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Proximate Cause

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PROXIMATE CAUSE.—In the case of *Wright* v. *L. C. Powers & Company*, 238 Ky. 572, the defendant left a truck parked in the alley, leading to the plaintiff's garage so that the plaintiff could not get his car into his garage without danger of injuring it. Later the plaintiff, in order not to run the risk of hurting his car in driving it in, attempted to crank the truck with the intention of starting it and moving it out of the way. The engine backfired and broke the plaintiff's arm. In an action for damages the court denied relief to the plaintiff on the theory among others that there was no proximate causal connection between the defendant's act of parking the truck in the alley and the injury to the plaintiff.

What does the court mean by the term Proximate Cause?

It is apparent that the court must have denied relief, either because there was no causal connection, in the natural sense, between the defendant's act and the plaintiff's injury, or because though there was such connection the defendant did not violate any legal duty which he owed to the plaintiff. These are the fundamental inquiries in any tort problem. This note seeks to establish that the probable reason for the court's opinion was the latter, and that by attempting to express the absence of such negligence in terms of cause, that is by saying that its decision rested on the fact that there was no proximate causal connection, the court casts the members of the bar into much unnecessary confusion. Perhaps the best way to establish that it was the lack of negligence and that there was in fact causal connection is to suppose a case in which all of the facts are the same save that it can be shown that the defendant knew that injury would probably result to the plaintiff and that the plaintiff was not aware of his danger and had no reason to be so aware; that is a case in which the court would probably reach a result contra to that in the principal case though the cases differ in no other respect than that in the one there was no legal duty while in the other there probably is such a duty. For this purpose let us assume that in the principal case the evidence clearly established that the defendant knew (1) that the plaintiff would have to get into his garage, (2) that to effectuate such purpose the plaintiff would attempt to crank the truck, (3) that the truck was sure to backfire, (4) that the plaintiff had no idea that there was any such possibility. In view of the fact that the defendant left his truck on plaintiff's property the court would be hard pressed to find reasons for denying relief to the plaintiff. It would seem that the least that the defendant could do would be to warn the plaintiff of the danger. If this distinction be well taken then it must be admitted that there was causal connection in the principal case because the cases differ in no other respect than in the mental attitude of the defendant. Consequently the court's reason for denying relief in the principal case must have been that it found no negligence in the defendant. Wherefore the use of the term Proximate Cause to express the reason for its opinion is exceedingly unfortunate, even though the court may have realized that it was not speaking of cause in its true sense. It would seem that

the reasons for the court's opinion should not have to be sought by inference and logic; they should be expressed.

This conclusion that the term Proximate Cause was meant to convey the court's opinion that there was no legal duty can be demonstrated, likewise, by a discussion of the various definitions accorded to the term by the court. At the outset it must appear that the natural ordinary meaning of the term is not the one intended to be conveyed by the court. A reference to Webster discloses the following definition of "cause": "That which occasions or effects a result; the necessary antecedent of an effect; that which determines the condition or existence of a thing, esp. that which determines its change from one form to another." A reference to the same authority discloses the following definition of the word "proximate": "Nearest; next immediately preceding or following." If the natural meaning of the term as defined here be accepted we are forced to the conclusion that "any act or omission but for which the result would not have occurred" is a cause thereof. Consequently the court would determine the question of liability solely on the ground that the act or omission by which the defendant is sought to be charged and "but for which the result would not have occurred" did or did not occur "nearer" than some other cause or causes, or "immediately preceding" the result. But no such test is known to the law. True the proximity or remoteness of the act from the result may be evidence as to whether the defendant was bound to anticipate the result and guard against it; but it is only a factor in such determination and is by no means conclusive. No court would hold that the mere remoteness of the cause as compared with other intervening causes would of itself relieve a person of a legal duty. So if A strikes B's arm so that B's finger pull a trigger of a gun in his hand with the result that the explosion frightens C's horse which runs away with C and injures him by running into the side of a train, the causal connection is obvious enough though there are many intervening causes, but the question of whether the defendant should have anticipated the result and was negligent for not guarding against it is a very different matter.

If the natural meaning is not the one intended, what, if any, technical meanings are appropriately expressed by the term? In *Kentucky Traction and Terminal Co.* v. *Roman's Guardian*, 232 Ky. 288, we find the following: "The proximate cause of any injury is that which in a natural and continuous sequence, unbroken by any independent responsible cause, produces the injury, and without which it would not have occurred. It is not a question of science or legal knowledge." If we remove the expression "unbroken by any independent responsible cause" and the sentence "It is not a question of science or legal knowledge" from this definition we have a definition practically synonomous with the natural one referred to above, especially in the following part: "The proximate cause of any injury is that without which it would not have occurred." Of course if the above parts be stricken the adjective proximate is superfluous and should be dropped. What if

anything do the expressions omitted add? The expression "unbroken by any independent responsible cause" necessarily admits that there is causal connection of some kind between the defendant's act and the plaintiff's injury, because otherwise there could be no "responsible *intervening* cause." Wherefore the phrases must mean that even though there was causal connection, the "intervening responsible cause" and not the defendant should be deemed responsible for the result. There is a failure to distinguish between cause in the natural sense and the unwarranted use of the word *cause* to mean fault. But the question of fault is one of legal duty and should be expressed in terms appropriate thereto and not in terms of cause with which it has no connection.

The principal case refers to 45 C. J. 928, where we find the following: "But an intervening cause will be regarded as the proximate cause, and the first cause as too remote, where the chain of events is so broken that they become independent and the result cannot be said to be the natural and probable consequence of the primary cause, or one which ought to have been anticipated. The law will not look back from the injurious consequences beyond the last efficient cause, especially where an intelligent and responsible human being has intervened." This definition is of course a mere extended exposition of the meaning sought to be conveyed by the definition in the paragraph just preceding this one. So the argument now runs that the defendant's act must be the proximate cause of the plaintiff's injury and it will be regarded as the proximate cause of that injury when there is no break in the chain of causal connection between the defendant's act and the injury such as will render the chain of causal connection on either side of the break independent of each other. It is respectfully submitted that there is more rhythm than sense in this passage. What is meant by "independent of each other", and what is the test by which we are to determine whether the break is such a one as will make the causes independent of each other? The next part of the definition reads "and the result cannot be said to be the natural and probable consequence of the primary cause." It is difficult to see just how any cause could fail to be the natural cause of all its effects unless we still admit the existence of unnatural effects. But perhaps the term is used as more or less synonymous with probable in which case it is subject to the same objection as that term, to-wit, the mere fact that a result is the probable or improbable consequence of a particular cause does not prevent the plaintiff from establishing the first item of his case, that is causal connection, though obviously such probability or improbability as evidenced by the remoteness of the cause from the effect may be an important factor in determining whether the defendant was negligent or not. But any opinion as to this matter is one dealing with the question of legal duty and should be expressed in terms appropriate thereto. This point is emphasized by the next part of the definition which clearly refers to the question of the legal duty of the defendant to anticipate and guard against the result: "or one

which ought to have been anticipated." The next part of the definition, "The law will not look back from the injurious consequences beyond the last efficient cause" will be dismissed with the queries: what is meant by the "last *efficient cause*", and what is the test for determining whether a particular cause is an efficient one or not? The last part of the definition reads "especially where a responsible and intelligent human being has intervened". What can this possibly refer to other than the question of legal duty? And even then does "responsible human being" assume that in the particular case the person has been negligent and is responsible therefor or is the expression used as a mere antonym of an unintelligent and non-responsible person? It is again respectfully submitted that the question of legal duty and breach thereof should not be discussed in terms of cause, and furthermore that the use of one phrase to convey all the above possible meaning is not conclusive to clarity of thinking.

Finally the definition in the case of *Blue Grass Coal Corp.* v. *Combs*, 205 Ky. 765, is offered as some evidence that even the court itself sometimes uses the term "proximate cause" as synonymous with the word "cause" thus adding an additional element of confusion. In that case we find the following: "To authorize a recovery in such actions there must be not only negligence by the defendant, but that negligence must be the proximate cause of the accident producing the injury. No matter how negligent one may be if his negligence does not result in injury to another, the latter has no ground of recovery." It would seem that the definition of proximate cause assumed in the expression, "but that negligence must be the proximate cause of the injury," is the simple one ordinarily used to define the word cause. In which case the adjective "proximate" is superflous. It would seem that in the sense that the word is used here, that is in the ordinary meaning of the word "cause," the court finds no necessity for dividing the various causes of the accident into proximate and remote ones. This conclusion is borne out by the fact that the court in elaborating on its opinion made the simple statement that the negligence must result in injury to another for the latter to have a cause of action. In other words there must be negligence and causal connection.

To return again to the concrete, the specific point of this note is that the court in the principal case would possibly have stated its position more clearly if it had admitted that there was causal connection and then held that the defendant was not liable because the injury to the plaintiff was too remote a consequence under all the circumstances for the court to hold that the defendant was bound to anticipate it and guard against it, or because the plaintiff was contributorily negligent as the case may be. Thus it would show that the proximity of the cause to the result is not of itself a conclusive factor of liability but only one of several factors bearing on the question of the defendant's negligence.

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