New Jersey Court of Errors and Appeals

JOHN VALLENCY, by Nicholas Vallency next friend and NICHOLAS VALLENCY,
Plaintiffs-Appellants,
against
ROCCO RIGGILO,
Defendant-Respondent.

APPELLANTS' BRIEF

Statement of Facts

This action is brought by the plaintiff, John Vallency, an infant, by his next friend, to recover $10,000 damages for the loss of his right eye, and by the father of said infant, Nicholas Vallency, to recover $3,500 for the loss of services and expenses incurred on behalf of the infant, occasioned as a result of the negligence of the defendant in placing and leaving dynamite cartridges in his house, in an exposed and unguarded place, accessible to any person, some of which explosives were taken by defendant's minor son out of the house, and exploded by him, causing the injuries complained of.

Plaintiff suffered a non-suit at the trial, the Court holding that the negligence of the defendant in leaving the dynamite where his minor son could and did get possession of it, and cause the resulting injuries, was not the direct and proximate cause of plaintiff's injuries, and that the act of the defendant's son was an intervening cause, which absolved the defendant from any liability.

From the judgment of non-suit the plaintiffs have appealed.

POINT I

The Court below erred in granting defendant's motion for a non suit.

By the motion, which in effect was a demurrer, the defendant admitted his negligence in having and keeping the dynamite cartridges in a place where a child could, and as a matter of fact, did get possession of some of them, and thereby was enabled to cause injury with them. For any result which might reasonably be anticipated through such negligence—and it is claimed that such a result might have been foreseen—the defendant is to blame, and the so-called intervening act of his minor child, is not to be considered as the proximate or sole cause of plaintiff's injuries.

If it appears from the evidence that the defendant might have reasonably anticipated the injury as a consequence of permitting his son to employ the agency which produced the injury, he is liable therefor.

Palmer vs. Ivorson, 117 Ill., App. 535.

If it be shown that the father permitted the dynamite cartridges to be and remain where an occurrence of the kind charged, might take place, or be permitted acts to be done on his premises, which were likely to result in damage to a third person, he is liable for the tort of his child.

Hoverson vs. Noker, 2 Del., Co., 4 217 (Pa).
Hoverson vs Noker, 60 Wis., 511.

In *Nelson vs. McLellan,* 31 Wash., 208, 60 L. R. A., 793, a contractor for street work left dynamite sticks half buried in a vacant lot, where children were accustomed to play. One of the children was injured through the explosion of the dynamite. The contractor was held liable.

The latest authority on the proposition is found in the advance sheets of the American Digest, August, 1914, at page 326, a Missouri case, where it is stated that a parent may be liable for negligence in permitting a minor son to use a dangerous weapon, by which plaintiff was injured. In this case, the plaintiff, a caller in the defendant's home, was shot by the defendant's minor son, thirteen years of age, during the absence of the father. It was held that both mother and father were liable for negligence, in permitting their child to have and use the gun with knowledge of his careless habits.

Charlton vs. Jackson, 167 S. W., 670.

Where a railroad employe carelessly left a signal torpedo on the track at a crossing or a place frequented by the public and a boy who picked it up and exploded it, was injured, the Company was held liable.

See Harriman vs. Railway Co., 15 Ohio, St., 11.

Pittsburg, etc., vs. Schields, 47 *Id.*, 387, 8 L. R. A., 464.
Cleveland vs. Marsch, 63 *Id.*, 236, L. R. A., 142.

Where a parent through lack of care or watchfulness, permits an infant of tender age to discharge fire works, he is liable for injuries resulting from a negligent use of them.

Mullins vs. Blaise, 37 La. Ann., 92.

In the case of *Wells vs. Gallagher,* 3 L. R. A., 759, an Alabama case, it was held, that where a boy carried a bomb found in the public highway to an adjacent yard and there exploded it to his injury, it will not relieve from liability the one responsible for the bomb being where it was.

The case of *Sullivan vs. Creed,* 2 I. R., 317, was one where the defendant left a gun loaded, standing inside of the fence on his own land opposite a gap, from which a path led over the defendant's land from the public road to his house. The defendant's son, aged between fifteen and sixteen years, coming from the road through the gap on his way home, found the gun. He went back with it to the public road and not knowing that it was loaded, pointed it in play, at the plaintiff, who was on the road. The gun was discharged and the plaintiff injured. The defendant was held liable.

If a parent negligently leaves a loaded revolver in an unlocked bureau drawer in a room in which his minor children are allowed to play, and one of them not knowing the danger, takes the pistol and inflicts injury on the person or property of another, the parent is liable.

Philip vs. Barnett, 2 City Court, (New York) 20.

Meers vs. McDowell, 62, S. W. (Kentucky) p. 1013.

The recent case of *Davenport vs. McClellen* reported in 96 Atl., 921, and decided by this Court is the nearest approach to the case at bar. There defendant set fire to a heap of leaves, and after it had been burning about an hour, he left it unextinguished and unguarded. Plaintiff about five years old, gathered other leaves and put them on the fire, causing a flame which set fire to his clothing and severely burned him.

In reversing a judgment of non-suit, recovered on the theory that the act of the child was an intervening cause, for which the defendant was not liable, the court said:

> "The starting of a fire in a public street is the committing of a nuisance and the wrongdoer in leaving it still burning and unguarded, is responsible for the consequential damages which may be reasonably apprehended will result from such an act; one of them being that very young children without capacity to estimate or appreciate the danger may, while playing in the street, interfere with it. The act of the child in the present case was not an intervening cause in that it destroyed the causal connection between defendant's negligent act and the resulting injury, but rather an act which contributed to it; x x x x
> It was therefore error to non suit either upon the ground of intervening cause or contributory negligence."

In the case of *Bindford vs. Johnson,* 82 Ind., 426, the defendant sold cartridges to a child and was informed of what use the child expected to

make of them. Held, he could not escape liability on the ground that a pistol loaded with one of the cartridges was left lying where another child could reach it, because the result could have been anticipated.

> "The appellant was bound to take notice of the natural conduct of lads like those to whom he sold cartridges and it cannot be justly said that the act of lads in carrying the pistol with them to their home, and leaving it upon the floor within reach of their brother and playmate was an unnatural or improbable one."

So with the case at bar. The defendant had a family, and knew, or was chargeable with the knowledge of, the natural curiosity of children and the very inherent probability of their taking some of the dynamite cartridges out of the house to use in their play. The possible consequences of the negligence of the defendant in thus leaving a highly dangerous commodity open, exposed and unguarded, could have been reasonably forseen by him, and for his failure to take reasonable and ordinary precautions to prevent any accident happening through such negligence, he is liable.

To cite *Lynch vs. Murdin,* 1 Q. B., 29 cited in *Friedman vs. Snare & Triest Co.,* 42 Vr., 605

> "Defendant has been the real and only cause of the mischief. He has been deficient in ordinary care; the child acting without prudence or thought has, however, shown these qualities in as great a degree as he could be expected to possess them. His misconduct bears no proportion to that of the defendant, which produced it."

In *Heaven vs. Pender,* 11 Q. B. D., 503, Lord Justice Cotton said:

> "Any one who leaves a dangerous instrument, as a gun, in such a way as to cause danger, or who without due warning supplies to others for use, an instrument or thing which to his knowledge, from its construction or otherwise is in such a condition as to cause danger, not necessarily incident to the use of such an instrument or thing, is liable for injury caused to others by reason of his negligent act."

Cited in *Torgesen vs. Schultz,* 192 N. Y., at 159, 160. Judgment dismissing complaint reversed.

In *Aitken vs. Bradley Eng. Mach. Co.,* 14 L. R. A. N. S., 580, a boy, eleven years old, found a dynamite cap and exploded it with a dry battery, and was hurt. Defendant had thrown large numbers of these caps on vacant land near path used by school children. Held that the plaintiff did not appreciate the danger and therefore was not an intervening cause. Defendant liable.

In *Lamuri vs. Saginaw City Gas Co.,* 148 Mich., 27, 111 N. W., 884, defendant left a drip wagon on the street, unattended, on which the plaintiff was at play with a companion who was six and a half years old, plaintiff being five and a half. The companion threw a match into the drip wagon, causing an explosion with inflicted injuries upon the plaintiff, who was allowed to recover.

The Court said:

> "What is there in this case, intervening between the defendant's wrong and the plaintiff's injury, which may be called a cause? Nothing, unless it be the action of

> the plaintiff's companion a child of tender years. It is true that the intervention af a responsible human agency has frequently been held to destroy the causal connection between a wrong and its consequences; but the intervening human agency in this case was irresponsible."
>
> "The defendant had in his possession an explosive substance, and he was bound to the exercise of a high degree of care to so keep it as to prevent injury to others."
>
> Travell vs. Bannerman, 174 N. Y., at p. 51., citing Shearman & R., on Negligence, 5th Edn., Sec. 689.

The explosive in the present case placed upon a mantel, with full knowledge of the danger, where a child could get possession of it, was, or at least might become, as it did in fact, here, a dangerous agency, and defendant is chargeable with the result which might have been reasonably anticipated by him.

The Court of Appeals, in *Perry vs. Rochester Lime Co.,* 219 N. Y., at p. 65., Cardozo, J., in a case where death ensued as the result of the explosion of dynamite stolen by the boys, said—

> "Nothing in our ruling is in conflict with the recognition of a duty to protect the young and heedless from themselves, and guard them against perils that may reasonably be foreseen. To define the orbit of that duty is unnecessary now."

Citing numerous cases.

In *Mattson vs. Minnesota &c Ry.,* 104 N. W., 443, 93 Minn., 455, defendant left a large quantity of dynamite exposed on its premises, which was found by plaintiff's children. Defendant held liable.

POINT II

Plaintiffs were entitled to have the question of defendant's negligence submitted to the jury as a matter of fact.

If the appellants' contention that the proximate cause of the injuries sustained was the negligence of the defendant—and for the purposes of the motion for non-suit, such negligence was admitted—be correct, then under the decision referred to in Point 1 of this brief, appellants were entitled to have their case tried upon the merits, and the Court recognized that fact, since in passing upon defendant's motion it said:

> "The Court must assume that the plaintiff will be able to prove precisely what was stated in the opening." (Case p. 11, fol. 20).

POINT III

The judgment of non-suit was contrary to law and should be reversed and a trial de novo ordered.

Respectfully submitted,

WILLIAM HAUSER,
Attorney of plffs. Appellants.

THE ARTHUR H. CRIST CO., Cooperstown, N. Y.
New York Office, 220 Broadway

Arthur W. Cross, Law Printer, 243 Market Street, Newark, N. J.

New Jersey Court of Errors and Appeals

ROCCO RUGGILO,
Plaintiff-Appellant,

vs.

JOHN VALLENEY, by next friend,
Defendant-Respondent.

In Tort.

Brief for Defendant-Respondent.

Two questions are presented in this cause:

First. Was the accident to the plaintiff's son the direct cause of any negligent act on the part of the defendant? Or was the defendant's act an indirect or remote cause of the accident?

To justify a recovery against defendant, his negligence must have been the direct or proximate cause of the injury. A proximate cause in the law of negligence is such a cause as operates to produce particular consequences without the intervention of an independent cause. If subsequent to the original wrongful act a new cause had intervened of itself, sufficient to stand as the cause of the misfortune, the former must be considered as too remote.

Glanes v. *Worcester,* 70 N. E. Rep., 199.
Herr v. *City of Lebedon,* 24 At. Rep, 207.
Clyhorn v. *Thompson,* 64 Pac. Rep., 605.
B. & O. v. *Tranner,* 33 Md., 542.
Cuff v. *M. & N.,* 35 N. J. L., 18.
Alexander v. *Newcastle,* 115 Ind. 51.
Texas v. *Beckwith,* 32 S. W. 347.
1st Thompson on Negligence, sec. 55.
See also 95 N. S. 469-479; 105 N. S. 249.
Fowles v. *Briggs,* 116 Mass. 225.

Carter v. *Tower,* 103 Mass. 507.
Stone v. *Boston,* 117 Mass. 536.

In the latter case the defendant left oil cans on the platform of a railroad station in violation of a city ordinance. A third party let drop a lighted cigar on the cans, which caused a big fire, destroying several buildings. It was held that although the defendant's act was negligent and wrongful, yet it was not the direct act but a remote act of the injury, and therefore no liability could attach to him.

In *Shaafer* v. *R. R. Co.,* 105 U. S. 249, a party was injured in a railroad accident and his mind became so disordered that eight months after the accident he committed suicide. Held that his suicide was his own act and not that of the R. R. Co., and the collision was not the direct cause of the death.

Liability for conduct does not attach unless the conduct was a proximate cause of the injury complained of.

Hale on Torts, Ed. 1896, p. 43.

See *Bigelow on Torts,* 8th Ed. sec. 17, p. 187, under the head of "intervening causes."

See *Burdick on Torts* under title "Remoteness of damage" 3rd Ed.. p. 106.

No liability if a distinct cause intervene between defendant's wrong and the damage.

1 *Cooley on Torts,* Ed. 1906. p. 115.

The next question is: In any event would defendant be liable for the act of his infant son?

In a note in second of *Kent's Commentaries,* Comstock's Edition, page 193, it was stated that a parent is not liable, and in *Taft* v. *Taft,* 4 Denio and also in *Baker* v. ————, 24 Mo. 219, no liability could attach to the parent. The par-

ent must answer for the discharge of firearms by his young children and other misconduct on his premises and with his permission either by approval or with his knowledge of the material facts, beyond this his liability does not extend. The mere relationship of parent does not subject him to legal responsibility for his children's torts.

Burdick on Torts, 3rd Ed. 151.

Parent not liable for his son in shooting mules.

Chandler v. *Denton,* 37 Texas, 406.

Next to the liability of parents viewed simply in his parental capacity is in no case chargeable with the act of his child; but to fix him for the liability for the consequences he must be shown either expressly or impliedly to have authorized the performance.

2 *Walford on Parties,* 1084.

In *Needless* v. *Buck,* 18 Mo. 572, a parent paid a sum of money in settlement of a wrong committed by his son, being under the impression that he was liable for the son's wrong. On ascertaining that he was not liable he sued for a return of the money and the Court held that he was entitled to a return of it.

In *Smith* v. *Davenport,* 45 Kansas, 423, parent not liable for the act of minor son unless committed with parent's consent or connected with parent's business. If any liability of the parent is sought it must not be because of the domestic relation, but by reason of the relation of master and servant, and then it must be shown that there was some proof of contract on his part, expressed or implied.

2nd *Walford on Parties,* 1088.

Infancy is no protection in an action brought to recover the value of a horse which died of sud-

den fright caused by the explosion of fire-cracker thrown under the horse by the infant defendant.

Conklin v. *Thompson,* 29 Barb. 218.

A parent is not liable for wilful act of his minor child as for setting the parents' dog upon a hog of a third person.

Taft v. *Taft,* 4 Denio. 175.

Parent not liable for assault and battery committed by his minor son. 24 Misc. (3 Jones), 219.

To hold parent liable on the theory of master and servant there must be some proof of contract either express or implied. 2 *Wal. on Parties,* 1085.

It may be asked in this case on whom does the liability attach? Unquestionably on the infant.

Sutro on Torts committed by infants.

Conklin v. *Thompson,* 29 Barb., 218.

Both are not liable.

Schlossberg v. *Lehr,* 60 How. Pr. Rep, 450.

In this case the opinion was written by Judge Van Brunt who held that there was no case in New York which holds that both parent and child are liable.

An infant was held liable for throwing mortar at the head of a boy and a piece flew off and hit another boy causing loss of eye. Infancy pleaded and liability held to be on infant.

Peterson v. *Haffner,* 59 Ind. 130.

In *Bullock* v. *Babcock,* 3 Wend. 391, infant's liability held in same manner as adults for torts when injury is not the result of unavoidable accident.

In *Hostching* v. *Egner,* 17 Wis. 237, a child of six years of age held liable for tort.

In this case there was no relation of master and servant. The infant defendant was about five years of age and was under no contract to render services to his father or to any other person. The case recently decided by this Court known as the burning leaves case is unlike this case in that there was one act and no intervening act; defendant in that case set fire to the leaves and it was the burning of the leaves that caused the damage.

It is respectfully submitted that the judgment of the Circuit Court should be affirmed.

MICHAEL A. CASTELLANO,
Attorney for Defendant-Respondent.

THOMAS S. HENRY,
Counsel for Defendant-Respondent.

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New Jersey Court of Errors and Appeals

Notice of Appeal

(Filed May 11, 1916)

ESSEX COUNTY CIRCUIT COURT

JOHN VALLENCY, by Nicholas Vallency, next friend and NICHOLAS VALLENCY, Plaintiffs, against ROCCO RIGGILO, Defendant.	20

To Michael A. Castellano, Attorney of Defendant:

TAKE NOTICE that the plaintiffs above named hereby appeal to the Court of Errors and Appeals from the judgment of non-suit entered in the above entitled cause, on the 2d day of June, 1915, on the following grounds: 30

1. It was reversible error to non-suit the plaintiffs on the pleadings in the cause, as said pleadings stated facts sufficient to constitute a cause of action. 40

II. It was reversible error to non-suit the plaintiffs on the opening to the jury, since the said statements set out a cause of action against the defendant.

III. Defendant, by his motion for non-suit, admitted the facts properly pleaded by the plaintiffs, and plaintiffs should have been permitted to produce their evidence and have the case submitted to the jury.

IV. The judgment of non-suit was contrary to law.

Dated, at Bloomfield, New Jersey, April 25th, 1916.

Yours, etc.,

WILLIAM HAUSER,
Attorney for Plaintiff-Appellant.

Summons

(Filed April 16, 1913)

State of New Jersey to Rocco Riggilo:

(Seal)

You are summoned to answer the annexed Complaint of John Vallency by his next friend, Nicholas Vallency and the said Nicholas Vallency in an action at law in the Essex County Circuit Court. And take notice, that unless you file your answer to said complaint with the Clerk of the Essex County Circuit Court at Newark within twenty days after service

upon you of this writ and the annexed complaint, the plaintiffs may proceed in the suit and judgment may be entered against you.

Witness, Frederic Adams, Judge of the Essex County Circuit Court, at Newark, this fifteenth day of April, one thousand nine hundred and thirteen.

Gifford & Miller,
Attorneys.
Joseph McDonough,
Clerk.

Complaint

(Filed April 16, 1913)

ESSEX COUNTY CIRCUIT COURT

JOHN VALLENCY, by Nicholas Vallency, next friend, and NICHOLAS VALLENCY, Plaintiffs, vs. ROCCO RIGGILO, Defendant.	

Plaintiffs residing in the Town of Belleville, County of Essex and State of New Jersey, say that:

1. On or about the first day of June, one thousand nine hundred and twelve, the defendant oc-

cupied and had possession of a certain building or dwelling house in the Town of Belleville, Essex County, New Jersey.

2. That said defendant did on or about the said date place in said building or dwelling house within reach of his infant son, Aserene Riggilo, certain explosives, to wit, dynamite cartridges.

3. That the said infant son of the said defendant, did on or about the aforesaid date take and procure one or more of the said explosives, to wit: the dynamite cartridges and did carry the same from the said dwelling house or building and did thereupon, while playing with this plaintiff, the said John Vallency, cause the said explosive to go off and explode, by reason of which explosion this said plaintiff was injured in his right eye to such an extent that he has completely lost the sight thereof and all use of said eye and so injured the left eye of this said plaintiff that he will, in all probability, lose the sight of that eye, and become totally blind.

4. That by reason of said explosion as aforesaid, the plaintiff, Nicholas Vallency, has been forced to and did expend and pay out a large sum of money, to wit, Five hundred dollars ($500.00) for the care and attendance of his son, the said John Vallency, in the endeavor to cure the said son and save the said eyes, and has suffered a great damage from the loss of service of his said son by reason of the said explosion, to wit, Three thousand dollars, ($3,000.00).

The plaintiff, John Vallency demands as damages the sum of ten thousand dollars and the said

plaintiff, Nicholas Vallency, demands as damages the sum of thirty-five hundred ($3500.00) Dollars.

GIFFORD & MILLER,
Attorneys for plaintiffs.

Answer

(Filed May 2, 1913)

ESSEX COUNTY CIRCUIT COURT

JOHN VALLENCY, by Nicholas VALLENCY, next friend, and NICHOLAS VALLENCY, Plaintiffs, vs. ROCCO RIGGILO, Defendant.	Action at law.

Defendant residing at Number 23 Garside Street, in the City of Newark, in the County of Essex and State of New Jersey, says that:

1. He denies the truth of the matters contained in the Complaint.

MICHAEL A. CASTELLANO,
Attorney of Defendant.

Order Substituting Attorney

(Filed December 29, 1914)

ESSEX COUNTY CIRCUIT COURT

JOHN VALLENCY, by Nicholas VALLENCY, next friend, and NICHOLAS VALLENCY, Plaintiffs, vs. ROCCO RIGGILO, Defendant.	Action at law.

Application having been made to this court by William Hauser, on behalf of the plaintiffs in the above entitled cause, for leave to substitute attorney and it appearing that Gifford & Miller, the present attorneys of record, consent to the substitution of the said William Hauser:

It is thereupon on this 29th day of December, A. D. 1914,

ORDERED, that William Hauser be and he hereby is substituted attorney of record for the plaintiff in the above entitled cause in the place of Messrs. Gifford & Miller.

We hereby consent to the entry of the above order.

GIFFORD & MILLER.

Judgment

(Entered June 2, 1915)

ESSEX COUNTY CIRCUIT COURT

JOHN VALLENCY by friend Nicholas Vallency, Plaintiffs, vs. ROCCO RIGGILO, Defendant.	24885 323 Action at Law on non-suit. Judgment entered June 2d, 1915. Costs $60.69.

M. A. Castellano, Atty. of Defendant.

Judgment on Non Suit in the above entitled Action at Law was rendered on the Second day of June, A. D. Nineteen hundred and fifteen in favor of the said defendant Rocco Riggilo and against the said plaintiff John Vallency by next friend Nicholas Vallency for the sum of Sixty Dollars and sixty-nine cents cost of suit.

Judgment entered and signed June 2d, A. D. 1915.

WM. S. GUMMERE,
Judge.

Book 93, page 133.

Testimony

ESSEX CIRCUIT COURT

JOHN VALLENCY, by friend,
vs.
ROCCO RIGGILO.

Newark, N. J., June 2, 1915.

Before HON. NELSON Y. DUNGAN, Judge, and a Jury.

William Hauser for plaintiff.
Michael A. Castellano and Thomas S. Henry for defendant.

Jury drawn and sworn.

Mr. Hauser opened as follows:

May it please your Honor, and gentlemen of the jury: This action is brought by John Vallency, an infant, by his next friend, his father, and by the father, each to recover damages, the infant son for the loss of his right eye, and the father for the loss of his son's services, and for expenses incurred by him in endeavoring to cure his son of the injuries received.

We allege, and intend to prove, that the defendant Rocco Riggilo carelessly and negligently placed and permitted to remain in his house, on the mantel piece of his house, certain dynamite cartridges, which were obviously, by reason of their character, dangerous. That these cartridges were open and available to anyone who might wish

to get possession of them. That his son, an infant, did get possession of some of these cartridges, and went out on the street with them in his possession, and while in the course of play with the infant plaintiff, and other boys, who are here in Court and will corroborate my statement, caused one of these dynamite cartridges to be exploded by striking it with stones, as a result of which the infant plaintiff was struck in the right eye, and the sight destroyed, and the eye subsequently removed, so that he is obliged to go through the rest of his life with an artificial eye.

We charge that the defendant had no right to allow the explosives to remain where they could be reached by anybody, and that having so done he makes himself responsible for whatever naturally would result from that negligence on his part. We expect to prove the finding of cartridges, other than the one which was exploded by the boy, in the house of the defendant. We expect to show to you by witnesses the effect of the explosion, and the result of it. I do not think you need very much proof on that, because the boy is the best evidence in that respect. If we satisfy you of these facts we expect to receive a verdict at your hands.

The Court: You have stated all the facts, now, that you expect to be able to prove, have you?

Mr. Hauser: I think so, sir.

Mr. Henry: Now, if your Honor please, I move for a non-suit. If all the facts stated by my friend in his opening are absolutely true, there is nothing that would entitle him to a recovery in this case. He has stated, if I understand him correctly, that the defendant's father kept explosives in the defendant's house.

The Court: On the mantel.

Mr. Henry: And that this injury did not take place in the defendant's house, but it was caused through the negligent conduct of the defendant's son. The first question we want to determine is, even admitting, for the sake of argument, that the defendant did so negligently and wrongfully act in having on his premises dynamite explosives, it is apparent from my friend's opening that that was not the immediate or direct cause of the injury; it may have been the remote cause but it was not the direct cause. The direct cause of the injury was the act of the defendant's son, not on the premises, but somewhere else, in causing this explosion.

I have given this matter very careful consideration, and I find that all the text writers, and all the authorities, are in perfect harmony. There is not the slightest conflict of authority. If ever the law be well settled, it is settled in regard to these questions. The first question is, was the accident to the plaintiff's son the direct result of any negligent act on the part of the defendant, or was the defendant's act an indirect or remote cause of the accident? To justify a recovery against the defendant his negligence must have been the direct, not the remote or indirect, but the direct or proximate cause of the injury. A proximate cause, under the law of negligence, is such a cause as operates to produce particular consequences, without—I want to emphasize the word "without"—without the intervention of any independent act. If subsequent to the original wrongful act a new cause has intervened of itself sufficient to stand as the cause of the misfortune, the former must be considered as too remote. (Citing authority.)

If there is any law that is well settled it is this, that where there is an intervening cause, no matter how great the negligence of the defendant may have been, the intervening cause protects it from all liability. And this doctrine, this principle, seems to be based upon the principle that no matter how great a man's negligence may be, that negligence must stop somewhere. So I respectfully submit that, assuming that all my friend has said be proved, he has not shown any cause of action, and I respectfully submit that the motion for nonsuit should be granted.

(Mr. Hauser argues in opposition to the motion.)

The Court: At the commencement of this case it was agreed that the opening of counsel should be regarded as an offer to prove, so that, in dealing with this motion, the Court must assume that the plaintiff will be able to prove precisely what was stated in the opening. It is not contended that the parent is responsible for the tort of the child, and the plaintiff must recover in this case, if at all, upon the theory of the negligence of the defendant, who was the parent of the child.

It is well settled by the decisions in this state that negligence, to be actionable, must be the direct and proximate cause of the injury; not the remote, but the direct and proximate cause. It seems to me that the facts stated by the plaintiff do not show that situation, the proofs being that all that the defendant did was to leave explosives, dynamite cartridges, upon the mantel in his house. From this point to the accident there was the intervening cause of his son taking these cartridges from the mantel to the street, and there exploding

them. Can it be said that the reasonable mind would anticipate that these three things would take place, the taking of the cartridges by the son, taking them to the street, and the exploding of them there by the son?

We have a number of cases in this state, and, indeed, it is the general law of the land, if I understand it, that where there is an intervening cause between the original wrongful act, and the injury, the plaintiff cannot recover of the person guilty of the wrongful act. Assuming therefore, that the act of the defendant was wrongful and negligent in leaving these cartridges where he did, my view is that the injury to the defendant was not the proximate result of that negligent act. Therefore the nonsuit requested will be granted, and an exception to that ruling will be noted as ground of appeal.

An exception to this ruling is noted by the plaintiff as ground of appeal.