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Article 24

# Negligence--Liability Fire Spreading to Non-Contiguous Premises (Homack Corporation v. Sun Oil Company, 258 N.Y. 462 (1932))

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ing corporations.[5] It is also a prerequisite in the use of this agency that the legal title be vested in the principal.[6]

There has been no adjudication as to the validity of a trustee casting his vote by proxy in New York. However, the right of a trustee to vote on stock so held is recognized.[7] Furthermore, everyone having stock and the right to vote on such stock stock is entitled to vote by proxy.[8] Therefore, since both these methods are valid, and a combination of them would not produce a principle illegal in itself, it seems logical to conclude that New York would follow the rule of the Delaware case if the terms of the agreement permitted the voting trustee to vote by proxy.

C. T. S.

NEGLIGENCE—LIABILITY FIRE SPREADING TO NON-CONTIGUOUS PREMISES.—Sun Oil Company maintained a plant for the storage of gasoline in Syracuse. Homack Corporation owned certain buildings across the street from this plant. A fire started on the premises of the Sun Oil Company and was transmitted by direct flames, sparks or intense heat, across intervening street free from inflammable material, to a building of the Homack Corporation and thence spread to other buildings on the same premises. An action was brought by the Homack Corporation for damage caused by the fire alleged to have negligently originated on land of Sun Oil Company who contend they are not liable because the fire on their premises was not the proximate cause of the damage.[1] Appeal from a judgment of the Appellate Division of the Supreme Court unanimously affirming judgment in favor of plaintiff. *Held, aff'd, Homack Corporation* v. *Sun Oil Company,* 258 N. Y. 462, 180 N. E. 172 (1932).

As stated in this case it is settled that when a fire negligently starts upon land of *A* and spreads to land of *B,* an adjoining land owner, and ignites a building and spreads to others, *A* is liable for the damage to all the buildings on the land of *B.*[2] If, however,

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[5] Phillips v. Wickham, 1 Paige 590 (1829); N. Y. GEN. CORP. LAW, §19; FLETCHER, CORPORATIONS, vol. 5, §2050.

[6] Matter of Mohawk & Hudson R. R., 19 Wend. 135 (1838); FLETCHER, CORPORATIONS, vol. 5, §2053.

[7] Matter of Barker, 6 Wend. 509 (1831).

[8] N. Y. GEN. CORP. LAW (1932) §19; FLETCHER, CORPORATIONS, vol. 5, §1005.

[1] Ryan v. N. Y. C. R. R. Co., 35 N. Y. 210 (1886); Frace v. N. Y., L. E. & W. R. R. Co., 143 N. Y. 182, 189, 38 N. E. 102, 103 (1894); Hoffman v. King, 160 N. Y. 618, 627, 55 N. E. 401, 403 (1899); Matter of City of New York, 209 N. Y. 344, 103 N. E. 508 (1913).

[2] Frace v. N. Y., L. E. & W. R. R. Co., *supra* note 1; Hoffman v. King, *supra* note 1; Davis v. D. L. & W. R. R. Co., 215 N. Y. 181, 109 N. E. 95 1915); Rose v. Penn R. R. Co., 236 N. Y. 568, 142 N. E. 287 (1923).

the fire spreads over intervening lands, *B* not being an adjoining landowner, *A* is not liable.[3] The reason for absence of liability when fire spreads over intervening lands being that defendant has no control over the material on that land. Liability attaches when the fire on defendant's land spreads to the plaintiff's without the intervention of any intermediate agencies. Defendant disclaims liability contending that inasmuch as neither party owned any part of the intervening street they were not adjoining landowners.[4] Although a street intervened between the lands of the parties the fire did not spread to the street and thence to the plaintiff's land but spread directly to the land of the plaintiff so that the fire upon the land of the defendant was the proximate cause of the destruction of plaintiff's buildings. This decision modifies the general rule in that it extends liability to an owner of land not adjoining plaintiff when the intervening land does not contribute to the spreading of the negligent fire.

A. E. A.

PARTITION SALE—SPECIFIC PERFORMANCE OF CONTRACT FOR SALE OF LAND.—A vendee at a partition sale paid 10% of the bid but on closing day refused to perform. Six months thereafter an order directing the vendee to take title and make payment was obtained. On appeal the order was affirmed. The purchaser defaulted on the day set and on subsequent adjournments. Thereafter an order of resale, providing that the purchaser at the sale will be liable for a deficiency, was decreed. It was never vacated or modified. Subsequently purchaser assigned his rights. When the property fortuitously enhanced in value, the assignees moved for specific performance. Order was denied. On appeal, *held,* the assignees were not entitled to the relief sought. They acquired no greater rights than the assignor possessed. *Bowen* v. *Horgan,* 259 N. Y. 267, 181 N. E. 567 (1932).

The purchaser may assign his rights under the contract, thereby transferring the same right to specific performance that he had.[1] But at the time of the assignment the vendee did not possess the right to specific performance, he defaulted absolutely and thereby forfeited it.[2] Hence, the assignee did not acquire this right. An assignee

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[3] *Ibid.*

[4] Matter of City of New York, *supra* note 1; Ansorge v. Belfer, 248 N. Y. 145, 161 N. E. 450 (1928); Monogram Development Co. v. Natben Construction Co., 253 N. Y. 320, 171 N. E. 390 (1930).

[1] Epstein v. Gluckin, 233 N. Y. 490, 135 N. E. 861 (1922); Langel v. Betz, 250 N. Y. 159, 164 N. E. 890 (1928).

[2] Stagman v. Lasson, 345 Ill. 482, 178 N. E. 166 (1931); McDonald v. Sautter, 346 Ill. 67, 178 N. E. 340 (1931); Haddaway v. Smith, 277 S. W. 728 (1925) (refusal to perform is a breach discharging the other party); Westown Realty Co. v. Keller, 143 App. Div. 458, 128 N. Y. Supp. 518 (1st Dept. 1911).