advised Mr. Adams, on the day the Georgia left Liverpool under the charter-party to the Portuguese government, August 8th, 1864, her Majesty's government had given directions that, "In future, no ship of war, of either belligerent, shall be allowed to be brought into any of her Majesty's ports for the purpose of being dismantled or sold."

DECREE AFFIRMED.

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## INSURANCE COMPANY *v.* TWEED.

1. The act of March 3d, 1865 (13 Statutes at Large, 501), which provides by its fourth section a mode by which parties who submit cases to the court, without the intervention of a jury, may have the rulings of the court reviewed here, and also what may be reviewed in such cases, binds the Federal courts sitting in Louisiana as elsewhere, and this court cannot disregard it.

   However, in a case where the counsel for both parties in this court had agreed to certain parts of the opinion of the court below as containing the material facts of the case, and to treat them here as facts found by that court, this court acted upon the agreement here as if it had been made in the court below.

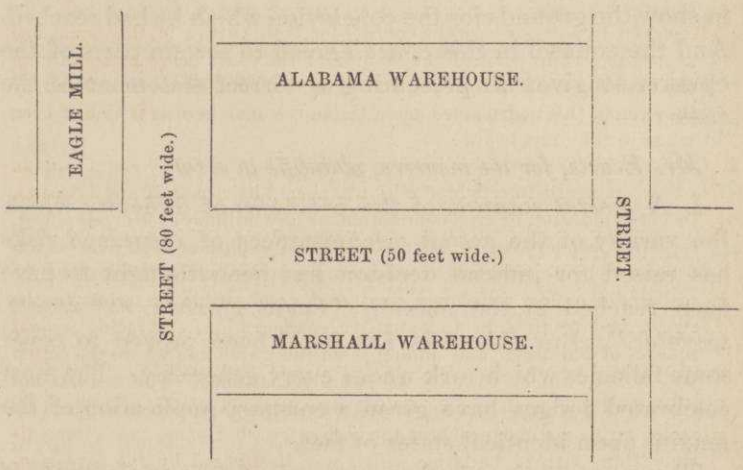
2. Cotton in a warehouse was insured against fire, the policy containing an exception against fire which might happen "by means of any invasion, insurrection, riot, or civil commotion, or any military or usurped power, *explosion*, earthquake, or hurricane." An explosion took place in another warehouse, situated directly across a street, which threw down the walls of the first warehouse, scattered combustible materials in the street, and resulted in an extensive conflagration, embracing several squares of buildings, and among them the warehouse where the cotton was stored, which, with it, was wholly consumed. The fire was not communicated from the warehouse where the explosion took place directly to the warehouse where the cotton was, but came more immediately from a third building which was itself fired by the explosion. Wind was blowing (with what force did not appear) from this third building to the one in which the cotton was stored. But the whole fire was a continuous affair from the explosion, and under full headway in about half an hour. *Held*, that the insurers were not liable; the case not being one for the application of the maxim, "*Causa proxima, non remota, spectatur.*"

TWEED brought suit in the Circuit Court for the Eastern District of Louisiana against the Mutual Insurance Company, on a policy of insurance against fire, which covered

Statement of the case.

certain bales of cotton in a building in Mobile, known as the Alabama Warehouse. The policy contained a proviso that the insurers should not be liable to make good any loss or damage by fire which might happen or take place "*by means* of any invasion, insurrection, riot, or civil commotion, or any military or usurped power, *explosion*, earthquake, or hurricane."

During the time covered by the policy an explosion took place in another building, the Marshall Warehouse, situated directly across a street, which threw down the walls of the Alabama Warehouse, and scattered combustible materials in the street, and resulted in an extensive conflagration, embracing several squares of buildings, among which the Alabama Warehouse, and the cotton stored in it, were wholly destroyed.




It is to be understood, however, that the fire was not communicated directly from the Marshall Warehouse, in which the explosion occurred, to the Alabama Warehouse, but that it came more immediately from a third building—the Eagle Mill—which was itself fired by the explosion. The wind (with what force did not appear) was blowing in a direction from the Eagle Mill to the Alabama Warehouse. But the whole fire was a continuous affair from the explosion, and under full headway in about half an hour.

Upon this state of facts the court below held that the principle, "*Causa proxima, non remota, spectatur*," applied; and that accordingly the fire which consumed this cotton did not "happen or take place by means of an explosion." It, therefore, gave judgment for the plaintiff below. The correctness of this view was the question now to be decided here on error.

The case was tried by the court below without a jury. There was no bill of exceptions, nor any ruling on any proposition of law raised by the pleadings. The evidence seemed to have been copied into the transcript, but whether it was all the testimony, or how it came to be there, there was nothing to show. However, in the court's opinion (or, as it was styled, "reasons for judgment"), the learned judge below quoted considerable portions of the evidence, in order to show the grounds for the conclusion which he had reached. And the counsel in this court agreed to certain parts of the opinion so given as presenting a correct statement of the case.

*Mr. Evarts, for the insurers, plaintiffs in error:*

I. A *general* solution of the problems of difficulty which the variety of the actual circumstances of insurance risks has raised for judicial decision has been thought to have been reached in the maxim, "*Causa proxima, non remota, spectatur.*" But this rule has itself been proved to cover some fallacies which lurk under every generality. The most celebrated judges have given a contrary application of the maxim upon identical states of fact.

The controversy, whether nearness of *time* or closeness of *efficiency* in the competing causes satisfied the maxim, and the still larger controversy, as to what secondary and subordinate agencies were to be treated as swallowed up in a *predominating cause*, have resulted in closer practical definitions, which may be trusted as the rule of the law in the premises. They are thus stated by the judicious commentator, Mr. Phillips.*

* 1 Phillips on Ins., § 1, 132, and see Ibid., § 137.

"In case of the concurrence of different causes, to one of which it is necessary to attribute the loss, it is to be attributed to the efficient predominating peril, whether it is or is not in activity at the consummation of the disaster."

II. The contract in this case shows a circumspect attention to the true description of the risks excepted:

1. In the words used to accomplish the desired discrimination, so that the sense, to the apprehension of practical men, is neither obscure, equivocal, nor incomplete.

2. In the comprehension of, and attention to, the legal distinctions and criticisms which judicial decisions have applied to the subject with which the contract deals.

3. In the association in which the excepted cause of fire by means of explosion is found; for these other causes of fire are, indisputably, in their nature and mode of operation, neither direct nor immediate *processes* of ignition or combustion; but are either moral or physical agencies, in the progressive operation of which fire *may* be lighted or propagated.

Whatever difficulty, then, can arise to disappoint the intent of the parties in their contract must be referred to some strange or obscure state of facts, which has eluded all their forecast. But the facts make neither doubt, difficulty, obscurity, or uncertainty, as to the relation of the primary cause and the subordinate means by which the property insured was destroyed by fire:

1. The security against fire of the property insured is first invaded by the explosion in close proximity, which itself and instantly denudes the combustible property insured of the protecting walls of the building within which the terms of the insurance require it to be, and exposes it, naturally and probably, to fire, if fire shall happen.

2. The explosion, itself and instantly, lights the fire which, as a single, progressive, uninterrupted, and irresistible conflagration, consumes the property insured.

3. No *new* cause, influence, or means is interposed between (1) the explosion and the lighting of the fire which it

caused, or (2) the lighting of the fire and the destruction by its flames of the property insured, to which any efficiency towards or any responsibility for the loss can be imputed.

The suggestion which will be made on the other side, that the *propagation* of the flames, by the course of the wind, or the intermediate combustible matter, introduced a new *cause* or *means* of loss, is only important as indicating the *absence* of any efficient cause, in the sense of insurance law, to relieve the explosion from being the predominating cause and the effectual means of the destroying fire.

The authorities show that within any accepted interpretation of the rule of "*causa proxima, non remota, spectatur*," the loss was by "fire which happened or took place by means of explosion." A leading case is *St. John* v. *Insurance Company*, considered in the Superior Court of New York,* and in the Court of Appeals.† The syllabus in the report of the Superior Court is thus:

"When it is provided by the conditions annexed to a policy of insurance against fire, that the company shall not be 'liable for any loss occasioned by the explosion of a steam-boiler, or explosions arising from any other cause, unless specially specified in the policy,' although fire may be the proximate cause of the loss that is claimed, the company is not liable when it appears that the fire was directly and wholly occasioned by an explosion."

Numerous other cases give a similar view of the rule.‡

*Mr. Billings, contra:*

To exempt the insurers the explosion must have been the direct cause of the fire. But contrary to what is maintained

* 1 Duer, 371.

† 1 Kernan, 516.

‡ General Insurance Company *v.* Sherwood, 14 Howard, 367; Montoya *v.* London Assurance Company, 6 Exchequer, 451; Tilton *v.* Hamilton Insurance Company, 1 Bosworth, 367; Brady *v.* Northwestern Insurance Company, 11 Michigan, 425; Lewis *v.* Springfield Insurance Company, 10 Gray, 159; Strong *v.* Sun Insurance Company, 31 New York, 103; City Fire Insurance Company *v.* Corlies, 21 Wendell, 367.

by opposite counsel, the facts show that while the explosion was remotely tributary to the loss, as were many other circumstances, it was far removed from the agency applying it. This is the order of events: an explosion takes place, by force of which a fire is kindled in the Eagle Mill; more than half an hour afterwards, the wind, aided by inflammable substances in the street, and at a distance on the opposite side of the street, kindles a fire which consumes the cotton.

The first fire in the Eagle Mill was, if we concede to direct causation its broadest sense, caused by an explosion; the second, by the wind; for, had the wind blown in the opposite direction, the cotton would have remained unharmed. With the kindling of the first fire the explosion was entirely spent and had, as a cause, a full interruption and end.

The rule of law, of which opposite counsel would dispose by the statement,—hardly, we should hope, for the honor of juridical science, warranted in fact,—that "*the most celebrated* judges have given a *contrary* application of the maxim upon *identical* states of fact," has been handed down to us in the apothegmatic form which it enjoys by a no less personage than Lord Chancellor Bacon. And he shows the weighty reasons of it also. "It were infinite," he says, "for the law to consider the causes of causes, and their impulsions one of another; therefore it contenteth itself with the immediate cause, and judgeth of acts by that without looking to any further degree."

The authorities, we apprehend, do but illustrate the maxim.

In *Livie* v. *Janson*,* a ship was insured against the perils of the sea, but not against capture, and met with sea damage, which checked her rate of sailing, in consequence of which she was captured. The loss was ascribed to the capture, and not to the sea damage.

In *Hodgson* v. *Malcolm*,† where the crew who were sent ashore, were imprisoned by a press-gang, and thereby pre-

* 12 East, 648.

† 5 Bosanquet and Puller, 336.

vented from casting off a rope, and in consequence the ship went ashore and was lost, it was held a loss by the perils of the sea.

In *Redman* v. *Wilson*,* a vessel insured against perils of the sea, in consequence of unskilful lading, became leaky, and having been pronounced unseaworthy, to save the cargo, was run ashore. Held, that the insurers were liable, the immediate cause of the loss being the perils of the sea.

And so more recent English cases.† American authorities equally assert the distinction maintained in Bacon's maxim.‡

[In reply to some remarks by the bench as to the irregular and defective character of the record, tested by the rules of the common law, and as to the absence of any certain *case* on which judgment could be given, Mr. Billings observed that the record, he believed, was in the frequent form of those from Louisiana, and that the opinion of the court presented a sufficient finding of the fact. By consent of counsel, at any rate, in this court, certain parts of the opinion (the parts given as the case in the reporter's statement, *supra*, p. 45), were to be received as containing the material facts.]

Mr. Justice MILLER delivered the opinion of the court.

There is, in this case, as presented by the transcript, nothing which a writ of error can bring here for review tested by the rules of the common law.

The distinction between law and equity prevails in the Federal courts sitting in Louisiana in the modes of proceeding, notwithstanding the Civil Code, which governs the practice as well as the rights of parties in the State courts. On account of the peculiarity in practice in that State, it has been decided in several cases coming from the State courts

* 14 Meeson and Welsby, 476.

† Ionides *v.* The Universal Insurance Company, 8 Law Times, new series, p. 705; Marsden *v.* The City and County Assurance Company, 13 Law Times, 465; Thomson *v.* Hopper, Ellis, Blackburn and Ellis, 1038.

‡ Columbia Insurance Company *v.* Lawrence, 10 Peters, 517; Waters *v.* Merchants' Insurance Company, 11 Id. 221.

of Louisiana to this court by writ of error, that we would regard the statements of fact found in the opinions of the court as part of the record, where they were in themselves sufficient and otherwise unobjectionable. And perhaps this may in practice have been extended to cases from the Federal courts of that district. But in regard to the latter, we are not now at liberty to do so. The act of March 3d, 1865,* by its fourth section provides a clear and simple mode by which parties who submit cases to the court, without the intervention of a jury, may have the rulings of the court reviewed here, and also prescribes what may be reviewed in such cases. This statute, which is but a reproduction of the system in practice in many of the States, is as binding on the Federal courts sitting in Louisiana as elsewhere, and we cannot disregard it.

We are asked in the present case to accept the opinion of the court below, as a sufficient finding of the facts within the statute, and within the general rule on this subject. But with no aid outside the record we cannot do this. The opinion only recites some parts of the testimony by way of comment in support of the judgment, and is liable to the objection often referred to in this court, that it states the evidence and not the facts as found from that evidence. Besides, it does not profess to be a statement of facts, but is very correctly called in the transcript, "reasons for judgment."

But the counsel for both parties in this court have agreed to certain parts of that opinion as containing the material facts of the case, and to treat them here as facts found by the court; and inasmuch as they could have made such an agreement in the court below, we have concluded to act upon it here as if it had been so made.

Upon an examination of the facts thus stated, and placing upon them that construction most favorable to the judgment of the court, we are of opinion that it cannot be sustained.

The only question to be decided in the case is, whether

* 13 Stat. at Large, 501.

the fire which destroyed plaintiff's cotton, happened or took place by means of the explosion; for if it did, the defendant is not liable by the express terms of the contract.

That the explosion was in some sense the cause of the fire is not denied, but it is claimed that its relation was too remote to bring the case within the exception of the policy. And we have had cited to us a general review of the doctrine of proximate and remote causes as it has arisen and been decided in the courts in a great variety of cases. It would be an unprofitable labor to enter into an examination of these cases. If we could deduce from them the best possible expression of the rule, it would remain after all to decide each case largely upon the special facts belonging to it, and often upon the very nicest discriminations.

One of the most valuable of the *criteria* furnished us by these authorities, is to ascertain whether any new cause has intervened between the fact accomplished and the alleged cause. If a new force or power has intervened of itself sufficient to stand as the cause of the misfortune, the other must be considered as too remote.

In the present case we think there is no such new cause. The explosion undoubtedly produced or set in operation the fire which burned the plaintiff's cotton. The fact that it was carried to the cotton by first burning another building supplies no new force or power which caused the burning. Nor can the accidental circumstance that the wind was blowing in a direction to favor the progress of the fire towards the warehouse be considered a new cause. That may have been the usual course of the breeze in that neighborhood. Its force may have been trifling. Its influence in producing the fire in the Alabama Warehouse was too slight to be substituted for the explosion as the cause of the fire.

But there are other causes of fire mentioned in the exempting clause, and they throw light on the intent of the parties in reference to this one. If the fire had taken place by means of invasion, riot, insurrection, or civil commotion, earthquake, or hurricane, and by either of these means the Marshall Warehouse had been first fired, and the fire had

extended, as we have shown it did, to the Alabama Warehouse, would the insurance company have been liable?

Could it be held as necessary to exemption that the persons engaged in riot or invasion must have actually placed the torch to the building insured, and that in such case if half the town had been burned down the company would have been liable for all the buildings insured, except the one first fired? Or if a hurricane or earthquake had started the fire, is the exemption limited in the same manner?

These propositions cannot be sustained, and in establishing a principle applicable to fire originating by explosion, we must find one which is equally applicable under like circumstances to the other causes embraced in the same clause.

Without commenting further, we are clearly of opinion that the explosion was the cause of the fire in this case, within the meaning of the policy, and that the judgment of the Circuit Court must be

REVERSED AND A NEW TRIAL GRANTED.

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## THE CHINA.

1. A State pilot law having provided for the educating and licensing of a body of pilots, enacted that all masters of foreign vessels bound to or from one of the State ports "*shall* take a licensed pilot, or, in case of refusal to take such pilot, *shall* pay pilotage as if one had been employed." It enacted further, that any person not licensed as a pilot, who should attempt to pilot a vessel as aforesaid, should be "deemed guilty of a misdemeanor, and, on conviction, be punished by a fine not exceeding $100, or imprisonment not exceeding sixty days," and that all persons employing any one to act as a pilot not holding a license, should "forfeit and pay the sum of $100." The pilot first offering his services to a vessel inward bound had a right to pilot her in, and when she went out the right to pilot her out. *Held*, that under this statute vessels were compelled to take a pilot.
2. *But held*, further (the statute containing no clause exempting the vessel or owners from liability for the pilot's mismanagement), that the responsibility of the vessel for torts committed by it not being derived from the law of master and servant, or from the common law at all, but from maritime law, which impressed a maritime lien upon the vessel in