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Torts - Strict Liability

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TORTS—STRICT LIABILITY—Plaintiff, an employee of the Ministry of Supply, was injured by an explosion while performing her duties as an inspector in an ordnance plant operated by the defendant. Negligence was neither alleged nor proved. The trial court found that the manufacture of munitions was a non-natural use of land,¹ that it was an ultra-hazardous activity, and held the defendant strictly liable.² The court of appeal³ held that there could be no recovery on the basis of strict liability as “escape from the premises” is an essential part of the rule of *Rylands v. Fletcher*.⁴ The decision was affirmed by the House of Lords which further intimated that *Rylands v. Fletcher* could never serve as the basis of recovery for personal injuries.⁵ *Read v. J. Lyons and Company Ltd.* [1946] 2 All England Rep. 471.

This English case is of interest because it denies the development, from the case of *Rylands v. Fletcher*, of any general principle of absolute liability for an ultra-hazardous activity.⁶ Originally that famous case imposed liability in absence of negligence, on an *occupier of land* who, in the non-natural⁷ use of such land, allowed the *escape* of a substance likely to do mischief onto the land of another, and there causing damage to his *property*.

In the instant case, the plaintiff relied on the American Restatement of the Law of Torts as expressive of the English Law. Although in America, *Rylands v. Fletcher* has been rejected by name

1. The trial court relied on *Rainham Chemicals Work Ltd. v. Belvedere Fish and Guano Co., Ltd.* [1921] 2 A. C. 465. On appeal to the House of Lords, Viscount Simon thought the House would not be bound by this case to hold that the manufacture of munitions in time of war was a “non-natural” use of land.

2. *Read v. Lyons and Co., Ltd.* [1944] 2 All E. R. 98.

3. *Read v. Lyons and Co., Ltd.* [1945] 1 K. B. 216, [1945] 1 All E. R. 106.

4. [1866] L. R. 1 Ex. 265, 279. Blackburn J., stated the rule:

“We think that the true rule of law is, that the person who for his own purposes brings on his lands and collects and keeps there anything likely to do mischief if it escapes, must keep it 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.”

This rule was approved by the House of Lords [1868] L. R. 3 H. L. 330, 340, with the addition of the words “natural and non-natural use of land” by Lord Cairns.

5. [1946] 2 All E. R. 471, 476.

6. Fault is requisite in Louisiana. Art. 2315, La. Civil Code of 1870. “Every act whatever of man that causes damage to another, obliges him by whose fault it happened to repair it. . . .” But see *Watkins v. Gulf Refining Co.*, 206 La. 942, 20 So. (2d) 273 (1944), noted in (1946) 6 LOUISIANA LAW REVIEW 601.

7. “Non-natural use” is generally understood to be an activity not sanctioned by general usage. *Stallybrass, Dangerous Things and the Non-Natural User of Land* (1929) 3 Cambridge L. J. 376.

in most jurisdictions,⁸ the development of the doctrine is reflected in Section 519 of the Restatement:

"One who carries on an ultra-hazardous activity is liable to another whose *person*, land, or chattels the actor should recognize as likely to be harmed by the unpreventable *miscarriage of the activity* for harm resulting thereto from that which makes the activity ultra-hazardous, although the utmost care is exercised to prevent the harm." (Italics supplied.)

Note the phrase "*miscarriage of the activity*" rather than any phrase conveying the idea of *escape of a substance from the premises*. Note also that Section 519 specifically includes the *person* as one of the interests protected.

Although the English courts have never expressly applied a principle of law as broad as that contended for by the plaintiff and enunciated by the Restatement, they have extended the rule of *Rylands v. Fletcher* beyond its original bounds.⁹ In the case of *Charing Cross Electric Supply Company v. Hydraulic Power Company*,¹⁰ recovery was permitted to a plaintiff who occupied only under a license and not under any right of property in the soil.¹¹ Recovery has also been permitted for damage due to *vibrations* rather than to the escape of some tangible substance.¹²

Rylands v. Fletcher was the basis of recovery for *personal* injuries in the case of *Hale v. Jennings Brothers*.¹³

8. Prosser, *A Handbook on the Law of Torts* (1941) 452; Smith, *Tort and Absolute Liability—Suggested Changes in Classification*, Part III (1917) 80 *Harv. L. Rev.* 409, 413. For a history of the application of the rule in *Rylands v. Fletcher* by American courts see Bohlen, *Studies in the Law of Torts* (1926) 416.

9. Bohlen, *op. cit. supra* note 8, at 410: "In the later English cases the application of the rule in *Rylands v. Fletcher* is not limited to cases of injury resulting from 'use by a person of land belonging to him. . .'" See rule of *Rylands v. Fletcher* as stated *id.* at 414.

10. [1914] 3 K. B. 772. Electric cables under a public street were injured by the bursting of a water main under the same street. See also *Batcheller v. Tunbridge Wells Gas Company* [1901] 84 L. T. 765; *West v. Bristol Tramway Company* [1908] 2 K. B. 14.

11. Strong dictum to effect that *Rylands v. Fletcher* would allow recovery for damage to a business interest. Discharge of electrical current into the ground interfered with telephone communications. Recovery was denied because defendant was acting under an order of the Board of Trade. *National Telephone Company v. Baker* [1898] 2 Ch. D. 186.

12. *Hoare and Company v. McAlpine* [1923] 1 Ch. 167 (vibrations from the driving of piling damaged hotel).

13. [1938] 1 All E. R. 579, decided by the court of appeal. Plaintiff, owner of an amusement park concession, was injured when a chair became detached from a Chair-O-Plane operated by the defendant.

Moulton, L. J., in the case of *Wing v. General Omnibus Company*,¹⁴ gives a broad scope to the rule:

"This cause of action is of the type usually described by reference to the well-known case of *Rylands v. Fletcher*. For the purposes of to-day it is sufficient to describe this class of action as arising out of cases where by excessive use of some private right a person has exposed his neighbor's property or person to danger."¹⁵

The court, in the case at bar, might easily have followed the tendency of prior cases and decided that in England an ultra-hazardous activity creates absolute liability. It is easy to understand why such a doctrine was not looked upon with favor in America during our period of industrial expansion,¹⁶ but more difficult to determine a reason for the denial at this late date in England. Perhaps it lies in the need for maximum industrial development in Britain during the war and the postwar period and a corresponding hesitancy to burden industry.

It is unlikely that the restrictive holding of this case will be reflected in future American decisions. Rather, the tendency, as evidenced by workmen's compensation acts and similar legislation, seems to be toward the position of the Restatement. However, the tendency to assimilate liability for airplane accidents to the familiar fault provision that controls in the surface traffic cases¹⁷ perhaps suggests that in this country we are not yet prepared to move readily into the field of absolute liability.

Strict liability for ultra-hazardous activity seems to afford an effective means of allowing a dangerous but socially desirable activity to function at the price of paying its own way.¹⁸

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14. [1909] 2 K. B. 652, 665.

15. Prosser, op. cit. supra note 8, at § 59 stated that the rule of *Rylands v. Fletcher* has developed until the modern English version may be expressed ". . . one who maintains a dangerous thing, or engages in an activity which involves a high degree of risk of harm to others in spite of all reasonable care, is strictly liable for the harm which it causes."

16. See Bohlen, op. cit. supra note 8, at 368.

17. See, for example, Uniform State Law for Aeronautics, § 6 [9 Uniform Laws Ann. 17 (1923)]; Rhyne, *Aviation Accident Law* (1947) 61, 81, 88.

18. Stallybrass, supra note 7, at 387: "The principle of law behind all these cases is, it is submitted, that if a man takes a risk, which he ought not to take without also taking upon his shoulders the consequences of that risk, he shall pay for any damage that ensues."