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Liability for the Spread of Fire

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LIABILITY
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THESIS

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HARRY MYRON CHAMBERLAIN.

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1896.
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SECTION I.

THE COMMON LAW DOCTRINE.

At common law, a man in whose house or on whose premises fire originated, whether through accident or by reason of negligence, was held absolutely liable for any damage done by that fire to the property of another. (1).

This rule was comprehended in the general doctrine of Rylands v. Fletcher (1), thus expressed by Blackburn, J. when the case was in the Court of Exchequer Chamber: (2)

"We think the true rule of law is that the person who, for his own purposes, brings on his lands and collects and keeps there anything likely to do mischief if it escapes, must keep it in at his peril, and if he does not do so, is prima facie answerable for all the damage which is the natural consequence of its escape.--- And upon authority this we think is established to be the law, whether the thing so brought be beasts, or water, or filth, or stenches."

The earliest case is found in the Year Books(3) and is translated as follows: A man sued a bill against another for burning his house vi et armis. The defendant pleaded not guilty. It was found by the verdict at the inquest that the fire broke out suddenly in the house of the defendant, he knowing nothing about it, and burned his goods and also the house of the plaintiff, wherefore, upon this verdict, it was adjudged that the plaintiff should take nothing by this writ, but should be amerced.

This case would not be authority for the principle above

(1). Rylands v. Fletcher, L. R. 3 H. L., 330.
(See) Jones v. Festiniog R. R., L.R. 3 Q. B.,733.
(2). Fletcher v. Rylands, 1 Exch., 265.
(3). 42 Edw. III, 9.
laid down, were it not for the explanation of the reason for the holding, which is that the plaintiff brought trespass when he should have brought case(1).

In the case of Crogate v. Morris(2), it is said, obiter, that, "if my friend come and lie in my house and set my neighbor's house on fire, the Action lieth against me and Judgement for the Plaintiff."

A man stood at the door of his house and shot at a fowl, thereby firing his own house and that of his neighbor. It was held that an action on the case was well brought(3).

Defendant owned a heath adjoining that of plaintiff. Defendant's servant kindled a fire for purposes of husbandry. The fire spread to the plaintiff's heath, and the defendant was held responsible for the damage done. And this though the spread of the fire was caused by a high wind which arose unexpectedly after the fire was set(4).

The foregoing abstracts have been given for the purpose of showing how rigid the old rule was. That it soon came to be considered too rigid is clear from the exceptions that may be gathered from dicta of some of the later cases. These exceptions are two in number.

(2). Crogate v. Morris, Brownlow, 197.
(3). Anonymous, I Croke, 10.
Exceptions:

I. Act of God.

II. Act of third person.

Thus, in the year 1401, it is said,—"I shall answer for my neighbor for him who enters my house with my leave or with my knowledge, or who is a guest with me or with my servant, if he or any of them does anything, as with a candle or other thing, by which doing the house of my neighbor is burned; but if a man outside my house, against my will, throws fire into the straw of my house, or elsewhere, whereby my house is burned and also the houses of my neighbors, for this I shall not be held to answer to them, for this cannot be called a fault on my part but was against my will." (1).

The last clause is very significant, since it shows that the opinion was gradually gaining ground that a person from whose premises fire spread and did damage should not be held liable unless negligent.

(1) Beaulieu v. Pingham, 2 Henry IV, 18 (translated, 22 N. Y., 366.)
SECTION II.

THE COMMON LAW DOCTRINE AS MODIFIED BY THE STATUTES OF ANNE AND GEORGE III.

The rule of the common law was so firmly fixed that a statute was needed to modify it. Accordingly, in the sixth year of the reign of Queen Anne, a statute was passed which enacted that no action should be maintained against any person in whose house or chamber any fire should accidentally begin (1).

In the fourteenth year of the reign of George III, this statute was re-enacted, and its application extended to fires accidentally beginning in one's house, chamber, stable, barn or other building, or on his estate (2).

What is said to be the first reported case after Turbervil v. Stampe, and hence the first one after the statute, is Vaughn v. Menlove, decided in 1837 (3).

(1). 6 Anne c. 51, A. D. 1707.
"No action suit or process whatsoever shall be had maintained or prosecuted against any person in whose house or chamber any fire shall accidentally begin, or any recompense be made for such person for any damage suffered or occasioned thereby, any law, custom or usage to the contrary notwithstanding."

(2). George III, c. 78, s. 86.

(3). Vaughan v. Menlove, 4 Scott, 244.
In the report of this case the statute is not alluded to at all, but the case is decided, nevertheless, upon the ground of negligence. In this case a stack of hay put together in a green and damp condition so that it would naturally ferment and ignite, did ferment and ignite, and the plaintiff's premises were injured. The jury were instructed below that the question was one of negligence, and the Common Pleas held that the instruction was right, Tindal, C. J., saying:

(1) "The case falls within the general rule of law which requires that a man shall so use his own property as not to injure or destroy that of his neighbour, and which renders him liable for all the consequences resulting from the want of due care and caution in the mode of enjoying his own."

When the statute came to be considered in the case of Viscount Canterbury v. The Attorney General (2), the question arose as to what construction should be put upon it: whether the protection of the statute should extend to cases of negligence, or should be restricted to cases of pure accident in the limited sense of the word. The court, however, did not in this case decide the point, as a ruling thereon was not necessary to a decision of the case. The statement

(1). p. 251.
(Viscount Canterbury v. The Attorney General)
of Blackstone(1), however, that the word "accidentally" included "negligently" was considered at some length, the court expressing no opinion upon the point.

But in the case of Filliter v. Phippard(2), the point was squarely before the court and had to be squarely decided. It was held that Blackstone had drawn a conclusion from the statutes which the statutes did not warrant, and that the word "accidentally" was used in contradistinction to "negligently". The court admitted, however, "that in strictness, the word accidental may be employed in contradistinction to wilful, and so the same fire might both begin accidentally and be the result of negligence."

The true construction to be put upon the statutes is therefore, that it contemplates fires purely accidental,

(1). I Blackstone Com., 431. "By the common law if a servant kept his master's fire negligently, so that his neighbour's house was burned down thereby, an action lay against the master; because this negligence happened in his service. But now the common law is altered by a statute 6 Ann., c. 3 (c. 31), which ordains that no action shall be maintained against any in whose house or chamber any fire shall accidentally begin; for their own loss is sufficient punishment for their own or their servant's carelessness."

and not those resulting from negligence. The defendant is still liable for his negligence.
SECTION III.

THE MODERN RULE.

Naturally the modern rule makes negligence or misconduct the gist of the liability. This is true in both England and America(1). The defendant is liable if his act is negligent, and something of negligence must be shown by the plaintiff(2). "Every person has a right to kindle fire

Barnard v. Poor, 21 Pick., 378.
Bennett v. Scott, 18 Barb., 347.
Calkins v. Barger, 44 Barb. 424.
Clark v. Foot, 8 Johns. 422.
Fahn v. Reichart, 8 Wis. 255.
Fraser v. Tupper, 29 Vt. 409.
Garrett v. Treeman, 5 Jones(N.C.), 78.
Hays v. Miller, 70 N. Y. 112.
Jordon v. Wyatt, 4 Gratt. 151.
Miller v. Martin, 16 Mo. 508.
Scott v. Hale, 16 Me. 326.
Stuart v. Hawley, 22 Barb. 619.
Sturgis v. Robbins, 62 Me. 289.
Tourtellot v. Rosebrook, 11 Mets. 460.

(2). Bachelor v. Heagan, 18 Me. 32.
Bennett v. Scott, 18 Barb. 347.
Calkins v. Barger, 44 Barb. 424.
Clark v. Foot, 8 Johns. 422.
Dean v. McCarty, 2 Upper Can. Q. B. 448.
Filliter v. Phippard, 11 Q. B. 347.
on his own land for the purposes of husbandry, if he does it at the proper time and in a suitable manner, and uses reasonable care and diligence to prevent its spreading and doing injury to the property of others (1)."

The fire may be, first, negligently set, in which case it is immaterial whether the fire was managed negligently or not; or, second, it may be negligently managed, in which case it is immaterial whether the fire be set prudently, accidentally, or negligently.

The burden is upon the plaintiffs to show negligence (2) and the question of negligence is ordinarily one for the jury (3). In a clear case, however, the court will determine the question (4). For example: Defendant set a fire to some log heaps in a dry time and on a still day. He then left the place and stayed away nearly all day. Meanwhile a heavy wind arose and the plaintiffs buildings were burned. It was held as a matter of law that the defendant was not negligent (5).

The statutes of Anne and George III have been held by

(1). Hewey v. Nourse, 54 Me. 256.
    Sturgis v. Robbins, 62 Me. 289.
    Tourtellot v. Rosebrook, 11 Metc. 460.
(3). Bennett v. Scott, 18 Barb. 347.
    (Except in Railroad Cases. See post, 57)
New York courts to be part of the common law of that state (1). Some states have put them upon their statute books/(2) But the rule is the same whether the statutes apply or not. The defendant is not held liable unless negligent or guilty of some misconduct.

(2). New Jersey, (see p.88) Maine, (see p.77)
SECTION IV.

STATUTORY CHANGES IN THE MODERN RULE.

In some states, statutes have been passed making the liability of the defendant absolute. For example, take the state of Connecticut: "Every person who shall set fire on any land that shall run upon the land of any other person shall pay to the owner all damages done by such fire."(1)"

Other states having statutes of the same tenor are, California, Delaware, Kansas, North Dakota, Oklahoma, South Carolina, Wisconsin and Wyoming.(2)

In many of the states a penal liability is imposed upon the negligent man consisting of fine or imprisonment or both(3). Such liability is sometimes restricted, however, to wilful and malicious fires(4), but the punishment in

(1). Conn. post p. 67
(2). Calif. (Treble damages), post p. 64; Del. post p.68; Kans. post p.74 ; N. Dak. post p.92 ; Okla. post p.97 ; S. c. post p.99 ; Wis. post p.101; Wyo. post p.102.
(3). Arizoma post p.63 ; Colo. post p. 65; Del. post p.69 Idaho post p.70 ; Iowa post p.73 ; Ky. post p.75 ; Mass. post p.79 ; Minn. post p.82 ; Mont. post p.85 ; N. Dak. post p. 93 N. H. post p.87 ;N. J. post p.88 ; N. Y. post p.91 ; Okla. 97 post p. 97; S. C. post p.98 ; Wis. post p.101 Idaho post p.70 Ill. post p.71 ; Ia. post p.73 ; Kans. post p.73 ;Ky. post p 75 Me. post p.76 ; Mass. post p.79 ; Minn. post p.82 ; Miss. post p.84 ; Mont. post p.85 ; N.H. post p.87 ; N.J.post p.88. N.Y.post p.91 ; Okla.post p.97 ;S.C.post p.98 ; Vt.post p.99.
those cases is usually more severe. A strange law still stands on the statute books of Delaware, which, though no doubt repealed by statutory construction, illustrates the severity of the penalties inflicted in the early history of our country. The person wilfully or maliciously setting on fire the property of another "shall be deemed guilty of a misdemeanor, and shall be fined not exceeding one thousand dollars, shall stand one hour in the pillory, shall be imprisoned not exceeding one year, and in case of destruction of private property, shall restore and pay to the owner thereof two-fold the value thereof."

The liability thus far is of course, for ordinary arson pure and simple. But the statute goes on to provide that in case a fire so set shall spread, the offender shall be deemed guilty of setting on fire any property to which the fire should extend. He would, therefore, be subjected to the same penalty. (1).

A person who builds a camp-fire and leaves it without extinguishing it is made guilty of a misdemeanor whether any damage is done or not (2).

Fires to clear land or for other purposes of husbandry are lawful, but due notice must be given and there must be negligence in the care of the fire. (3)

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(1). Del. post p.69 .
(2). Colo. post p.66 ; Idaho post p.70 ; Mont. post p.85 Nev. post p.86 ; N. Dak. post p.94 .(3).Del.post,69;N.D.post,93.
Backfires to prevent the extension of a fire already burning are always lawful and are sometimes expressly exempted from the operation of the statute imposing liability for the spread of fire. (1).

(1). Arizona post p.63; Cal. post p.64; Kans. post p.74; Mass. post p.79.
PART II.

FIRES SET BY RAILROAD COMPANIES.

SECTION ONE: THE GENERAL PRINCIPLE.

SECTION TWO: WHAT CONSTITUTES NEGLIGENCE.

SECTION THREE: CONTRIBUTORY NEGLIGENCE.

SECTION FOUR: PROXIMATE AND REMOTE CAUSE.

SECTION FIVE: EVIDENCE OF NEGLIGENCE.

SECTION SIX: STATUTORY PROVISIONS.

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SECTION I.

THE GENERAL PRINCIPLE.

To whirl a railway train by means of fire, in all kinds of weather through all kinds of country is in itself unlawful, and the company, if unchartered, is absolutely liable for all injuries, whether from fire or from other cause, irrespective of the question of negligence. But if the corporation is chartered, the charter as the exponent of the legislative sanction puts the corporation on a level with lawful corporations and individuals. Indeed, it goes further, and makes the corporation liable only in case of negligence.

The rule as to individuals we have already considered. When we apply this to railroads we see that by the common law rule as to dangerous agencies railroads even if incorporated, would be absolutely liable for any damage done by the spread of fire whether due to the negligence of the company or not. By the common law rule as changed by the statutes of 6 Anne and 14 George III, railroads legally in- 

(1). Jones v. Festiniog R. Co. L.R. 3 Q. B. 733.
corporated would be relieved from all liability for spread of fire except when caused by the company's negligence or that of its servants and agents, - if indeed it were necessary to invoke those statutes.

There seems to be some doubt however, as to the applicability of the statutes to fires caused by railroad companies. The doctrine of the leading case seems to be that they do not. (1) and it is even said that the statutes do not apply to railroads for the reason that railroads were not in existence at the time when the statutes were passed (2).

In Vaughan v. Taff Vale R. Co. (3) it was alleged and practically conceded that sparks from defendant's engine had set fire to plaintiff's wood, the fire having been communicated by means of dry grass along the railroad track on the defendant's right of way. It appeared that the defendant had taken every precaution in the constructing and management of the engine to prevent the escape of fire, and that the injury to the plaintiff had been caused in spite of all precautions.

The Court of Exchequer, as well as the trial court, was of opinion that it was immaterial whether the defendant was negligent or not; that it had used an instrument likely to

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(1) Vaughan v. Taff Vale R. Co. 5 Hurl. and N. 678.
(2) I Thompson on Negligence, 152.
Spaulding v. Chicago & N.W. R. Co. 30 Wis. at p.120.
(3) Vaughan v. Taff Vale R. Co. 5 Hurl. and N. 678, reversing 3 H. and N. 742.
produce damage, and one which had produced damage; and that it was therefore liable in any case.

The Court of Exchequer Chamber refuse to adopt this rule, Cockburn, C. J. saying in the course of his opinion: "It may be true that if the person keeps an animal of known dangerous propensities, or a dangerous instrument, he will be responsible to those who are thereby injured, independently of any negligence in the mode of dealing with the animal or using the instrument; yet when the legislature has sanctioned and authorized the use of a particular thing and it is used for the purpose for which it was authorized, and every precaution has been taken to prevent injury, the sanction of the legislature carries with it this consequence, that if damage result from the use of such things independently of negligence the party using it is not responsible." (1).

Nothing is said in the opinion as to the applicability of 14 George III, c. 78, sec. 86, although the point was raised and discussed by counsel on both sides. As the opinion professes to follow Rex v. Pease (2), however, it may be assumed that the court did not think it necessary to con-

(1). The question of the liability of the defendant for negligence in allowing dry grass to accumulate was not squarely raised, and no opinion was expressed upon it.

(2). 4 Barn and Adol. 30. In this case it was held that when a nuisance was chartered by the legislature, the company was not responsible for accidents resulting from the operation of the road, and this on account of benefit to the pub-
sider the statute.

The argument then is as follows: The charter of a railroad company gives it permission to use fire for purposes of locomotion, and the company is therefore absolved by the charter from liability for all non-negligence fires. The fire is a part of the nuisance chartered, a nuisance within a nuisance, and no liability attaches in case of its escape unless such escape is negligent.

It would seem that the decision of the question would depend upon whether a railway train be considered a nuisance or not. If so, then there is no need of invoking the statutes for protection against liability for non-negligent fire; if not, then the statutes may be invoked.

For a discussion of the applicability of the English statutes to railway trains see Spaulding v. Chicago & N.W. R.R. (1). In this case the railroad company invoked the aid of the English statutes with the construction that made them include negligent fires as well as those purely accidental. The court held that the statutes did not apply, that even if they did apply they would not receive the construction con-

lic. And in Rex v. Russel, 6 B.& C. 566, it was held that at common law a nuisance was excusable on the ground of benefit to the public. It is the rule that when a nuisance is chartered by the legislature, it is relieved from all liability for acts necessary for the carrying on of the business chartered, but not for acts of negligence or misconduct,—Wood's Law of Nuisances, 2 ed. sec. 755.

(1) Spaulding v. Chicago & N.W.R.R., 30 Wis, 110.
tended for, and that the company would be liable for negligence in any event. Nothing is said about the "legislative sanction" and it seems to be assumed that, in the absence of statute, a railroad company would be liable for negligence only. The idea would seem to be similar to that expressed in Rex v. Russell, cited in note on preceding page.

Thus we have three possible theories:

1. Applicability of the statute.
2. Legislative sanction.
3. Benefit to the public.

But whether the statute applies or not, it is certain that the rule in this country and in England is that a railroad company is liable for damage done for the spread of fire only in case of negligence, unless some statute has expressly established a different rule. This doctrine is laid down in every case, and courts hardly ever stop to think why negligence is a basis of liability(1).

Ill. & R. Co. v. Mills, 42 Ill. 407.
Ind. & R. Co. v. Paramore, 31 Ind. 143.
Kams. & R/ Co. v. Butts, 7 Kans. 308.
SECTION II.

WHAT CONSTITUTES NEGLIGENCE.

1. The omission of spark arresters, or failure to use them when present, is negligence per se. (1).

A steamboat was provided with spark arresters which could be turned on or off at will. They were hardly ever used for the reason that their use detracted from the speed of the vessel. Held, that this fact was no justification for their non-use(2).

A spark-arrester was left off a dummy engine, and plaintiff's house was consumed. It was held that it did not matter that the use of spark-arresters on dummy engines was not common. "It is enough that the evidence tended to show that this engine could not with safety be run near dwellings without this appendage, and that it could be with it, and hence ordinary prudence required its use."(3).

Sparks escaped from chimney of defendant's mill and

Brighthope R. Co. v. Rogers, 76 Vir. 443.
Kellogg v. Milwaukee & R. Co. 94 U.S. 469.
Teall v. Bartam, 40 Barb. 137.


burned plaintiffs house. The fact that other mill owners having similar chimneys did not use spark-arresters was held to be no justification for defendant's neglect to use one.(1)

2. Defective Spark-arresters.

The use of spark-arresters so defective that sparks are emitted constitutes negligence unless it can be shown that the company has used every reasonable safeguard that science affords.(2) This does not mean that a railroad company is bound to test and use every new appliance that comes out, but only such as use and experience have shown to be effectual(3).

The contrary has been held in several cases, both experts and judges saying that it is possible for a railroad company to procure such appliances as will prevent the escape of sparks, and that they must use the most perfect appliances obtainable(4).

(2) Burroughs v. Housatonic Co. 15 Conn. 124.
Phila & R. Co. v. Yeiser, 8 Pa St. 366.
Read v. Morris, 34 Wis. 315.
Spaulding v. Chicago & R. Co., 30 Wis. 110.
Steinweg v. Erie R. Co. 43 N.Y.123.
Toledo & R. Co. v. Corn, 71 Ill. 493.
(3) Read v. Morris, 34 Wis, 316.
(4) Anderson v. Cape Fear S. Co. 64 N.C. 399.
Case v. Northern Cent. R. Co. 59 Barb. 644.
Chicago & Al. R. Co. v. Quaintance, 58 Ill. 389.
Ill. Cent. R. Co. v. Mills, 42 Ill. 407
St. L & R. Co. v. Gilham, 39 Ill. 455.
Steinweg v. Erie R. Co. 43 N. Y. 123.
But this is not law(1).

In Read v. Morris(2) plaintiff's saw-mill was fired by sparks from the smoke stack of a steam tug owned by the defendants. The trial court charged the jury as follows: "Fire is a dangerous and unruly element; therefore the necessities of society require that in its use care skill and diligence shall be used by the person using it to prevent injuries to others by it, and the law demands of men who use for a propelling power, or for the purposes of generating steam, in using steam as a propelling power, that the utmost care and diligence shall be observed by them, together with all such means and products and skill and science have discovered that may be necessary to keep it within proper control and prevent injury to others."

Jury were also instructed that unless the boat was provided with all the means and appliances which science had discovered to prevent the escape of fire, the defendants were guilty of negligence.

These instructions were held to be too stringent, the court citing with approval a former Wis. case in which the true rule was thus laid down: "The law upon this subject is, that the companies in the construction of their engine are bound not only to employ all due care and skill for the prevention of mischief arising to the property of others,

(1) 1 Thomp. on Neg. 155; Horton on Neg. Sec. 872; 2 S.& R. on Neg. Sec. 672.  (2) Read v. Morris, 34 Wis. 315.
but they are also bound to avail themselves of all the discoveries which science has put within their reach for that purpose, provided they are such as under the circumstances it is reasonable to require the companies to adopt(l).


It is great carelessness on the part of an engineer to use wood in a coal-burning engine, because the meshes the wire netting are made much larger when coal is to be used, and because the sparks from wood are much more dangerous, retaining the fire a greater length of time(2). One case holds that a company is not liable for using an inferior quality of fuel, whether of coal or of wood, unless such fuel is known to be of a hazardous or dangerous quality(3).

4. Over-crowding the Engine.

Over-crowding the engine or otherwise driving an unusual number of sparks through the smoke stack is held to be negligence.(4). But it is not negligence in case of mere failure to shut off steam on an upgrade, if thereby the progress of the train would be interfered with.(5)

(1). Spaulding v. Chicago etc. R. Co., 30 Wis. at p. 121.
(2). Chicago etc R. Co., v. Ostrander, 116 Ind. 259.
   " 4 v. Quaintance, 58 Ill. at p. 398.
(4). Toledo etc R. Co. v. Pindar, 53 Ill. 447.
(5). Flinn v. N.Y. etc R. Co. 142 N.Y. 19.
5. Carelessly dropping coals of fire on the track so that the track is set on fire is held to be negligence(1).

6. Allowing the accumulation of dry grass and debris upon the right of way.

This has been held to be negligence at law(2). But the usual holding is that a question of fact is presented which the jury is to decide.(3).

In the leading case of Vaughn v. Taff Vale R. Co.(4), although the fire was communicated by dry grass and other substances, no allegation of negligence in this regard was made by the plaintiff and the point was passed by without notice. But in a case decided in 1870 (5) the question was raised and decided. There the Railroad Company after cutting grass and trimming the hedges on their right of way, raked the debris into heaps, and allowed the heaps to remain there four days in dry weather. Kelly, C. B. said:

"I think the law is that if they were aware that these heaps were lying by the side of the rails, and that it was a hot season, and that therefore by being left there the heaps were likely to catch fire, the defendants were bound to provide against all circumstances which might result from this, and were responsible for all the natural consequences of it. I think then there was negligence in the defendants in not removing these trimmings, and that they thus became responsible for all the consequences of their conduct."

In Flynn v. S.F.etc R. Co. 40 Cal. 14, grass and weeds had been cut and left on the ground. Fire spread from them and burned plaintiffs wheat that was stacked in a neighboring field. The negligence in this case which was the proximate cause of the destructing of the plaintiffs grain was the leaving of the dry grass and weeds upon the railroad where it was liable to be set on fire by sparks from a passing engine.

Various statutes have been passed prescribing what shall be the duty of railroad companies in regard to the matter discussed in this section. For the remarks upon these, see the section dealing with statutory changes.
SECTION III.

CONTRIBUTORY NEGLIGENCE.

The General Principle:

A person who by his own negligence has made it possible for another to injure him cannot recover damages for the injury he has received.

What constitutes contributory negligence in cases of fires set by railroad companies:

1. Failure to keep one's own premises in a safe condition by the removal of any inflammable matter, or by making the access of sparks less probable. The Vaughn case (1) practically decided that such a defense could not be set up. This is the general rule (2). In Illinois the contrary rule prevails; but in that state the doctrine of comparative negligence makes it possible for a jury to say that the plaintiff's negligence was great while defendants was slight, or vice versa, and to decide the question accordingly (3).

(1). Vaughn v. Taff Vale Co. 5 H. & N. 678.
(2). Bryant v. Cent. R. Co. 56 Ver. 710.
Chicago etc R. Co. v. Simonson, 54 Ill. 504.
Kalbfleisch v. L. I. R. Co. 102 N.Y. 520.
Kellogg v. Chicago & N. W. R. Co. 26 Wis. 223.
(3). Ohio etc R. Co. v. Shanefelt, 47 Ill. 497.
Toledo etc R. Co. v. Pindar, 53 Ill. 447.
The case of Bass v. Chicago etc R. Co. 28 Ill. 9, seems to be a variation from the Illinois rule, but the later cases do not consider this case an authority. For example, in the case of the Ohio etc R. Co. v. Shanefelt, it is said: "When the plaintiff by his own carelessness has contributed to produce the injury the defendant is not absolved from all further care and effort on his part to avoid the injury but is still required to use all reasonable efforts to prevent its recurrence; and failing to do so he must be held liable. By the very nature of things it must be that where the plaintiff has by his negligence increased the hazard it becomes more difficult for the defendant to avoid the injury, and unless it appears that he could have done so, he will not be held liable."

Some of the cases draw a distinction between voluntary and involuntary accumulations of debris,—those put there by the hand of the owner and those caused by natural growth (1). In the Missouri case cited dry shavings were allowed to lie around a newly built house situated about one hundred feet from the railroad track. It was held that the owner was negligent.

In the Wisconsin case cited the contributory negligence charged consisted in permitting straw hay and shavings to accumulate between a couple of buildings destroyed and under

(1). Coates v. Mo. etc R. Co. 61 Mo. 38.
Murphy v. Chicago etc R. Co. 45 Wis. 222.
one of them which was open toward the railroad. The trial
court charged as follows: "While as I have said the defen-
dants had the right to use their way in the transaction of
their legitimate, while they had a right to use fire there,
the plaintiff on his part had a right to use his own land
adjoining the track of the defendant as he saw fit; and if
through the negligence of the defendany the property of
the plaintiff took fire the defendant is liable to the plain-
tiff for the damages sustained."

This charge is held to be too sweeping. The court ex-
presses its agreement with the cases that hold that the
owner is not obliged to gather up fallen leaves, but holds
that where a man recklessly and unnecessarily exposes his
property to destruction he cannot be protected in so doing.

Probably the true rule is that when the act or omission
of the plaintiff amounts to gross and wantom negligence he
cannot recover for damages caused by the negligence of the
railroad company.(1).

2. If there be a custom in a particular locality of
plowing around haystacks or otherwise taking precautions
against the possible spread of fire, some courts will hold
that a failure to comply with that custom will give rise to
a question of negligence for the jury to decide(2). The con-

(1). Collins v. N.Y.C.R.Co. 5 Hun 499.
Kesee v. Chicago etc R. Co. 30 Ia. 78.
trary is held in Burlington etc. R. Co. v. Westover (4 Neb. 268) on the ground that a railroad company cannot impose conditions upon property owners along its track.

3. Leaving door and windows open. Question is ordinarily for the jury.

Examples: About a quarter of a pane of glass was out through which the sparks were alleged to have passed. Held not contributory negligence. (1). A door to a house in process of construction was left partly open. Held question whether this was culpable negligence or not was one for the jury (2). A door of a shed was left open. The shed contained shavings and other combustible material. Held question for jury (3).

4. Failure to exercise due diligence to prevent spread of a fire once started.

Example: Plaintiff's son and servant saw the fire as it was starting and by the exercise of reasonable diligence might have prevented its spread. Held such negligence would prevent the plaintiff from recovering. (4).

But it is not necessary to use extraordinary means. (5).

(2). Ross v. Boston etc R. Co. 6 Allen 87.
(3). Gr. West. R. Co. v. Haworth, 39 Ill, 347.
SECTION IV.

PROXIMATE AND REMOTE CAUSE.

1. The general Principle:

There must be a direct causal connection between the negligent act of the defendant and the injury complained of, such a connection that the defendant may reasonably be said to have anticipated that his negligent act would result as in fact it did result. "We have been disposed to think that there is a principle derivable on the one hand from the general reason and justice of the question, and on the other, applicable as a test in many cases and perhaps useful if not decisive in all. It is that every defendant shall be held liable for all of those consequences which might have been foreseen and expected as the results of his conduct, but not for those which he could not have foreseen, and was therefore under no moral obligation to take into consideration." (1).

How far a person or a railroad company or other corporation shall be held liable for damages resulting from the spread of fire from field to field or from house to house

(1). 2 Parsons on Con. 1st Ed. 456.
is a question that tests to the uttermost the principle above laid down, and one that has been a fruitful source of dissension and contradiction, particularly in New York and Pennsylvania. The rule in England is in accord with the general principle. It is that a fire of this nature makes the act of the person setting the fire the proximate cause of the injury complained of. (1). This is the rule in America also, (2) with the possible exception of New York and Pennsylvania, where the doctrine is not so clear. (3).

Thus, sparks set fire to a warehouse beside the track. The flames spread to plaintiff's buildings situated about two hundred feet distant. Held, that the negligence of the defendant was the proximate cause of the injury. (4).

2. The New York Cases:

The Ryan Case, 1866 (35 N.Y. 210). Sparks negligently allowed to escape from defendants engine set fire to a wood-shed belonging to defendant, which was burned. Plaintiffs house situated at a distance of one hundred and thirty feet from the shed soon took fire from the heat and sparks

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(2). Atch. etc. R. Co. v. Bales, 16 Kans. 252.
Penn. R. Co. v. Whitlock, 99 Ind. 16.
(3). See Subs. 2 and 3, of Section IV.
(4). Fent v. Toledo etc R. Co. 59 Ill. 349.
(see) Chicago etc R. Co. v. Pennell, 110 Ill. 435.
and was consumed. The plaintiff seeks to recover for the damage done.

On the trial the plaintiff was non-suited, and the general Term affirmed the judgment. The Court of Appeals affirmed the judgment on the ground that the damage done was not the immediate but the remote result of the negligence of the defendants. "The immediate result was the destruction of their own wood and shed; beyond that it was remote."

The court struggles hard to obviate what it calls the "apparent inconsistency" of the early English and New York cases with its view of this case, and finally admits that it will be impossible to reconcile some of the English cases with such view.

The court also attempts to make a strong point of Littleton's rule that "What never was never ought to be," saying that "No such action as the present has ever been sustained in any of the courts of this country, although the occasion for it has been frequent and pressing." The court certainly cannot have looked far or it would have found plenty of cases. An action exactly in point was sustained in Massachusetts in 1847,(1) and another in the same commonwealth in 1864,(2) only two years before the Ryan case was decided. It is true that in Massachusetts there were stat-

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(1). Hart v. Western R. Co. 13 Metc. 99.
(2). Ingersoll v. Stockbridge R. Co. 8 Allen, 438.
utes affecting the liability of the defendant, but these had no bearing upon the question of proximate and remote cause.

But the true reason for the decision found in the last part of the opinion, is that to sustain such an action would work great hardship in some cases. "To sustain such a claim as the present, and to follow the same to its legitimate consequences, would subject to a liability against which no prudence could guard and to meet which no private fortune would be adequate. Nearly all fires are caused by negligence in its extended sense. In a country where wood coal gas and oils are universally used, where men are crowded into cities and villages, where servants are employed, and where children find their home in all houses, it is impossible that the most vigilant prudence should guard against the occurrence of accidental or negligent fires.------- To hold that the owner must not only meet his own loss by fire, but that he must guarantee the security of his neighbors on both sides, and to an unlimited extent would be to create a liability which would be the destruction of all civilized society. No community could long exist under the operation of such a principle."

The next New York case was that of Webb v. Rome Watertown and Ogdensburg Railroad Company (49 N.Y. 420), decided in 1872. There, live coals negligently dropped upon the
track set fire to a tie; thence the fire was communicated by means of an old tie and other old rubbish on the defendant's right of way, to plaintiff's fence and land, burning the trees and soil and doing the damage complained of. This was at a time of extreme drought, and while the wind was blowing in the direction of plaintiff's premises.

It was argued upon reliance upon the decision in the Ryan case that the negligence of the defendant consisted only in allowing the coals to drop upon the track and stopped there; for the coals set fire to the track and did not touch the plaintiff's property; that there were several steps between the defendant's negligence and the injury to the plaintiff, determined by the various intermediate objects that were set fire to. But the court held that this position could not be maintained.

"The defendant asks in effect that this court hold that it is not liable for the damage to the plaintiff unless it appears that the coals which escaped from the engine were cast from the engine directly upon the property of the plaintiff which was injured. If the air had been the medium through which was conveyed the same fire which left the engine, it seems to be conceded that the damage was the immediate result of the negligence. I am unable to perceive a reasonable distinction between the air as a medium of con-
veying the fire, and the denser matter which had accumulated upon the ground there. Nor am I able to confine the act of negligence to the dropping of the coals from the engine, and thus separating it from all the other concurring acts and omissions of the defendant, make that the solitary prime cause of a series of causes." "I am of the opinion that in the disposition of the case before us we are not to be controlled by the authority of the case in 35 N.Y. more than we are by that of the long line of cases which preceded it. It announces no new principle. It recognizes the principle which it adopts as one before that established, and applying it to the facts therein existing, holds that the damage sued for was not the necessary and natural result of a negligent act. A different state of facts brought into the focus of the same principle would give a different conclusion. It is proper however to say that it is not necessary to differ from or to question the reasoning in that case which fortifies the conclusion there reached by a consideration of the relations of men to each other in populous villages and cities, and the disastrous consequences to follow from holding one liable for his own or his servant's negligence by which a fire is kindled in his house which spreads to the property of one or more neighbors."

It will be observed that the consideration which furnish-
ed the real reason for the decision in the Ryan case, and by which the minds of the court were influenced to consider cause remote and not proximate, is treated by the court in the Webb case as a sort of dictum "fortifying" the decision already reached. And upon this the Webb case 

**expresses no opinion.** The facts in the two cases are certainly just alike in principle. The burning of a second building is no less to be anticipated than the burning of a woodland at some distance from the track. A result to be anticipated is one which in the common experience of mankind is usually the outcome of a given set of circumstances. And common experience will certainly bear witness to the fact that fire is just as liable to spread from house to house in a village or city as from object to object in the country. The true reason then for the decision in the Ryan case is not that the damage was remote and not to be anticipated, but that it would be very burdensome, and unjust to hold the negligent party in a case where the fire spreads from house to house. To say that this consideration merely "fortifies" the conclusion there reached is a very good way of construing the case so as to make it applicable to its own facts alone.

The case of Pollett v. Lomg (56 N.Y.200) though not a case of spread of fire, was one in which the Ryan case was
invoked as furnishing the rule in cases of proximate and remote cause. Defendants dam was so negligently constructed that it gave way, and the large volume of water in its escape tore out a second dam. The accumulated volume of water rushed down upon and destroyed a third dam. The trial court charged in substance that if there was sufficient water in the middle pond to materially augment the volume and force of the stream, then defendant's negligence was not the sole cause of the injury to the third dam and there could be no recovery therefor. The Court of Appeals held that this was error, that the break in the first dam was the proximate cause of the injury to the third dam; and commented upon the Ryan case in this brief sentence: "Assuming that this rule was correctly applied in the case of Ryan v. N.Y. Central, it comes far short of sustaining the proposition under consideration."(1).

The case of Reiper v. Nichols (31 Hun 491) was the next fire case. Here the flames in their progress described a figure eight. Plaintiff's shop was the last building burned. On the trial the charge was in accordance with the general rule, that the jury were to find from the facts in the case whether defendant's negligence was the proximate or the remote cause of the burning of plaintiff's shop.

The General Term held that the charge was erroneous and sent the case back for a new trial on the authority of the Ryan case.

Now it is submitted that upon the authority of the Ryan case, no new trial was necessary. The Ryan case decided that as a matter of law the burning of any building after the first, the flames being communicated from such first building, was not the proximate but the remote result of the original cause of the fire. It would seem therefore that the judgment in this case should have been reversed upon the error of the trial court in refusing to nonsuit the plaintiff, and in leaving the case to the jury at all.

In the case of Lowery v. The Manhattan Railway Company (99 N.Y. 158) decided the following year the question of proximate and remote cause again came up for discussion. Fire from defendant's locomotive fell upon a horse attached to a wagon in the street below. The horse became frightened and ran away. The driver, in order to stop him, drove over a curb stone; but this did not have the desired effect, and plaintiff who was walking on the sidewalk was run over and injured. The defendant submitted that the cause of the injury was too remote, and in support of his position relied largely upon the Ryan case. The court held however that the injury was not remote and "distinguished" the Ryan case by
saying "It will be observed that the Ryan case is clearly distinguishable from the case at bar and can scarcely be held to be applicable to the facts presented here and was not followed in the case last cited (1), although there was considerable similarity in the leading facts between the two cases. It certainly should not be held to be controlling where there was a positive and unlawful act of the defendant, which, as we have seen, induced the accident which was the cause of the plaintiff's injury."

It would be difficult to see in what respect the last sentence quoted would not apply to the Ryan case. The original cause was the same in the Ryan case as in this. The only difference was that in the Ryan case the sparks set fire to a building while in this it set a horse in motion. Moreover, the injury complained of in this case was at least one step more remote than was the injury in the Ryan case; and it was of a character far less to be expected by the party in fault.

The facts in O'Neill v. New York, Ontario and Western Railway Company (115 N.Y.579) are similar to those in the Webb case, and the decision follows that in the Webb case. The question of remoteness of damages was not raised upon the trial, and hence the Court of Appeals refused to enter--

tain it upon the appeal. It is amusing to note how much re-

lief the court seems to feel over the fact that it will not

be under the necessity of distinguishing the Ryan case.

But in Read v. Nichols (118 N.Y.224), the Ryan case is

expressly reaffirmed and followed. There the sparks from
defendant's smoke stack were borne by a strong wind past
the buildings in question to a house two hundred and eighty
feet distant. Thence the fire spread in a zigzag line from
house to house, and finally burned up plaintiff's building.
The trial court granted a non-suit, and both General Term
and Court of Appeals affirmed; the latter court saying:
"Certainly the facts here presented are much more favorable
to the defendant than they were in Ryan v. N.Y.C.R.R.Co. (35
N.Y.210). That case has been distinguished by this court
in Webb v. R.W.& O.R.R.Co. (49 N.Y.420); Pollett v. Long,
(56 id. 200); and Lowery v. Manhattan R.R. Co. (99 id. 158);
but it has never been over-ruled, and the rule still obtains
in this state that when the facts are undisputed the court
may under some circumstances determine as a matter of law
whether the act complained of is the immediate or remote
cause of the injury."

"If it may be said that the rule laid down in the Ryan
case has been broadened somewhat by the decisions referred
to, it cannot be contended that it has been so far modified
as to permit od holding that the burning of the Main street buildings was the ordinary and natural result of the act complained of. If it could be so held then however many buildings might be burned, if the fire but spread from one building to another, the negligent party would be liable to respond in damages to every owner."

Here we find not only a re-affirmation of the decision in the Ryan case, but also a statement of the same consideration as a reason for the later decision.

Martin v. N.Y. & O. & W. R.R. Co (62 Hun, 181) is another example of the Webb case, and was decided upon the authority of that case and that of the O'Neill case. The Ryan case is disposed of in a very unceremonious manner: "The case of Ryan v. New York Central Railroad (35 N.Y. 210) is very gingerly treated in Pollet v. Long (56 id. 206), and O'Neill v. New York, Ontario and Western Railroad (115 id. 579). And it is not necessary to comment upon it. It is not the case before us. Whatever may be the law as to a house in a village or city which takes fire from the burning of an adjacent house, negligently set on fire by the owner, that not the question here. It is well settled that where one negligently sets on fire grass or brush or other combustible material, and the fire extends to the adjacent owner's land and destroys woods or grass, such owner may recover the
damages. (Citing Webb case). It is not necessary for us to justify the distinction made between such cases and that of city or village houses."

The last case before the New York Court of Appeals(1) was another Ryan case. The property destroyed was a barn and a hotel, about forty feet distant from each other. The barn first caught fire. The trial court charged as follows: "In order to justify you in finding a verdict for the plaintiff for the value of the buildings, it is incumbent upon you to find from the evidence in the case that the destruction of the barn was the direct and natural result of the fire being emitted from the engine, and if you find that the fire was emitted from the engine immediately to the house, under the circumstances to which I have called your attention, the plaintiff would be entitled to recover. To justify a verdict covering or including the value of the hotel, you must find that the same was destroyed by reason of the fire being communicated thereto directly from the engine, or without the assistance of other agencies and arising from other causes. This is a question for you to determine from the evidence."

Upon this the Court of Appeals said: "We think the charge of the learned judge upon this part of the case was as favorable to the defendant as it could possibly ask. The ques-

tion was left as one of fact, under all the circumstances as to whether the burning of the hotel were not the natural and direct result of the sparks of the engine. In this case the court committed no error to the prejudice of the defendant. The Ryan case (35 N.Y. 210) should not be extended beyond the precise facts which appear therein. Even if correctly applied in that case the principle ought not to be applied to other facts."

The case of Judd & Co. v. Cushing (50 Hun 181) seems to extend the doctrine of the Ryan case still further. There it is held that if a building take fire in consequence of the negligence of the defendant, and the fire spreads and burns another building, there can be no recovery. The case professes to follow the Ryan case. But the Ryan case does not seem to be in point.

3. The Pennsylvania cases.

These have followed about the same course as those of New York. The decisions start out about the same way, the first case following the first in New York. The Kerr case (1) is the Ryan case of Pennsylvania. The facts were substantially the same, and were not disputed. The charge on the trial was the equivalent of holding that a recovery

for all the consequences of the first act of negligence was
in law allowable. But the Supreme Court said: "We are in-
clined to think that in this there was error. It
cannot be denied but that the plaintiff's property was de-
troyed, but by a secondary cause, namely, the burning of the
warehouse. The sparks from the locomotive did not ignite
the hotel. They fired the warehouse, and the warehouse fired
the hotel. They were the remote cause—the cause of the
cause of the hotel being burned. As there was an intermed-
iate agent or cause of destruction, between the sparks and
the destruction of the hotel, it is obvious that that was
the proximate cause of its destruction, and the negligent
emission of sparks the remote cause."

The court then goes on to give as the real reason for
its decision the same reason that was given in the Ryan case."
To hold that the act of negligence which destroyed the ware-
house destroyed the hotel is to disregard the order of se-
quences entirely and would hold good if a row of buildings
a mile long had been destroyed. -- -- -- A railroad termi-
nating in a city might by the slightest omission on the
part of one of its numerous servants, be made to account for
squares burned, the consequence of a spark communicating to
a single building. Were this the understanding of the ex-
tent of liability under such circumstances, it might seems
to me that there might be more desirable objects to invest capital in than in the stock of such a railroad." And again, "With every desire to compensate for any loss when the loser is not to blame, we know it cannot always be, without transcending the boundaries of reason, and of course of law. This we cannot do, and we fear we would be doing it if we affirmed the judgment in this case. The limit of responsibility must lie somewhere, and we think we find it in the principle stated. If not found there it exists nowhere."

In the next case(1) an engine with two or three cars attached was standing on the track in front of plaintiff's house, which was about twenty feet from the track. Through a car ran down the track the alleged negligence of the defendant's servants and collided with the engine which set fire to the cars and burned the plaintiff's house. On the trial the defendant requested the court to charge as follows: "If the jury find from the evidence that the fire originated on the engine, and spread from thence to the other cars and from thence to the building, the cause would be too remote and the plaintiff could not recover."

To this the court replied: "Answered in the affirmative; but if the cars were attached to the engine when the fire broke out and quickly ignited and burnt with the engine, the whole being a connected upon the tract, and the burning

(1) Oil Creek etc R: Co. v. Keighron, 74 Pa. St. 316.
mass directly, without any intervening agency, set fire to and destroyed the plaintiff's house, the cause was not too remote, and if the plaintiff has made out his case in other respects he may recover."

It was held that this answer was correct. The Ryan and Kerr cases were merely referred to.

We now come to the case of the Penn. R. Co. v. Hope (80 Pa. St. 373), which is the Webb case of Pennsylvania. The facts, as far as the principles are concerned, may be considered the same. The question was whether plaintiff could recover damages for the burning of his fences and woods, some of which were situated about six hundred feet from the railroad track. As to these latter the defendant claimed the damages were too remote. The trial court left the question of proximate cause to the jury, and such action was sustained on appeal.

In regard to the Kerr case, the court says: "It was not held in Railroad v. Kerr that when a second building is fired from the first, set on fire through negligence, it is a mere conclusion of law that the railroad company is not answerable to the owner of the second." Yet that is what, it seems to the writer, the Kerr case did decide. (1).

In Hoag v. Lake Shore etc. R. Co. (85 Pa. St. 293) the (1). Fent v. Toledo etc R. Co. 59 Ill. 349.
Kerr case was followed. There a train loaded with petroleum ran into a mass of earth and rocks which had slid down upon the track. The cars were thrown from the track, and the oil was set on fire by the engine. The oil thus ignited ran down a neighboring creek and set plaintiffs building on fire. The court directed a verdict for the defendants on the ground that the injury was too remote and his judgment was affirmed.

It was urged that the court erred in taking the case from the jury and in deciding the question of proximate and remote cause. But the court held that there was no error. "Was the negligence of the defendant's servants in not seeing the landslide and stopping the train before reaching it the proximate cause of the destruction of the plaintiffs property? We need not enter into an extended discussion of the delicate questions suggested by this inquiry. That has been done so fully in two of the cases cited as to render it unnecessary. A man's responsibility for his negligence and that of his servants must end somewhere. There is a possibility of carrying an admittedly correct principle too far. It may be extended so as to reach the reductio ad absurdum, so far as it applies to the practicable business of life." And again: "It has never been held that when the facts of a case have been ascertained the court may not ap-
ply the law to the facts."

The cases of Pennsylvania etc R. Co. v. Lacey (89 Pa. St. 458) and Lehigh Valley R. Co. v. McKeen, (90 Pa. St. 122), simply re-affirm the Hope case.

In Haverly v. State Line R. Co. (135 Pa. St. 50) decided in 1890, sparks from defendant's locomotive set fire to an old stump beside the road. Nineteen hours afterward a wind arose and caused the fire to spread and destroy plaintiffs lumber. The question of proximate and remote cause was left to the jury, in conformity with the doctrine of the Hope case. The railroad company urged on appeal that this was error, that the succession of events was so broken as to require the judge to direct a verdict in its favor. But the Supreme Court held that there was no error. "The break in the chain of events was merely a gap in the time. Had the fire extended from the stump to plaintiffs lumber without interval, on the same afternoon, case would have been exactly parallel with Pa. R. Co. v. Hope. But the fact that the fire smouldered awhile in the stump and after it was supposed to have been extinguished, broke out again the next day, while it makes the conclusion less obvious that the damage was done by the same fire, does not interpose any new cause, or enable the court to say as matter as law that the causal connection was broken. ----The pauses in the progress of
the fire therefor, and the lapse of time, while matter for
the consideration of the jury in determining the continuity
of effect do not of themselves make such a change as re-
quires the court to say that they break the connections."

The case of Confer v. N.Y.etc R. Co. (146 Pa. St. 31)
was submitted to the jury where the facts were similar to
those of the Ryan and Kerr cases, and this course was held
to be right.

4. Summary.

The principles laid down as follows:

I. General principle: If fire be negligently started,
and then spread from object to object or from house to
house, the defendant is liable for all the damages done how-
ever remote they may be.

II. Limitation in New York and Pennsylvania: If the
first object set fire to is a building and the fire spreads
thence to other buildings, only the owner of the first can
recover. The damage caused to any building or buildings
after the first is held as a matter of law to be too remote.
As to other cases, New York and Pennsylvania are on a foot-
ing with the rest of the states.

5. Criticisms on the New York and Pennsylvania rule:

In regard to the Ryan and Kerr cases, Thompson says
after stating the general rule: "There are two cases in
Pennsylvania and New York which are opposed in principle to the foregoing. But as they are condemned in every subsequent case in which they have been cited outside of those states and have been so qualified in the states in which they were decided as to be practically overruled, (1), it is not necessary in this connection to do more than simply to refer to them. (2).

Wharton concurs in the principle laid down in the Ryan and Kerr cases. He says: "If we must go back through all intermediate negligences to the first act of negligence there is no reason for stopping with the railway company. Either the road was anterior or posterior to the buildings which were thus ignited. If anterior, then, in view of the contingences of railroad fires, it was negligence to erect such buildings under the very eaves of its smoke pipes. If posterior, then it was negligence in the legislature to authorize the road to run its track close to buildings so combustible; and it was negligence in the village authorities not to require these buildings to be removed, nor, if we trace the train of causation as thus defined at its other end can we see on the reasoning of the courts where this liability

(1). In support of this proposition the Webb case and the Hope case are cited, but these must be admitted, do not by any means "practically overrule" the former cases. They deal with a different state of facts, and in effect confine the prior decision to their own facts.

(2). 1 Thompson on Negligence, p. 171.
can be stopped."(1).

Shearman and Redfield reject the doctrine of the Ryan and Kerr cases: "The point decided in those cases was that a defendant who had negligently kindled a fire should not be held responsible for its spread over an unusually long distance in consequence of an unusually high wind prevailing at the time. The defect in this reasoning is that although the wind was extraordinary and the actual consequences extraordinary, yet the extension of the fire itself was only the reasonable and natural consequence of the extraordinary wind which existed at the time of the negligent act. The true doctrine is that the defendant is liable for even extraordinary damage if it is the result of his negligence operating in a natural and continuous sequence. If the circumstances in the presence of which he was negligent were extraordinary and so were likely to make the result of his negligence extraordinary, that is an additional reason why he should have been especially careful not to be negligent at such a time. Accordingly one who negligently allows fire to escape on his neighbor's land when a gale of unusual force is blowing is all the more to blame for being negligent at so peculiarly dangerous a time, and should be held responsible for all the damage done by reason of the gale carrying

(1) Wharton on Negligence, Sec. 153, commenting upon

the opinion of Lawrence C.J. in Fent v. Toledo R. Co. 59 Ill 351.
the fire to a distance which it would not have reached under an ordinary wind."

Wood on Railways is content with citing the Ryan case and remarking: "But this rule has been repudiated in New York and it is now held that the company is liable for injuries from a fire although it is transmitted over intervening lands."(2)

Rorer, writing in 1884, favors the New York and Pennsylvania rule. In regard to the opinion in the Kerr case: "When we consider that this ruling of Chief Justice Thimpson was made as recently as 1870, we may well rely upon it we think as, at least for the present, the approved ruling on the subject of remote and proximate cause."(3)

It is perhaps not to be wondered at that some of these writers conclude that the Ryan and Kerr cases have been practically overruled, for none of their works were written later than 1888. As we have seen, these cases have been specifically re-affirmed, and notwithstanding certain dicta in some of the later cases, they are still law in New York and Pennsylvania. To judge from the dicta referred to it might seem that the cases are losing favor in their own

(1). 1 Shearman and Redfield on Negligence, Sec. 30. accord 1 Redfield on the Law of Railways, p. 479.
(2). 2 Wood's Railway Law, p. 1369, note.
(3). 2 Rorer on Railroads, 819.
states. However that may be they have not been overruled, and are looked upon by many as establishing a more just and sensible rule than the one from they are a departure. (1)

Nevertheless they have received a great deal of criticism in later cases in other states, the most vindictive sample of which is probably contained in the opinion of Lawrence C. J. in the leading case (2) of Fent v. Toledo etc R. Co. 59 Ill. 349. "While the law to be administered by the courts should not be a mere reflex of uneducated public opinion at the same time it should be the expression of a masculine common sense, and its decisions should not be founded on distinctions so subtle that they might have afforded fitting topics to the schoolmen."

In regard to the argument that railway companies would be inconstantly danger of bankruptcy, the court says: "We confess ourselves wholly unable to see the overpowering force of this argument. It proceeds upon the assumption that if a great loss is to be suffered it had better be distributed among a hundred innocent victims than wholly visited upon the wrong doer. As a question of law or ethics the proposition does not commend itself to our reason. We

(2). 1 Thompson on Negligence, pp. 116 and 136.
must still cling to the ancient doctrine that the wanton wrong-doer must take the consequences of his own acts, whether measured by a thousand dollars or a hundred thousand. As to the railroads, however useful they may be to the regions they traverse, they are not operated by their owners for benevolent purposes, or to promote the public welfare. Their object is pecuniary profit. It is a perfectly legitimate object, but we do not see why they should be exempted from the moral duty of indemnification for injuries committed by the careless or wanton spread of fire along their track, because such indemnity may sometimes amount to so large a sum as to sweep away all their profits. The simple question is, whether a loss that must be borne somewhere is to be visited on the head of the innocent or the guilty. If, in placing it where it belongs, the consequence will be the bankruptcy of a railway company, we may regret it, but we should not for that reason hesitate in the application of a rule of such palpable justice. But is it true that railroads cannot thrive under such a rule? They have now been in operation many years, and extend over very many thousand miles, and we have never yet heard of a town or village that has been destroyed by a fire ignited by their locomotives. Improved methods of construction and a vigilant care in the management of locomotives have made
the probability of loss from this cause so slight that we cannot but regard the fears of the disastrous consequences to the railway companies which may follow from an adherence to the ancient rule as in a large degree chimerical. A case may occur at long intervals in which they will be required to respond in heavy damages; but better this than that they should be permitted to evade the just responsibilities of their own negligence, under the pretence that the existence of the road may be endangered. It were better that a railway company should be reduced to bankruptcy and even suspend its operations than that the courts should establish for its benefit a rule intrinsically unjust, and repugnant not merely to ancient precedent but to the universal sense of right and wrong.

Our position on this question is briefly this: We do not wish to impose upon railway companies unreasonable obligations, or to subject them to unreasonable danger of great pecuniary loss. We do not wish to make them insurers against all damages by fire that may result from the passage of their trains without reference to the question of remote and proximate cause. But, on the other hand, we do insist on applying to them the same rule that has been held through all the administration of the common law, with the exception of the two cases upon which we have been commenting."
SECTION V.

EVIDENCE OF NEGLIGENCE.

Burden of Proof:

1. The strict rule.

The general rule is that the person who alleges negligence must prove it; (1), and this rule applies in all cases of alleged negligence in the use or management of fire in the case of a private person. Plaintiff has the burden of proof. The question is whether the same rule applies in the case of negligence of railroad companies, and many courts hold that it does. This is the true doctrine according to Wharton, and indeed its support is so great as to give it great claim to precedence. For our purposes it may be denominated the strict rule. (2).

2. The liberal rule.

The strict rule has however a very formidable rival in the exception that has been grafted upon the old rule. Many courts hold that the rule is different in the case of railroad companies, owing to the fact that it would be prac-

(1) 1 Shearman and Redfield on Negligence, Sec. 57.
(2) Aldridge v. R. Co. 3 Man. & G. 515.
Field v. R. Co. 32 N.Y. 339.
Gandy v. R. Co. 30 Ia. 420.
Phila. etc R. Co. Yerger, 73 Pa. St. 121.
tically impossible for the party injured to show which en-
gine did the damage, wherein the defect in the construction
or management of the engine lay. He could not tell whether
sparks were emitted by one particular engine or not when
there were many engines belong to the defendants, and the
one that did the damage was going by so rapidly that he
could not distinguish it from any other. Again, he could
not tell whether the emission of the sparks was due to de-
fective construction or negligent management. The defen-
dant is ordinarily in excursive possession of all these facts,
and is the only one who can speak in regard to them. Hence
it is that many courts hold that all the plaintiff has to
do to make out a prima facie case is to show the fact of the
fire and its communication from defendants engine.

Shearman and Redfield are authority for the statement
that this is the prevalent rule, and the modern tendency
seems to be in its favor. Some states have put it upon their
statute books, (1), and it would seem destined to supplant
the old rule altogether. At all events it seems to be the
more sensible and logical of the two. It is difficult to
say at the present time, however, which of the two is sup-
ported by the greater weight of authority, the cases seem
to be so evenly divided. All that can be done here is to

(1). See post, Section on Statutes.
state that the two rules exist.

3. The medium rule.

There is a third line of cases however, which holds that a slight inference of negligence raised by the plaintiff's case will throw the burden of disproving negligence upon the defendant. These cases occupy a middle ground between the two extremes just discussed.

Prior and Subsequent Fires:

There is little uniformity in the decisions upon this subject. When evidence of fire prior and subsequent fires is held to be admissible, the admissibility is usually for the purpose of showing either the origin of the fire when the plaintiff is unable to show such origin by direct testimony or negligence in the defendant.

When the engine is identified evidence of former sparks from the same engine is held admissible; but evidence of sparks from other engines is not admissible unless identity of construction be shown. But it has been held that even when identity of construction is shown, evidence of

sparks from other engines is inadmissible.

When the engine is not identified it is usually held that evidence of prior and subsequent fires is admissible. (1)

But there are cases holding every way, and it is impossible to harmonize them.

(1) Cleveland v. R. Co. 42 Vt. 449.
    Field v. R. Co. 32 N. Y. 339.
S E C T I O N V I .

STATUTORY PROVISIONS.

Dry grass and debris must not be allowed to accumulate. Some statutes provide that the railroad company must plow a strip of land of a certain width on each side of their track or must at stated times burn up all combustible material on their right of way.(1).

Failure to carry spark-arrester subjects the railroad company to liability for all damages, and in many cases to penal liability also(2).

A railroad company is absolutely liable for all damages for all fire set by it(3). But in such cases the railroad is usually given an insurable interest in the property along its route, and is permitted to procure insurance thereon;(4) and two or three states have taken the advanced position which seems to be a very fair one that railroad companies held liable in damages may claim the benefit of any insurance effected by the adjoining owner(5). Massachusetts has just adopted this view(1895).

The fact that fires are set upon a railroad track or land upon adjoining is made prima facie evidence that the fire originated from the engines of the railroad company(1).

The fact that fires are communicated shall be prima facie evidence of negligence(2).

No act of the adjoining owner in the use of his land shall be construed as constituting contributory negligence(3).

The burden of disproving negligence is thrown upon the defendant(4).

No ashes or hot coals shall be left in dangerous proximity to woodlands or other combustible material(5).

(1). Ohio,
(3). Illinois, Ohio, contra Kansas.
(4). Maryland, Michigan.
(5). Minnesota.

Any person or persons who shall willfully or deliberately set fire to any wooded country or forest belonging to this territory or the United States within this territory, or to any place from which fire shall be communicated to any such wooded country or forest, or who shall accidentally set fire to any such wooded country, or to any place from which fire shall be communicated to any such wooded country or forest, and shall not extinguish the same, or use every effort to that end, or who shall build any fire, for lawful purpose or otherwise, in or near any such wooded country or forest and through carelessness or neglect shall permit said fire to extend to and burn through such wooded country or forest, shall be deemed guilty of a misdemeanor and on conviction shall be punishable by fine not exceeding one thousand dollars, or imprisonment not exceeding one year, or by both such fine and imprisonment; provided that nothing
therein (herein?) contained shall apply to any person who in good faith shall set a backfire to prevent the extension of a fire already burning.

CALIFORNIA.

(Cali. Polit. Code, Sec. 3444)

Every person negligently setting fire to his own woods, or negligently suffering any fire to extend beyond his own land, is liable in treble damages to the party injured.

(Cali. Penal Code, Sec. 384)

Any person or persons who shall willfully and deliberately set fire to any wooded country or forest belonging to this state or the United States within this state, or to any place from which fire shall be communicated to any such wooded country or forest - - - for lawful purposes or otherwise - - - shall be deemed guilty of a misdemeanor, and on conviction shall be punishable by fine not exceeding one thousand dollars, or imprisonment not exceeding one year, or by both such fine and imprisonment; provided that nothing herein contained shall apply to any person who in good faith shall set a backfire to prevent the extension of a fire already burning.
Private Persons: Barriers.

Every person who starts a fire in hay grain stubble or grass without first carefully providing by plowing or otherwise for the keeping of said fire within and upon the premises upon which it is started or set out, and by reason of the non-providing of such barrier any property of an adjoining or contiguous residence or owner is injured, damaged, or destroyed, is guilty of a misdemeanor.

COLORADO.

(Will's Annotated Statutes, 1891, Sec. 1417.)


If any person shall willfully and maliciously set on fire or cause to be set on fire any woods or prairie or grounds of any description, other than his own, or shall intentionally or by gross neglect, permit a fire set or cause(d) to be set by him to pass from his own grounds to the injury of any other person or persons, such person shall be deemed of a misdemeanor and upon conviction thereof shall be punished by fine not exceeding three hundred dollars, or by imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment.

( Sec. 1418 )

Private Persons: Camp Fires.
Any person who shall build a camp-fire in any woods or any prairie, or on other grounds in this state, shall before or at the time of breaking and leaving such camp totally extinguish such camp-fires; and upon a failure to do so, such persons shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding one hundred dollars, or by imprisonment in the county jail not exceeding jail one month or by both such fine and imprisonment.

( Sec. 3704 )

Railroads : Fireguard by Plowing.

Every railroad corporation operating its lines of roads or any part thereof within this state shall between the fifteenth day of July and the first day of November of each and every year, upon each side of its line of road plough as a fireguard a continuous stretch of not less than six feet in width, which said strip of land shall run parallel with said line of railroads, and be plowed in such a good and workmanlike manner as to effectually destroy and cover up the vegetation thereon and be sufficient to prevent the spread of fire, and in addition thereto all such railroad corporations shall caused to be burned between the dates last aforesaid all the grass and vegetation lying between the said plowed strips and the track of said road.
Railroads: Absolute Liability.

Every railroad corporation operating its line of road or any part thereof shall be liable for all damages by fire that is set out or caused by operating any such line of road or any part thereof, and such damages may be recovered by the party damaged by the proper action in any court of competent jurisdiction.

CONNECTICUT.

Private Persons: Absolute Liability.

Every person who shall set fire on any land that shall run upon the land of any other person shall pay to the owner all damages done by such fire.

Railroads: Absolute Liability.

When any injury is done to a building or other property of any person by fire communicated by a locomotive engine of any railroad company, without contributory negligence on the part of the person entitled to the care and possession of the property injured, the said railroad company shall be held responsible in damages to the extent of such injury to the person so injured.
( Sec. 1096 )

Railroads : Prima Facie Evidence of Negligence.

In all actions to recover for any injury occasioned by fire communicated by any railway locomotive, engine in this State the fact that such fire was so communicated shall be prima facie evidence of negligence on the part of the person or corporation who shall, at the time of such injury by fire, be in the use and occupation of such railroad either as owner, lessee, or mortgagee, and of those who shall at such time have the care and management of such engine.

DELAWARE.

( Chap. 380, Vol. 16, L. of Del.)

Private Persons : Negligence : Damages.

If any owner or owners tenant or tenants, occupier or occupiers, of land within the State shall set fire to any brush or other combustible matter on such land for any purpose whatsoever, and shall in setting fire to such brush or other combustible matter omit to observe reasonable care and prudence, by reason whereof the property, real or personal, of any other person or persons shall be destroyed or impaired, such owner or owners tenant or tenants, occupier or occupiers, shall be liable to be the damage resulting therefrom.
Private Persons: Notice.

From and after the passage of this act it shall not be lawful for any person to set fire to any grass, brush or other substance where the burning thereof will in any manner endanger any timber either standing or felled, or other property without first giving sufficient notice to the owners or occupiers of such timber and property as will enable them to take such necessary steps to guard against such damages as they may deem proper, of his intention to set fire to such grass brush or other substance, and using all due and necessary precautions on his part to prevent any damages or loss to the timber or property of others.


If any person shall willfully and maliciously burn or set on fire any wheat or other grain, hay or straw, and boards shingles or other lumber, or any coals of another, he shall be deemed guilty of a misdemeanor and shall be fined not exceeding one thousand dollars, shall stand one hour in the pillory, shall be imprisoned not exceeding one year and in case of the destruction of private property shall restore and pay to the owner thereof two-fold the value thereof. — And if a fire so set to such wheat grain or
other property or to any building ship or vessel shall spread, the person so setting the same on fire shall be deemed guilty of burning (all property) to which such fire shall extend.

(Chap. 380, Vol. 16, L. of Del.)

Railroads: Debris: Liability.

If any railroad company owning or operating any railroad in this State shall suffer to remain on any part of the land owned or controlled by it for railroad purposes within this State any brush or other combustible matter, and if such brush or other combustible matter shall from any cause whatsoever be set on fire and by reason thereof the property real or personal of any person or persons shall be destroyed or impaired, such railroad company shall be liable to pay the damages resulting therefrom.

IDAHO.

(Rev. Stat. of Idaho, 1887, Sec. 6921)

Private Persons: Railroads.

Any person who shall willfully or care lessly set on fire or cause to be set on fire any timber or prairie lands in this territory, thereby destroying the timber, grass, or grain or (on ?) any such lands, or any person who shall build a camp-fire in any woods, or on any prairie, and shall leave the same without totally extinguishing such fire, or
any railway company which shall permit any fires to spread from its right of way to the adjoining land is guilty of a misdemeanor.

ILLINOIS.

(p. 1161, Sec. 89, Rev. Stat. of Ill. Cothran's Ed. 1889)
also p. 1206, Sec. 103, R. S. of Ill., Hurd's Ed. 1895.)

Railroads: Prima Facie Evidence of Negligence:
Contributory Negligence.

In all actions against any person or incorporated company for the recovery of damages on account of any injury to any property whether real or personal occasioned by fire communicated by any locomotive engine while upon or passing along any railroad in this state, the fact that such fire was so communicated shall be taken as full prima facie evidence to charge with negligence the corporation person or persons who shall at the time of such injury by fire be in the use and occupation of such railroad either as owners, lessees or mortgagees, and also those who shall at such time have the care and management of such engine; and it shall not in any case be considered as negligence on the part of the owner or occupant of the property injured that he has used the same in the manner, or permitted the same to be used or remain in the condition it would have been used
or remain had no railroad passed through or near the pro-
perty so injured, except in cases of injury to personal pro-
perty which shall be at the time upon the property occupied
by such railroads.

INDIANA.

(Ind. Stat. Revision of 1894, Burn's Ed., Sec. 2001)


Whoever maliciously or wantonly sets fire to any woods
or to anything growing or being upon any prairie or grounds
not his own property; or maliciously or wantonly permits any
fire to pass from his own prairie or grounds to the injury
or destruction of the property of any other person,—shall
be fined not more than one hundred dollars nor less than
five dollars, to which may be added imprisonment in the
county jail not exceeding thirty days.

IOWA.

( McClain's Annotated Code of Iowa, 1888, Sec. 1972)

Railroads : Absolute Liability.

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

( Sec. 5189)

If any person set fire to and burn or cause to be burned any prairie or timber land, and allow such fire to escape from his control, between the first day of Sept. in any year and the first day of May following, he shall be deemed guilty of a misdemeanor.

( Sec. 5188)

If any person willfully or without using proper caution set fire to or cause to be burned any prairie or timbered land or any enclosed or cultivated fields or any highway by which the property of another is injured or destroyed he shall be fined not exceeding five hundred dollars, or imprisoned in the county jail not more than one year, or by both fine and imprisonment in the discretion of the court.

( The latter is the later statute and amends the former. It was held under the former that cultivated fields were not within the statute).

KANSAS.

( Kans. General Stat. 1889, Sec. 7276 )


If any person shall wantonly and willfully set on fire any woods marshes or prairies so as thereby to occasion any damage to any other person, he shall upon conviction be
punished by fine not exceeding five hundred dollars and not less than fifty dollars, or by imprisonment in the county jail not more than six months and not less than ten days, or by both such fine and imprisonment.

( Sec. 7277 )

Private Person: Civil Damages.

If any person shall set on fire any woods marshes or prairies so as thereby to occasion damage to any other person, he shall be liable to the party injured for the full amount of such damage.

( Sec. 7278 )

Private Person: Backfires.

Nothing in this act contained shall be so construed as to prevent any person firing against fire so as to protect his or her property from being destroyed.

( Sec. 1321 )

Railroads: Prima Facie Evidence of Negligence: Contributory Negligence.

In all actions against any railroad company for damages by fire -- -- it shall only be necessary for the plaintiff in said action to establish the fact that said fire complained of was caused by the operating of said railroad, and the amount of his damages, ( which proof shall be prima facie evidence of negligence on the part of said railroad).

Provided That in estimating the damages under this act the con-
tributory negligence of the plaintiff shall be taken into consideration.

KENTUCKY.

(General Stat. of Ky., Bullitt & Feland's Ed. 1888, also The Ky. Stat., Barbour & Carroll's Ed. 1894)


If any person shall unlawfully set fire to any woods, fence, grass, straw, or other things capable of spreading fire on land, he shall be fined not exceeding one hundred dollars.

If any person intentionally or negligently set any woods on fire whereby damage is done to the lands or property of another he shall be fined at the discretion of the jury.

(p. 454, Sec. 6 and 5, B. & F. Ed.)

(p. 1017, Sec. 1, B. & F. Ed.)

Railroads: Spark-arrester.

It is hereby made the duty of all railroad companies or persons running or operating cars by steam on any railroad track or tracks in this Commonwealth to place on or around the tops of the chimneys of such cars or locomotives a screen, fender, damper, or other preventive, as will prevent, so far as possible, sparks of fire from escaping from such cars into fields, pastures, or outlands, or igniting any tim-
ber, grass, hay, cornstalks, house stable or any combustible matter whatever.

Any person or railroad company failing to comply with the provisions of the first section of this act shall upon conviction be fined in any sum not exceeding two hundred dollars for each offence — besides being responsible to any person injured by fire escaping from cars run or operated by them.

MAINE.

(Rev. Stat. of Me. 1883, Sections 15 - 19, p. 296)

Private Person: Penalty.

Whoever kindles a fire on land not his own without the consent of the owner forfeits ten dollars; if such fire spreads and damages the property of others, he forfeits not less than ten nor more than five hundred dollars; and in either case he shall stand committed until fine and costs are paid.

(In 1885, the above section was amended by adding the words: "or he shall be imprisoned not more than three years." Chap. 337, L. of 1885)

Private Person: Malicious Fires.

Whoever with intent to injure another causes a fire to be kindled on his own or another's land whereby the property of another person is injured or destroyed shall be fined not
less than twenty nor more than one thousand dollars, or im-
prisoned not less than three months nor more than three
years.

Private Person: Lawful Fires.

Whoever for a lawful purpose kindles a fire on his own
land shall do so at a suitable time and in a careful and
prudent manner; and is liable to any person injured by a
failure to comply with this provision.


The common law right to an action for damages done by
fires is not taken away nor diminished------.

(p. 481, Sec. 64)

Railroads: Absolute Liability: Insurable Interest.

When a building or other property is injured by fire
communicated by locomotive engine, the corporation using
it is responsible for such injury, and it has an insurable
interest in the property along the route for which it is
responsible, and may procure insurance thereon.

MARYLAND.

(Public General Laws of Maryland, 1888, Art. 23, p.364,
Sec. 198)

Railroads: No Liability unless Negligent.

Railroad companies shall be responsible for injuries
resulting --- by fire occasioned by their engines or car-
riages upon any of their roads and the branches thereof, unless the said companies can prove to the satisfaction of the justice or other tribunal before which the suit may be tried that the injury complained of was committed without any negligence upon the part of the company or its agents.

MASSACHUSETTS.


Private Person: Firing Brushwood, etc.

Whoever between the first day of April and the first day of October sets fire to a coal pit or pile of wood for the purpose of charring the same on any woodland in either of the cities or the towns of New Bedford, Dartmouth, Fall River, Freetown, Fair Haven, Middleborough or Rochester shall forfeit one hundred dollars.

Whoever between the times aforesaid sets fire to any brushwood or bushes on any part of such woodland, or on land adjoining thereto so as to cause the burning of such brushwood or bushes shall forfeit fifty dollars.

( p. 1164, Sec. 12)

Private Person: Bonfires.

Whoever is concerned in causing or making a bonfire within ten rods of a house or building shall be punished by fine
not exceeding twenty dollars or imprisonment not exceeding one month.

(p. 265, Sec. 9)

Private Person: Backfires.

When a fire occurs in woodland the firewards, or any two of them of a town in which woods are burning, or of a town containing woodland endangered by such fire, being present in a place in immediate danger of being burned over, may direct such back fires to be set and maintained, and such other precautions to be taken to prevent the spread of the fire as they may deem necessary.

(Chap. 163, L. of 1882)


Whoever wantomly and recklessly sets fire to any material which causes a destruction of any growing or standing wood of another shall be punished by fine not exceeding one hundred dollars or by imprisonment in a jail not exceeding six months.

(Chap. 296, L. of 1886)


Whoever willfully or without reasonable care sets a fire upon the lands of another by means whereof the property of another is injured or negligently or willfully suffers any fire on his own land to extend beyond the limits thereof
by means whereof the woods or property of another person are injured, shall be punished by fine not exceeding two hundred and fifty dollars.

( Public Stat. 1882, p. 638, Sec. 214)

Railroads : Liability : Insurable Interest.

Every railroad corporation and street railway company shall be responsible in damages to a person or corporation whose buildings or other property may be injured by fire communicated by its locomotive engine, and shall have an insurable interest in the property upon its route for which it may be held responsible, and may procure insurance thereon in its own behalf.

( L. of 1895, Chap. 293, amending the preceding Sec.)

Railroads : Insurance Procured by Owner of Adjoining Land.

In case such railroad corporation is held responsible in damages it shall be entitled to the benefit to any insurance effected upon such property by the owner thereof, less the cost of premium and expense of recovery. The money received as insurance shall be deducted from the damages if recovered before damages are assessed; if not so recovered the policy of insurance shall be assigned to the corporation held responsible in damages, and such corporation may maintain an action thereon.
Steamboats: Spark-arresters.

All vessels using wood for fuel navigating any part of the waters of this state shall be provided with suitable fire-screens attached to the smoke-stack of such vessels to prevent the escape of fire. Such fire-screens shall be of the best improved kind, shown by experience to be proper and suitable for protection from fire.

Same: Misdemeanor: Penalty.

The owner or owners and master of any steam vessel navigating the waters of this state who shall neglect to provide his or their vessel with the fire-screens (above mentioned) shall be deemed guilty of misdemeanor. The owner of such vessels shall also when any person is injured in person or property by reason of fire occasioned by the neglect of such owners of such vessels to comply with the provisions of Sec. 3 of this act, be liable to the amount of damages sustained to the person so injured.

Railroads: Liability: Equipment.

Any railroad company building owning or operating any railroad in this State shall be liable for all loss or damage to property to fire originating from such railroad; provided, that such railroad company shall not be held so
liable if it proves to the satisfaction of the court or jury that such fire originated from fire from engines whose machinery, smoke-stack, or fire-boxes were in good order and properly managed - - - - and that all reasonable precautions had been taken to prevent their origin, and that proper efforts had been made to extinguish the same in case of their extending beyond the limits of such road, when the existence of such fire is communicated to any of the officers of such company.

MINNESOTA.

(Minn. Penal Code, Sec. 336: Stat. of Minn. 1891, Kelly's Ed., Sec. 6392)


Whoever negligently or carelessly sets on fire or causes to be set on fire any woods prairies or other combustible material, whether on his own lands or not, by means whereof the property of another is endangered, or whoever negligently suffers any fire upon his own lands to extend beyond the limits thereof, is guilty of a misdemeanor------

L. of 1895, Chap. 196, Sec. 9 substantially re-enacts the above and continues: Any person who maliciously sets on fire or causes to be set on fire any woods prairies or other combustible material whereby the property of another is des-
troyed and life is sacrificed shall be punished with a fine of not over five hundred ($500.) dollars, or be imprisoned in the state prison for a term for not over ten (10) years, or both such fine and imprisonment.


Any person who shall kindle a fire on or dangerously near to forest or prairie land and leave it unquenched, or shall be a party thereto, and every person who shall use other than incombustible wads for firearms, or who shall cadry a naked torch, firebrand, or other exposed light in or dangerously near to forest land, causing risk of accidental fire, shall be punished by a fine not exceeding one hundred ($100.) dollars, or imprisonment in the county jail not exceeding three (3) months.


It shall be the duty of all railroad companies operating any railroad within this state to use efficient spark-arresters on all their engines, and to keep their right of way to the width of fifty (50) feet on each side of the center of the main track cleared of all combustible materials and safely dispose of the same within said limits of their right of way between the fifteenth day of April and the first day of December. No railroad company shall permit its employees to leave a deposit of fire or live coals or hot
ashes in the immediate vicinity of woodland or lands liable to be overrun by fire.

Portable Engines.

It shall be the duty of each and every owner of threshing or other portable steam engines to have efficient spark-arresters on their engines at all times when in use, and no person in charge of any traction engine shall deposit live coals or hot ashes from his engine in any place without putting them out or covering them with at least three inches of earth before leaving them.

MISSISSIPPI.

(Annotated Code, Thompson, Dillard and Campbell, 1892, Sec. 1091)


If any person willfully or maliciously set on fire any woods meadow marsh field or prairie not his own, or wantonly allow any fire to be communicated to any woods meadow marsh field or prairie not his own, he shall be guilty of a misdemeanor.

MISSOURI.

(Rev. Stat. of Mo. 1889, Sec. 2615)

Railroads: Absolute Liability: Insurable Int.

Each railroad corporation
Each railroad corporation owning or operating a railroad in this state shall be responsible in damages to every person and corporation whose property may be injured or destroyed by fire communicated directly or indirectly by locomotive engines in use upon the railroad owned or operated by such railroad corporation, and each such railroad corporation shall have an insurable interest in the property upon the route of the railroad owned or operated by it, and may procure insurance thereon in its own behalf for its protection against such damages.

MONTANA.

(Mont. Penal Code, 1895, Sec. 1071, 1072)

Private Person: Careless Fires: Campfires.

Every person who carelessly sets fire to any timber woodland or grass except for useful or necessary purposes, or who at any time makes a campfire or lights a fire for any purpose whatever without taking sufficient steps to secure the same from spreading from the immediate locality where it is used, or fails to extinguish such fire before leaving it, is punishable by imprisonment in the county jail not exceeding one year, or by a fine not exceeding two thousand dollars, or both.

Every person who wantonly or designedly sets fire to any timber woodland or grass, or maliciously fails to extinguish a fire after making the same for a necessary purpose, before leaving it, is punishable by imprisonment in the state prison not exceeding five years, or by a fine not exceeding five thousand dollars, or both.

NEVADA.

(Gene-al Stat. of Nev. 1885, Sec. 4816)

Private Persons: Campfires: Penalty.

Every person who upon departing from camp willfully or negligently leaves the fire or fires burning or unexhausted is guilty of a misdemeanor.

NEW HAMPSHIRE.

(Public Stat. of N. H. 1891)

p. 737, Sec. 4.

Private Person: Penalty.

If any person shall kindle a fire by the use of firearms or by any other means on land not his own he shall be fined not exceeding ten dollars; and if such fire spreads and does any damage to the property of others, he shall be fined not exceeding one thousand dollars or be imprisoned not exceeding three years.
p. 737, Sec. 5.


If any person for a lawful purpose shall kindle a fire on his own land or upon land which he occupies or upon which he is laboring, at an unsuitable time or in a careless and imprudent manner, and shall thereby injure or destroy the property of others, he shall be fined not exceeding one thousand dollars.

p. 737, Sec. 6.


If any person with intent to injure another shall kindle or cause to be kindled a fire on his own or another's land, and thereby the property of any other person is injur- ed or destroyed, he shall be fined not exceeding two thousand dollars or be imprisoned not exceeding three years.

p. 451, Sec. 29.

Railroads: Absolute Liability.

The proprietors of every railroad shall be liable for all damages to any person or property by fire or a team from any locomotive or other engine upon their road.

p. 451, Sec. 30.

Railroads: Insurable Interest.

Such proprietors shall have an insurable interest in all property situate upon the line of their road which is expos-
ed to such damage, and they may effect insurance thereon for their own benefit.

p. 451, Sec. 31.

Railroads: Insurance effected by Adjoining Owner.

Such proprietors shall be entitled to the benefit of any insurance effected upon such property by the owner thereonles the cost of premium and of expense of recovery. The insurance shall be deducted from the damages if recovered before the damages are assessed, or if not, the policy shall be assigned to the proprietors who may maintain an action thereon.

NEW JERSEY.

(Rev. Stat. of N. J. 1709 to 1877)


No action suit or process whatsoever shall be had maintained or prosecuted against any person in whose house or chamber any fire shall accidentally begin, or recompence be made by such persons for any damage suffered or occasioned thereby (p. 1236, Sec. 8)

Private Person: Double Damages.

If any person shall wilfully set fire to or burn or procure or cause to be burned his or her own woods marshes or
meadows — by means whereof any other person shall be damnified in his or her houses buildings fences woods or other property whatsoever, or shall willfully set fire to or burn or procure or cause to be burned any wood marshes or meadows of another — such person so offending in any of the premises shall be deemed to be guilty of a misdemeanor and on conviction shall be punished by a fine not exceeding one hundred dollars or imprisonment at hard labor not exceeding twelve months, or both; and also shall yield and pay double damages to the party injured thereby. (p. 422, Sec. 1).

Private Person : Smoking out Animals.

If any person or persons shall burn or smoke out any squirrel or squirrels, or any animal or species of game whatsoever in any woods forest marshes or meadows or other lands in this state belonging to any other person or corporation, or if fire originates from any such burning or smoking as aforesaid, by any person whatsoever, by means of which any other person or corporation shall be damnified in his or her (property) such person or persons so offending shall be punished by fine or imprisonment at hard labor or both. (p. 423, Sec. 3)

Railroads : Safe Appliances.

It shall be the duty of every railroad company in this
state—-— to take and use all practicable means to prevent the communication of fire from any locomotive engine used or employed by them. (p. 911, Sec. 13)

Railroads : Damages : Insurable Interest.

When any injury is done to any (property) of any person or corporation by fire communicated by a locomotive engine of any person or railroad corporation—-—said person or corporation shall be held responsible in damages to the person or corporation so injured; and it shall be lawful for any railroad corporation to make an agreement for insurance of any such property on which an insurance may be practicable, and such corporation shall have an insurable interest therein accordingly, and may effect the insurance thereon in its own behalf. (p. 911, Sec. 14)

Railroads : Spark-arresters.

It shall be the duty of every railroad corporation in this State—-— to provide (their) engine or engines with a screen or screens, or cover or covers on the smoke stack or smoke pipe of such engine or engines. (p. 911, Sec. 15)

Railroads : Prima Facie Evidence of Negligence.

In every action now or hereafter brought for the recovery of damages for an injury done to the property of any person or corporation by fire communicated by locomotive engine—-—proof that the injury was so done shall be
prima facie evidence of such violation, subject nevertheless

to be rebutted by evidence of the taking and using all prac-
ticable means to prevent such communication of fire. (p.
911, Sec. 16)

NEW YORK.

( Chap. 692, L. of 1893, p. 721, see also Penal Code,
Sec. 413.)


A person who:

1. Willfully or negligently sets fire to or assists
another to set fire to any waste or forest lands belonging
to the State or to another person whereby such forests are
injured or endangered; or

2. Negligently sets fire to his own woods by means
whereof the property of another is endangered; or

3. Negligently suffers any fire upon his own land
to extend beyond the limits thereof -------------------------
---------- is guilty of a misdemeanor.

(Chap. 395, Sec. 281, L. of 1895, p. 251)

Private person : Forest Lands : Penalty.

Any person who shall willfully or negligently set fire
to or assist another to set fire to any waste or forest
lands belonging to the state or to another person whereby such forests are injured or endangered; or who suffers any fire upon his own lands to escape or to extend beyond the limits thereof to the injury of the woodlands of another or of the state shall forfeit to the state not less than fifty not more than five hundred dollars, and be liable to the person injured for all damages that may be caused by such fires.

NORTH DAKOTA.

(revised Codes of N. Dak. 1895) Sec. 1654 to 1660)

Private Person: Prairie Fires Forbidden: Penalty.

If any person shall set or cause to be set on fire any woods marsh or prairie or any grass or stubble lands except in the months of July or August, except as is hereinafter provided, such persons shall be deemed guilty of misdemeanor and shall also be liable in a civil action to any person damaged by such fire to the amount of such damage.

Private Person: Fire Permitted When.

For the purpose of destroying any grass or stubble that may be on any piece of land at the time any person commences to break or plow the same it shall be lawful for such person to set the same on fire at any time in the year; provided
that at the time of setting such grass or stubble on fire there shall be a strip of land well plowed or burned over at least fifty feet in width completely encompassing the place where such fire is set.

Private Person: Negligent Fires:

If any fire set as provided in the last section shall by accident and without any fault or neglect of the person setting the same, get beyond his control, such person shall be liable as provided in the last section for all damages done by such fire, but not otherwise. But if such fire is carelessly, negligently, or intentionally permitted to spread beyond the bounds of such strip of land mentioned in the last section, then the person setting such fire shall be liable both civilly and criminally as provided in the last section.

Private Person: Grasshopper Destruction:

It shall be lawful for any person at any time between the twentieth day of April and the twentieth day of June to set on fire for the purpose of destroying grasshoppers any marshes, prairies, grass or stubble lands; provided, that the person desiring to set such fire shall give at least twenty-four hours' notice to all persons residing within one and a half miles of the place where the fire is to be set.
Private Person: Fire Limited:

Fire set under the provisions of the last section shall not be allowed to spread beyond the control of the person setting the same, and shall be extinguished the same day on which it is set.

Private Person: Penalty: Liability:

Any person violating the provisions of the last section shall be liable in a civil action to any person damaged by such fire to the amount of such damage. (Also penal liability).

Private Person: Negligent Fires: Camp-fires:

Penalty:

If any person shall willfully, negligently, or carelessly set or cause to be set on fire any woods, marsh, or prairie in this state, or if any person having made any camp or other fire shall leave such fire without having extinguished the same, so that the fire shall spread and burn any woods, marsh, or prairie, the person is guilty of a misdemeanor, and also liable in a civil action to any person injured.

(Laws of N. Dak. 1895. c. 90).

Railroads: Right of Way: Spark-arresters:

It is hereby made the duty of every railroad company within this state --- not later than the 30th day of June in each year to plow or cause to be plowed a strip not less
than four feet wide along and within the border line of their right of way and on each side of the track and to burn or otherwise destroy all grass, weeds, or other combustible matter being or lying within such plowed strip along their right of way, not later than the last day of August in each year. It is furthermore the duty of all railroad companies operating within this state to carry netting or spark-arresters on all smoke-stacks from the first day of August to the 15th day of November in each year when running through the prairie portions of this state. Any railroad company failing or neglecting to comply with the requirements of this section shall be guilty of a misdemeanor, and upon conviction shall be fined not less than five hundred (500) dollars for each offense, and shall be liable to any persons damaged by such failure or neglect to the full amount of such damage.

OHIO.


Railroads: Absolute Liability: Prima Facie Evidence of Origin of Fire:

Every railroad company operating a railroad or any portion of a railroad wholly or partially within the state of Ohio shall be liable for all loss or damage by fire originating upon the land belonging to such railroad company
caused by operating such railroad. Such railroad company shall be further liable for all loss or damage by fires originating on lands adjacent to such railroad company's land, caused in whole or in part by sparks from an engine passing over the line of such railroad, ------- and the existence of such fires upon such railroad company's land shall be prima facie evidence that such fire was caused by operating such railroad.

Railroads: Prima Facie Evidence of Negligence:

Contributory Negligence:

In all actions against any person or incorporated company for the recovery of damages on account of any injury to any property --- occasioned by fire communicated by any locomotive engine, --- the fact that such fire was so communicated shall be taken as prima facie evidence to charge with negligence the corporation or person or persons who shall at the time of such injury by fire be in the use and occupation of such railroad. --- And it shall not in any case be considered as negligence on the part of the owner or occupant of property injured, that he has used the same in the manner or permitted the same to be used in the manner in which it would have been used had no railroad passed through or near the property so injured.

OKLAHOMA.

(Statutes of Oklahoma, 1893, Secs. 2268,2270).

Every person who shall wilfully set on fire or cause to be set on fire any woods, marshes, or prairies, with intention to injure the property of another, shall be deemed guilty of a misdemeanor, and shall be liable for all damages done by such fire.

Private Persons: Negligent Fires: Penalty:

Every person who negligently or carelessly sets on fire or causes to be set on fire any woods, marshes, or prairies or who having set the same on fire, or caused to be done negligently or carelessly, or without full precaution or efforts to prevent, permits it to spread beyond his control, shall upon conviction be fined not exceeding one hundred dollars and not less than ten dollars, and shall be liable to injured parties for all damages occasioned thereby.

(Secs. 2902 - 2908)

Private Persons: Willful and Negligent Fires:

Various penalties are provided in addition to liabilities in civil actions.

(Sec. 2909)

Railroads: Absolute Liability:

Any railroad company operating any line in this state shall be liable for all damages sustained by fire originating from operating their road.
Rhode Island.


Private Persons: Malicious Fires: Penalty:

Every person who shall set, maliciously, or cause to be set any fire in the woods which shall run and spread at large, shall be imprisoned not exceeding two years.

SOUTH CAROLINA.


Railroads: Absolute Liability: Insurable Interest:

Every railroad corporation shall be responsible in damages to any person or corporation whose buildings or other property may be injured by fire communicated by its locomotive engines,-------- and it shall have an insurable interest in the property upon its route for which it may be so held responsible, and may procure insurance thereon in its own behalf.


Private Person: Willful and Negligent Fires:

Whoever shall willfully, maliciously, or negligently set fire to or burn any grass, brush, or other combustible matter, so as thereby any woods, fields, fences, or marshes of any other person or persons be set on fire, or cause the same to be done, or be thereunder aiding or assisting, shall upon conviction thereof be punished by a fine of not
less than five nor more than one hundred dollars, or imprisonement in the county jail not more than thirty days, and shall, moreover, be liable to the action of any person or persons who may have sustained damages thereby.

UTAH.

(Compiled Laws of Utah, 1888).

Private Persons: Malicious or Negligent Fires:

Vol. II. p. 607, sec. 4576:— Every person who maliciously or negligently sets on fire any woods, prairies, grasses, or grain on any lands, public or private, is guilty of a misdemeanor.

( Vol. II. p. 33, sec. 2359:—)

Railroads: Absolute Liability:

Any company constructing or operating lines of railroad in this Territory shall be liable for all damage which may be sustained through destruction of property caused by fire communicated from their locomotive engines.

VERMONT.

(Vermont Stat. 1894, sec. 4934)

Private Persons: Willful Fires:

A person who willfully and maliciously sets on fire or causes to be set on fire woods or forest so as to occasion injury to another person, shall be imprisoned in the state
prison not more than five years, or fine not more than five hundred dollars.

( Sec. 3926)

Railroads : Damages : Insurable Interest.

A person or corporation owning or operating a railroad, shall be absolutely responsible in damages for a building or other property injured by fire communicated by a locomotive engine on such road, unless due caution and diligence are used and suitable expedients employed to prevent such injury; such person or corporation shall have an insurable interest in the property along its route, and may procure insurance thereon.

VIRGINIA.

(Code of Vir., 1887, p. 350, Sec. 1264)

Railroads : Spark-arresters.

No railroad company doing business in this state shall run on its road any locomotive not having an approved spark-arrester. Every company violating the provisions of this section shall be fined ten dollars for each offence, and each day of running such locomotive shall be deemed a separate offence.

WASHINGTON.

( Wash. Penal Code, Sec. 81 to 84a.)
Private Person: Malicious and Negligent Fires:

Back Fires.

Certain penalties are provided for malicious and negligent fires. There is a provision in Sec. 84a that "nothing herein contained shall apply to any person who in good faith shall set a back fire to prevent the extension of a fire already burning.

WISCONSIN.

(Chap. 266, L. of 1895, Sec. 3 and 5)

Private Person: Negligent Fires.

Any person who shall willfully or negligently set fire to or assist another to set fire on any land whereby such land is injured or endangered or who willfully or negligently suffers any fire on his own land to escape beyond the limits thereof to the injury of the land of another shall upon conviction thereof be punished by a fine not exceeding one hundred dollars, or by imprisonment in the county jail not exceeding one month or by both such fine and imprisonment, and be liable to the person injured for all damages that may be caused by such fire.

Railroads: Debris: Spark-arresters.

Every railroad company shall at least once in each year cut and remove from its right of way all grass and weeds,
but under proper care, and at times when fires are not liable to spread beyond control. All locomotives shall be provided and shall use approved and sufficient arrangements for preventing the escape of fire and sparks so far as the same can reasonably be done. No railroad company shall permit its employees to deposit fire, live coals, or ashes upon their track outside of yard limits, except that they be immediately extinguished.

WYOMING.

(Rev. Stat. of Wy. Sec. 921, 922)

Private Person: Liability: Back Fires.

If any person or persons shall set on fire any woods, prairie or other grass lands, these so as thereby to occasion damage to the party injured such person or persons shall make satisfaction for such damages.

Nothing contained in the two preceding sections shall be so construed as to prevent any person from firing against fires so as to prevent property from being destroyed.

(R. S. of Wy. 1887, Sec. 1947 to 1949, as amended by chap. 34, L. of 1891)

Railroads: Fire-guards.

Fire-guards must be burned on both sides of right of way. In case of neglect so to do, railroad companies are absolutely liable for all damages resulting.
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