Chapter 11

RYLANDS v. FLETCHER

Section 1.—The Rule

RYLANDS v. FLETCHER

House of Lords (1868) L.R. 3 H.L. 330; 37 L.J.Ex. 161; 19 L.T. 220; 33 J.P. 70

Action for damages for flooding of plaintiff's mine by water from defendant's artificial millpond

Near Ainsworth in Lancashire the defendants had a mill whose water supply they wanted to improve. They obtained permission from Lord Wilton to construct a reservoir on his land and retained reputable engineers to do it. Unknown to the defendants, the plaintiff, who had a mineral lease from Lord Wilton, had carried his workings to a point not far distant, though separated by the land of third parties. In the course of construction the engineers came across some disused mine shafts and did not seal them properly, with the result that when the completed reservoir was filled, water flowed down those shafts and into the plaintiff's coal-mine, causing damage later agreed at £937.

The arbitrator stated a special case for the Court of Exchequer, which found for the defendants (Bramwell B. dissenting) ((1865) 3 H. & C. 774; 159 E.R. 737). The plaintiff took a writ of error to the Court of Exchequer Chamber, which gave him judgment. The defendants' appeal to the House of Lords was dismissed.

In the House of Lords

Lord Cairns L.C.: ... The reservoir of the defendants was constructed by them through the agency and inspection of an engineer and contractor. Personally, the defendants appear to have taken no part in the works, or to have been aware of any want of security connected with them. As regards the engineer and the contractor, we must take it from the case that they did not exercise, as far as they were concerned, that reasonable care and caution which they might have exercised, taking notice, as they appear to have taken notice, of the vertical shafts filled up in the manner which I have mentioned. However, my Lords, when the reservoir was constructed, and filled, or partly filled, with water, the weight of the water bearing upon the disused and imperfectly filled-up vertical shafts, broke through those shafts. The water passed down them and into the horizontal workings, and from the horizontal workings under the close of the defendants it passed on into the workings under the close of the plaintiff, and flooded his mine causing considerable damage, for which this action was brought.

The Court of Exchequer ... was of opinion that the plaintiff had established no cause of action. The Court of Exchequer Chamber, before which an appeal from the judgment was argued, was of a contrary opinion, and the judges there

unanimously arrived at the conclusion that there was a cause of action, and that the plaintiff was entitled to damages.

My Lords, the principles on which this case must be determined appear to me to be extremely simple. The defendants, treating them as the owners or occupiers of the close on which the reservoir was constructed, might lawfully have used that close for any purpose for which it might in the ordinary course of the enjoyment of land be used; and if, in what I may term the natural user of that land, there had been any accumulation of water, either on the surface or underground, and if, by the operation of the laws of nature, that accumulation of water had passed off into the close occupied by the plaintiff, the plaintiff could not have complained that that result had taken place. If he had desired to guard himself against it, it would have lain upon him to have done so, by leaving, or by interposing, some barrier between his close and the close of the defendants in order to have prevented that operation of the laws of nature.

As an illustration of that principle, I may refer to a case which was cited in the argument before your Lordships, the case of *Smith* v. *Kenrick* in the Court of Common Pleas ((1849) 7 C.B. 515; 137 E.R. 105).

On the other hand if the defendants, not stopping at the natural use of their close, had desired to use it for any purpose which I may term a non-natural use, for the purpose of introducing into the close that which in its natural condition was not in or upon it, for the purpose of introducing water either above or below ground in quantities and in a manner not the result of any work or operation on or under the land—and if in consequence of their doing so, or in consequence of any imperfection in the mode of their doing so, the water came to escape and pass off into the close of the plaintiff, then it appears to me that that which the defendants were doing they were doing at their own peril; and, if in the course of their doing it, the evil arose to which I have referred, the evil, namely, of the escape of the water and its passing away to the close of the plaintiff and injuring the plaintiff, then for the consequence of that, in my opinion, the defendants would be liable. As the case of *Smith* v. *Kenrick* is an illustration of the first principle to which I have referred, so also the second principle to which I have referred is well illustrated by another case in the same court, the case of *Baird* v. *Williamson* ((1863) 15 C.B.(N.S.) 376; 143 E.R. 831), which was also cited in the argument at the Bar.

My Lords, these simple principles, if they are well founded, as it appears to me they are, really dispose of this case.

The same result is arrived at on the principles referred to by Blackburn J. in his judgment in the Court of Exchequer Chamber, where he states the opinion of that court as to the law in these words: "We think that the rule of law is, that the person who, for his own purposes, brings on his land 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. He can excuse himself by showing that the escape was owing to the plaintiff's default; or, perhaps, that the escape was the consequence of *vis major*, or the act of God; but as nothing of this sort exists here, it is unnecessary to inquire what excuse would be sufficient. The general rule, as above stated, seems on principle just. The person whose grass or corn is eaten down by the escaping cattle of his neighbour, or whose mine is flooded by the water from his neighbour's reservoir, or whose cellar is invaded by the filth of his neighbour's privy, or whose habitation is made unhealthy by the fumes and noisome vapours of his neighbour's alkali works, is damnified without any fault of his own; and it seems but reasonable and just that the neighbour who has brought something on his own property (which was not naturally there), harmless to others so long as it is confined to his own property, but which he knows will be mischievous if it gets on his neighbour's, should be obliged to make good the damage which ensues if he does not succeed in confining it to his

own property. But for his act in bringing it there no mischief could have accrued, and it seems but just that he should at his peril keep it there, so that no mischief may accrue, or answer for the natural and anticipated consequence. And upon authority this we think is established to be the law, whether the things so brought be beasts, or water, or filth, or stenches."

My Lords, in that opinion, I must say I entirely concur. Therefore, I have to move your Lordships that the judgment of the Court of Exchequer Chamber be affirmed, and that the present appeal be dismissed with costs.

Lord Cranworth: My Lords, I concur with my noble and learned friend in thinking that the rule of law was correctly stated by Blackburn J. in delivering the opinion of the Exchequer Chamber. If a person brings, or accumulates, on his land anything which if it should escape, may cause damage to his neighbour, he does so at his peril. If it does escape, and cause damage, he is responsible, however careful he may have been, and whatever precautions he may have taken to prevent the damage. . . .

In the Court of Exchequer Chamber (1866) L.R. 1 Ex. 265

Blackburn J.: . . . The plaintiff, though free from all blame on his part, must bear the loss, unless he can establish that it was the consequence of some default for which the defendants are responsible. The question of law therefore arises, what is the obligation which the law casts on a person who, like the defendants, lawfully brings on his land something which, though harmless whilst it remains there, will naturally do mischief if it escape out of his land. It is agreed on all hands that he must take care to keep in that which he has brought on the land and keeps there, in order that it may not escape and damage his neighbours, but the question arises whether the duty which the law casts upon him, under such circumstances, is an absolute duty to keep it in at his peril, or is, as the majority of the Court of Exchequer have thought, merely a duty to take all reasonable and prudent precautions, in order to keep it in, but no more. If the first be the law, the person who has brought on his land and kept there something dangerous, and failed to keep it in, is responsible for all the natural consequences of its escape. If the second be the limit of his duty, he would not be answerable except on proof of negligence, and consequently would not be answerable for escape arising from any latent defect which ordinary prudence and skill could not detect.

Supposing the second to be the correct view of the law, a further question arises subsidiary to the first, *viz.*, whether the defendants are not so far identified with the contractors whom they employed, as to be responsible for the consequences of their want of care and skill in making the reservoir in fact insufficient with reference to the old shafts, of the existence of which they were aware, though they had not ascertained where the shafts went to.

We think that the true rule of law is [here follows the passage cited by Lord Cairns L.C., above, p. 445].

The case that has most commonly occurred, and which is most frequently to be found in the books, is as to the obligation of the owner of cattle which he has brought on his land, to prevent their escaping and doing mischief. The law as to them seems to be perfectly settled from early times; the owner must keep them in at his peril, or he will be answerable for the natural consequences of their escape; that is with regard to tame beasts, for the grass they eat and trample upon, though not for injury to the person of others, for our ancestors have settled that it is not the general nature of horses to kick, or bulls to gore; but if the owner knows that the beast has a vicious propensity to attack man, he will be answerable for that too. . . .

. . . No case has been found in which the question as to the liability for noxious vapours escaping from a man's works by inevitable accident has been discussed, but the following case will illustrate it. Some years ago several actions were brought against the occupiers of some alkali works at Liverpool for the damage alleged to be caused by the chlorine fumes of their works. The defendants proved that they at great expense erected contrivances by which the fumes of chlorine were condensed, and sold as muriatic acid, and they called a great body of scientific evidence to prove that this apparatus was so perfect that no fumes possibly could escape from the defendants' chimneys. On this evidence it was pressed upon the jury that the plaintiff's damage must have been due to some of the numerous other chimneys in the neighbourhood; the jury, however, being satisfied that the mischief was occasioned by chlorine, drew the conclusion that it had escaped from the defendants' works somehow, and in each case found for the plaintiff. No attempt was made to disturb these verdicts on the ground that the defendants had taken every precaution which prudence or skill could suggest to keep those fumes in, and that they could not be responsible unless negligence was shown; yet, if the law be as laid down by the majority of the Court of Exchequer, it would have been a very obvious defence. If it had been raised, the answer would probably have been that the uniform course of pleading in actions on such nuisances is to say that the defendant caused the noisome vapours to arise on his premises, and suffered them to come on the plaintiff's, without stating there was any want of care or skill in the defendant, and that the case of *Tenant* v. *Goldwin* ((1704) 2 Ld.Raym. 1089; 92 E.R. 222) showed that this was founded on the general rule of law, that he whose stuff it is must keep it that it may not trespass. There is no difference in this respect between chlorine and water; both will, if they escape, do damage, the one by scorching, and the other by drowning, and he who brings them there must at his peril see that they do not escape and do that mischief. . . . But it was further said by Martin B. that when damage is done to personal property, or even to the person, by collision, either upon land or at sea, there must be negligence in the party doing the damage to render him legally responsible; and this is no doubt true, and as was pointed out by Mr. Mellish during his argument before us, this is not confined to cases of collision, for there are many cases in which proof of negligence is essential, as for instance, where an unruly horse gets on the footpath of a public street and kills a passenger: *Hammack* v. *White* ((1862) 11 C.B.(N.S.) 588; 142 E.R. 926); or where a person in a dock is struck by the falling of a bale of cotton which the defendant's servants are lowering, *Scott* v. *London Dock Company* ((1865) 3 H. & C. 596; 159 E.R. 665); and many other similar cases may be found. But we think these cases distinguishable from the present. Traffic on highways, whether by land or sea, cannot be conducted without exposing those whose persons or property are near it to some inevitable risk; and that being so, those who go on the highway, or have their property adjacent to it, may well be held to do so subject to their taking upon themselves the risk of injury from that inevitable danger; and persons who by the licence of the owner pass near to warehouses where goods are being raised or lowered, certainly do so subject to the inevitable risk of accident. In neither case, therefore, can they recover without proof of want of care or skill occasioning the accident; and it is believed that all the cases in which inevitable accident has been held an excuse for what prima facie was a trespass, can be explained on the same principle, *viz.*, that the circumstances were such as to show that the plaintiff had taken that risk upon himself. But there is no ground for saying that the plaintiff here took upon himself any risk arising from the uses to which the defendants should choose to apply their land. He neither knew what these might be, nor could he in any way control the defendants, or hinder their building what reservoirs they liked, and storing up in them what water they pleased, so

long as the defendants succeeded in preventing the water which they there brought from interfering with the plaintiff's property.

The view which we take of the first point renders it unnecessary to consider whether the defendants would or would not be responsible for the want of care and skill in the persons employed by them, under the circumstances stated in the case.

We are of opinion that the plaintiff is entitled to recover, ...

Note:

Everyone has a strong opinion about this decision, especially the Scots: "*Rylands* v. *Fletcher* has no place in Scottish law, and the suggestion that it has is a heresy which ought to be extirpated," *per* Lord Fraser of Tullybelton in *R.H.M. Bakeries (Scotland)* v. *Strathclyde R.C.* (1985) S.L.T. 214, 217 (H.L.), noted 101 L.Q.R. 476 (1985). Some say it is retrogressive in so far as it declares absence of fault in the defendant to be immaterial (though it is now being treated as an example of liability for independent contractors—*Dunne* v. *North-Western Gas Board* [1964] 2 Q.B. 806, 831). Others say it is a forward-looking example of the imposition of risk of loss on an entrepreneur promoting a dangerous activity; but it has been shown that its results do not always make good sense even in terms of risk—Morris, "Hazardous Enterprises and Risk Bearing Capacity" (1952) 61 Yale L.J. 1172.

What is the extent of the decision? Professor Newark says this: "What was novel in *Rylands* v. *Fletcher*, or at least clearly decided for the first time, was that as between adjacent occupiers an isolated escape is actionable.": "The Boundaries of Nuisance" (1949) 65 L.Q.R. 480, 488. Yet in the United States is has become the starting-point of a liability without fault for the consequences of "ultra-hazardous activities," now called "abnormally dangerous."

The rule as stated by Blackburn J. is in purely factual categories, except for the phrase "for his own purposes" (which may yet have a use in restricting the liability of non-profit-making organisations such as local authorities—see *Dunne*, at 832). But the judgment of Lord Cairns contains the critical term "non-natural use," which allows judges to avoid imposing liability even when the facts of the case satisfy the rule stated in the Exchequer Chamber. It is for this reason that the judgment of Lord Cairns has been said to subvert that of Blackburn J. (Fridman, "The Rise and Fall of *Rylands* v. *Fletcher*" (1956) 34 Can. Bar Rev. 810, 815).

The reservoir still leaks, according to "Rylands v. Fletcher Revisited," a divertisement by Brian Simpson in *The Lawyer* for September 1983, p. 16. Indeed, the mine, which was abandoned in 1861, was for some time thereafter used as an alternative source of water supply by Rylands's mill. The name of Rylands, at one time the largest private employer in Britain, lives in the minds of scholars as well as less grateful lawyers, for he endowed a marvellous library in Manchester.

Non-natural user

A firm which tanned and cleaned leather hides kept chemicals for this purpose on its land. Naturally: where else would it keep them? The chemicals escaped, polluted the water table and consequently fouled the water in the defendant water company's wells, so that, in order to bring the water up to new (European) legislative standards of purity, the water company was put to vast expense. The court held that the storage of such chemicals in an industrial village was not a "non-natural use." *Cambridge Water Co.* v. *Eastern Counties Leather* [1991] Times L.R. 465.

A different distinction will be drawn in future, namely between waste and other things. Neither the water in *Rylands* nor the chemical in the *Cambridge Water Co.* case was waste. While the Environmental Protection Act 1990 imposes a duty of care in the management of waste, a forthcoming European Directive is likely to impose strict civil liability where damage is done by waste (unless it is either domestic or nuclear—the two extremes, as one might think).

Section 2.—Common User and Third Parties

RICKARDS v. LOTHIAN

Privy Council [1913] A.C. 263; 82 L.J.P.C. 42; 108 L.T. 225; 29 T.L.R. 281; 57 S.J. 281; [1911–13] All E.R. Rep. 71

Action by subjacent tenant against landlord in respect of property damage caused by escaping water

The plaintiff leased second-floor offices in a building occupied by the defendant. One morning he found his stock-in-trade seriously damaged by water. This water came from a fourth-floor lavatory basin, whose outlet had been plugged with nails, soap, pen-holders and string, and whose tap had been turned fully on. The defendant's caretaker testified that all was well at 10.20 the previous evening.

The jury found that the defendant was careless in not providing a lead safe on the floor under the basin, but that the plugging of the outlet and the turning of the tap "was the malicious act of some person." The county court judge at Melbourne entered judgment for the plaintiff. On appeal by the defendant, the Supreme Court of Victoria reversed the judgment, but the High Court of Australia reinstated it. The defendant's appeal to the Judicial Committee of the Privy Council was allowed.

Lord Moulton: ... Their Lordships are of opinion that all that is ... laid down as to a case where the escape is due to "*vis major* or the King's enemies" applies equally to a case where it is due to the malicious act of a third person, if indeed that case is not actually included in the above phrase ... a defendant cannot in their Lordships' opinion be properly said to have caused or allowed the water to escape if the malicious act of a third person was the real cause of its escaping without any fault on the part of the defendant.

It is remarkable that the very point involved in the present case was expressly dealt with by Bramwell B. in delivering the judgment of the Court of Exchequer in *Nichols* v. *Marsland* ((1876) 2 Ex.D. 1). He says: "What has the defendant done wrong? What right of the plaintiff has she infringed? She has done nothing wrong. She has infringed no right. It is not the defendant who let loose the water and sent it to destroy the bridges. She did indeed store it, and store in in such quantities that if it was let loose it would do as it did, mischief. But suppose a stranger let it loose, would the defendant be liable? If so, then if a mischievous boy bored a hole in a cistern in any London house, and the water did mischief to a neighbour, the occupier of the house would be liable. That cannot be. Then why is the defendant liable if some agent over which she has no control lets the water out? ... I admit that it is not a question of negligence. A man may use all care to keep the water in ... but would be liable if through any defect, though latent, the water escaped. ... But here the act is that of an agent he cannot control."

Following the language of this judgment their Lordships are of opinion that no better example could be given of an agent that the defendant cannot control than that of a third party surreptitiously and by a malicious act causing the overflow. ...

Their Lordships ... are of opinion that a defendant is not liable on the principle of *Fletcher* v. *Rylands* for damage caused by the wrongful acts of third persons.