the actual relation that must exist between the two. It is not necessary that the specific injury should have been actuall foreseen in order to have the negligence considered the proximate cause. It need only be such as might easily have been anticipated. Higgins v. Dewey, 107 Mass. 494.

Pollock C.B. in Rigby v.Hewit,remarked that"Every person who does a wrong is at leat responsible for all the mischievous consequences that may have been reasonably anticipated to result under ordiniary circumstances from such misconduct."

The term,reasonably to be expected,means such consequences as would naturally and ordiniarily be expected to follow in the long run. Smith v.Telegraph Co. 83 N.Y.115 Moulton v.Sanford,51 Me.134,Sutton v.Wauwatosa,29 Wis.21.

In Grounlund v.Chapin,5 Ex.248, Pollock J. said "I entertain considerable doubt whether a person who has been guilty of negligence is responsible for all consequences which arise,and in respect of mischief which could by no possibility have been foreseen,and which no reasonable person would have anticipated. I am inclined to consider the rule of law to be this,that a person is expected to anticipate and guard against all reasonable consequences,but he is not by the law of England,expected to anticipate and guard against that which no reasonable person would have expected to occur."

Much confusion has arisen on account of the judges not distinguishing between the conditions and the cause. Herein again the scientific and the legal investigators look at a given statement of facts from very different

standpoints. To illustrate, suppose a carriage is being driven down hill and a bolt breaks without negligence on the part of the driver, and the horses are thereby detached from the carriage; as a consequence the wagon is precipitated over an embakkment which the road commissioners had negligently left without a guard rail, and injury results. The scientist might say that the result was the sum of all its antecedents, such as the discovery of iron, making of a carriage, breaking of the bolt etc., But in law the negligence of the road commissioners in not erecting a guard rail is the efficient and proximate cause. Palmer v. Andover, 2 Cush. 600. The discovery of iron, breaking of the bolt or making of the carriage were simply conditions. Except so far as conditions are moulded by the human will ℓō bringing about injury, the law does not concern itself about them. See City of Atchison v. King, 9 Kan. 550. Salsbury v. Herchenroder, 106 Mass. 458.

From this brief discussion of the method pursued by the courts in applying the maxim in suits for negligence and breach of contract, it is clear that it is entirely different from the methods that the courts should use in cases that fall in either of the other two divisions previously discussed.

Conclusion.

The conclusion is necessarily a general one. The facts of a case being ascertained by testimony, the maxim is applied for the purpose of ascertaining the rights and liabilities of the respective parties to the proceeding. Those facts alone are viewed as cause and effect which have a direct bearing upon those rights and liabilities. The question is sometimes, whether a cause is proximate to an effect, sometimes it is which of several causes is immediate to an effect; sometimes the question is whether an effect shall be referred to a certain cause as its proximate result, sometimes it is to which of several causes the effect shall be referred. There are three divisions into which cases involving one or more of these questions falls. The method of applying the maxim in each division is of a different nature from that employed in the others.

It is perhaps unfortunate that this division has been made, but as has been shown it is a necessary one. If all the courts would recognize these divisions and use the line of reasoning applicable to each in applying the maxim, the law in regard to this subject would become much more settled and uniform than it is at present.

There is a strong tendency to cite authorities indiscriminately, seemingly not recognizing that cases in which the maxim has been applied, are of no value as authorities except in that branch of the law which governed the reasoning in that particular case. It is apparent that as long as this practice prevails, the law governing the application of the maxim will be vailed in obscurity, and in many cases great injustice will be done. It is only by observing the various principles presented that the true legal application of the maxim can be given.

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