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THE RYLANDS V. FLETCHER RULE AND THE MODERN TREND

by

Md. Anowar Zahid

Introduction

It is a general principle of civil liability that a person is liable for his own fault or for the fault of other under his control. But sometimes law recognizes liability without fault. In 1868 the House of Lords first recognized such "No fault" liability in *Rylands V. Fletcher*[1]. In this case the defendants (John Rylands and Jehu Horrocks), owners of a mill, retained independent contractors to build a reservoir on their land to supply water to their mill. In course of the work the contractors came to see in the land some old shafts and passages which communicated with mines of the plaintiff. But the contractors could not through their negligence discover the fact that the shafts communicated with the plaintiff's mines, for the shafts appeared to be fulfilled with earth. They did not block the shafts up. Consequently, when the reservoir was filled, the water escaped down the shafts and flooded the mines of the plaintiff, causing damage later agreed at £ 937

Originally the suit was *Fletcher V. Rylands* and was tried at the Liverpool Summer Assizes 1862, when a verdict was found for the plaintiff subject to an award of an arbitrator, who was afterwards empowered by a Judge's order to state a special case instead of making an award. The arbitrator stated a special case for the court of Exchequer, which found for the defendants (Justice Bramwell B. dissenting)[2] . The plaintiff took a writ of error to the Court of Exchequer Chamber, which gave him judgment[3], even though the defendants were neither themselves negligent nor vicariously liable in the tort of negligence for the negligence of their independent

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1. (1868) L. R. 3H.L. 330
2. (1865) 3 H&C. 774, 159 E.R. 737.
3. (1866) L.R. 1 Ex 265

contractors who were not their employees. The basis of liability in the case was propounded by Blackburn J[4].

> "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 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 shewing 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.".

On being defeated in the Court of Exchequer Chamber the defendants preferred an appeal to the House of Lords which upheld the judgment of Blackburn J. with, however, an important qualification made by Lord Cairns, namely that the liability would arise where the defendant made a 'non-natural use' of the land[5]. Thus finally a rule of "No fault" liability was established which is stated as follows[6]:

> "A person who, in the course of non-natural user of land, is held to be responsible for the accumulation on it of anything likely to do harm if it escapes is liable for the interference with the use of the land of another which results from the escape of the thing from his land."

Since 1868 this rule has trodden a long path through tide and ebb. While praised it has been criticized as well. Recently it is getting a very cold reception by the courts.This necessitates a review of the rule and, therefore, justifies the present work.

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4. *ibid* at 279-80
5. At 338-40
6. Harry street, *The Law of Torts,* ed. by Margaret' Brazier, Butterworths, London, 8th edn; (1988). 344.

GENESIS OF THE RULE

In Formulating the rule Blackburn J. relied upon precedents in three classes of cases, cattle-trespass, injury by dangerous animals and escape of water, filth and stenches[7]. Thus it appears that "Balckburn J. did not intend to make new law in *Rylands V. Fletcher*; he made a generalisation which covered the cases of absolute liability which had survived the general "moralization" of the law in the eighteenth and nineteenth countries[8] ". In Blackburn's own opinion[9], "I wasted much time in the preparation of the judgment in *Rylands V. Fletcher* if I did not succeed in showing that the law held to govern it had been law for at least 300 years. "However, Blackburn's credit is in his categorising the cases of liability without fault. The cases of liability without fault, in the words of Wigmore," wandered about, unhoused and unshephered, except for a casual attention, in the pathless fields of jurisprudence, until they were met by mastermind of Mr. Justice Blackburn, who guided them to the safe fold where they have since rested. In a sentence epochal in its consequences this judge co-ordinated them in their true category."[10]

But Lord Simon shook the soundness of the historical basis of the rule when he observed in *Read V. Lyons*[11] that "it appears to me logically unnecessary and historically incorrect to refer to all these instances as deduced from one common principle". In fact, all the three classes of cases relied upon by Blackburn J. were not cases of absolute liability. Though cattle-trespass was an instance of absolute liability, the cases of injury by dangerous animals and escape of water, filth and stenches were cases of negligence and nuisance respectively[12].

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7. L.R. 1 Ex at 280-86
8. Salmond on the *Law of Torts,* ed. by R.F.V. Heuston, Sweet & Maxwell, London, 17th edn. (1977) 317 footnote omitted.
9. Quoted by salmond, *Loc. cit.* n. 17-18.
10. "Responsibility for Tortuous Acts" (1894) 7 Harv. L. Rev. 441, 454.
11. (1947) A. C. 156, 167.
12. See S. Ramaswamy Lyer the *Law of Torts,* Eastern Law House Ltd, Calcutta, 4th edn, 550-51.

It might, however, be that the instances relied upon by Blackburn J. were indiscriminately treated as one group of cases as because they "belong to a period when principles of liability were in a crude stage of development and the modern distinction between liability for negligence and liability independent of it could not have emerged"[13]. But it is true that Blackburn J. did introduce "really a new doctrine on the strength of the said precedents by putting modern interpretation on phrases like 'acting at one's peril', used in them. This mode of introducing the doctrine however determined its form and content. So we have a rule which equates cattle, wild animals and explosives as dangerous things by finding a common factor in them, viz, their tendency to escape and do harm. The rule in *Rylands V. Fletcher* is thus an interesting illustration of the methods as well as the limitations of judicial legislation of which it is outstanding example"[14]

Winfield and Jolowicz evaluated the rule in *Rylands V. Fletcher* as[15] "the creation of new law behind a screen of analogies drawn from existing law... succeeding generations have regarded it as the starting point of a liability wider than any that preceded it." They again observed that[16]" The substantial advances which it made on the earlier law were two :

1. In the direction of things for the escape of which an occupier of land is subjected to strict liability.
2. In the direction of the persons for whose defaults in connection with such escape the occupier is vicariously responsible.

As to the Ist, the court took a rule of liability which had been more or less clearly perceived in connection with the escape of fire, cattle or

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13. *Ibid,* 551
14. *Loc. cit.*
15. Winfeld and Jolowicz on Tort, ed. by W.V.H. Rogers, Sweet and Maxwell, London, 12th edn., 428-29 footnote omitted.
16. *Ibid.* 429

unruly beasts, and extended it to the escape of mischievous things generally. As to the 2nd, they held in effect that the occupier from whose land these things escaped and did damage is liable not only for the default of his servant, but also for that of an independent contractor and (as later decision show) for that of anyone except a stranger."

SCOPE OF THE RULE
A. CONDITIONS OF APPLICATION OF THE RULE

If the rule in *Rylands V. Fletcher* is examined, it would be found that liability under it arises when the following conditions are fulfilled:-

(1) **Accumulation of mischievous things :**

Blackburn J. propounded that the rule applies to a 'person who for his own purposes brings on his lands and collects and keeps there anything likely to do mischief if it escapes'. Therefore, a person will be liable under the rule if he accumulates on his land such thing as will cause mischief if it escapes. Accordingly, the rule does not apply to the land itself, or to things which have been brought on the land by any natural forces, e.g., rocks slipping from an upper on a lower land owing to action of weather[17], weeds, vermin or wild animals naturally on the land[18]. In such cases, liability is not absolute, but it may arise by negligence[19]

Now question arises, what are the things likely to do mischief if they escape? There is no strict category of such things. These include *inter alia* electricity[20], gas likely to pollute water supplies[21],

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17. *Pontardawe Rural* D.C.V. *Moores-Gwyn* (1929) 1 Ch. 656.
18. *Boulston's case* (1597) 5 Co. Rep. 104(b)
19. *Proprietors of Margate Pier and Harbour V. Margate Town Council* (1869) 20 LTNS 564.
20. *National Telephone Co. V. Barker* (1893) 2 Ch. 186
21. *Batcheller V. Tunbridge Wells Gas Co.* (1901) 84 LT 765

explosives[22], flre[23] , oil[24],noxious fumes[25], water[26], sewage[27], and stag heaps[28]. Even a wire rope ordinarily used for fencing[29], a flagpole[30] which fell on a person passing by have been held to be such things. Thus there has been a tendency in some cases "to extend the operation of the rule by treating anything which did mischief as one likely to do mischief."[31] Thus the term 'things likely to do mischief' lacks a definite meaning and, therefore, the rule is sometimes loosely applied. Of course one important characteristic of such things has been described, namely that the things under the rule must have capacity for independent movement as well as being a potential cause of harm so that glass, for example would be ourside the rule[32].

(2) **Escape of the mischievous thing :**

Secondly, the mischievous things in question must "escape from a place where the defendant has occupation of or control over land to a place which is outside his occupation or control"[33]. Thus in *Read V. Lyons*[34], where the plaintiff who was employed as an inspector of

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22. *Rainham Chemical Works Ltd. V. Belvedere Fish Gunao Co* (1921) 2 AC 465, HL.
23. Powell V. Fall (1880) 5 QBD. 597
24. Smith V. G. W. Ry (1926) 135 L.T. 112
25. West V. Bristol Trainways Ltd. (1908) 2 K. B. 14.
26. Western Engraving Co. V. Film Laboratories Ltd. (1936) 1 All ER 106, CA.
27. Humphries V. Cousins (1877) 2 CPD 239
28. *A-G V. Cory Brothers & Co.* (1921) AC 521, HL.
29. *Firth V. Bowling Iron Co.* (1878) 47 LJC. 358
30. *Shiffman V. St John of Jerusalem* (1935) 1 A.E.R 557
31. S.R. Iyer, op cit, 537
32. *Read V. Lyons* (1947) AC 156 at 158
33. *Viscount Simon,* Ibid at 168
34. *Supra* note 32

munitions by the Ministry of supply, was injured in a munitions factory operated by the defendant by the explosion of a high explosive shell, the House of Lords held as there was no escape of a dangerous things from the defendants' premises, the defendants were not absolutely liable and as there was no allegation or proof of negligence the plaintiffs action failed.

The escape requirement has been extended beyond its original sphere in some subsequent cases. In *Charing Cross Electricity Supply Co. V. Hydraulic Power Co.*[35], it was held that there was a sufficient escape when water from a main, laid by the defendants under the highway, escaped and damaged the electric cable which was near to it and under the same highway. Also the rule would apply to a dangerous thing brought by the defendant on a highway and injury arising to a person passing along[36] or to a person or property near the highway[37].

It may be noted that the actual harm caused by the escape need not be immediately caused by the thing accumulated. Thus where parts of a coal slag heap escaped and their pressure on a third party's quarry spoil caused that spoil to damage the plaintiffs land, the requirement of *Rylands V. Fletcher* was held to have been satisfied[38].

(3) **Non-natural user of land :**

Thirdly, for liability under the rule it must be proved that in accumulating the thing the defendant has made a non-natural use of his land. For the use to be non-natural it "must be some special use bringing with it increased danger to others, and must not merely be

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35. (1914) 3 KB 772, CA

36. Per Fletcher Mounlton, L.J. in *Wing V. London General Omnibus Co.* (1909) 2 K.B. 652 at 655.

37. *North Western Utilities Ltd. V. London Guarantee & Accident Co.* (1936) A.C 108

38. *A. G. V. Cory Brothers & Co. supra note 28 at* 538

ordinary use of land or such a use as is proper for the general benefit of the community[39]."

According to Balckburn J. the rule applied only to a thing which was not naturally on the land of the defendant. Instead Lord Cairns used ambiguous term 'non-natural user' of the land as a condition of liability under the rule. This is to substitute a different principle from that adopted by Balckburn J. Its advantage is that it converts a rigid into a flexible rule, and enables the court by determining what is or is not a natural user of land to give effect to its own view of social and economic needs. Its disadvantage is that it has produced a bewildering series of decisions on the meaning of non-natural use. What is the natural use of land? Is it natural to build a house on it, or to light a fire? Is it natural to keep cattle on land? This must be one of the oldest methods of using land, but in Blackburn J's view it is quite logical to impose strict liability because the cattle have been artificially collected. But in Lord Cairns' view it is necessary to say that cattle-keeping is non-natural. Again, it has been held not to be natural to spray crops with herbicide from an aircraft : the activity of destroying weeds is as old as nature itself, but it seems odd today to insist that the hoe should be the only method used. Finally if, contrary to earlier authorities, it is now the law that there is liability in nuisance for things naturally on the land, the distinction is even less helpful.[40]".

As regards the problem of defining dangerous or mischievous things and non-natural use of land Salmond writes[41], "It is a question of fact, subject to a ruling of the judge whether the particular object cab be dangerous or the particular use can be non-natural, and in deciding this question all the circumstances of the time and place and practice of mankind must be taken into consideration so that what might be regarded as dangerous or non-natural may vary according to those circumstances. So today the collection of toxic waste on a rubbish tip, which escapes from it in solution in percolating water, and poisons

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39. *Richards V. Lothian,* (1913) A.C. 263 at 280
40. Salmond *op. cit,* 321-22, footnotes ommited
41. *ibid,* 323 footnotes ommited.

water on the plaintiffs premises, is probably unlawful at common law as well as by statute."

(4) **Interference with the use of land by the plaintiff :**

Fourthly, from the escape of the thing on the defendant's land there must result an interference with the use of plaintiff's land for which[42] the plaintiff is undoubtedly entitled to damages. But it was doubted whether damages was recoverable by the land owner for his personal injuries or injuries to chattels. According to Lord Macmillan, the rule "derives from a conception of mutual duties of neighbouring land owners[43] and is therefore inapplicable to personal injuries." In *Hale V. Jennings Brothers*[44] it was, however, held that an occupier of land was entitled to damages for personal injuries under the rule in *Rylands V. Fletch.* In cases subsequent to the *Read's* case the courts have generally refused to follow Lord Macmillan's view. For instance, in *Perry V. Kendricks Transport Ltd*[45] , Packer L. J. did not "think it is open to the court to hold that the rule applies only to damage to adjoining land or to a property interest in land and not to personal injury."

It was again doubtful whether the plaintiff could claim damages for personal injuries or damage to his chattels if he had no interest in the land. The decision of the court of Appeal in *Miles V. Forest Rock Cranlte Co. (Lelcestershire) Ltd*[46]*. and Perry V. Kendricks Transport Ltd.*[47] lend support to the view that damages are recoverable. In *Read V. Lyons* it was, however, doubted.

In respect of the above two issues it may be submitted that the modern trend is that remedies should the awarded in both cases and therefore doubt should go[48].

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42. It is assumed that it is not tort actionable *per se*, damage must be proved : Street, *op cit.* 353
43. *Read V. Lyons, Supra,* note 32 at 173
44. (1938) 1 All ER 579, CA
45. (1956) 1 W.L.R. 85
46. (1918) 34 TLR 500
47. *Supra* note 32
48. See Winfield and jolowincz, *op, cit,* 432-33

B. EXCEPTIONS TO THE RULE

The rule applies If the conditions discussed above are fulfilled subject, however, to the following exceptions.

(1) Act of God :

In *Greenock Corporation V. Caledonian Railway Co.*, the House of Lords adopted the following definition of a similar phrase of act of God in the Scottish law[49] : "*Damnum fatale* occurences are those which no human foresight can provide against, and of which human prudence is not bound to recognise the possibility." An accident may be an act of God if it has resulted directly from natural causes without human intervention[50]. "It is true that in most cases human and natural agency co-operate to produce the result, but the immediate and direct cause is alone to be looked at in determining whether the act is that of God or man. When a ship is cast away in a tempest, this would not have happened but for the act of the owner in sending her to sea but the loss is the act of God for all that[51]."

Today the scope of the defence of act of God has got restricted because of increased knowledge. Now people can by virtue of his knowledge of science and technology predict the possibility of many events which were earlier treated as acts of God. Presently the criterion is not whether or not the event could reasonably be anticipated[52], but whether or not human foresight and prudence could reasonably recognise the possibility of such an event[53]. Moreover, emphasis is given more on the act of care and control of the defendant than on the natural forces. Thus "the fact that an artificial danger escaped through natural causes was no ecuse to the

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48a. Because of the exceptions Winfield and jolowicz prefer to name liability under the rule as "strict" rather than "Absolute" liability *ibid,* 429

49. (1917) A.C. 556 at 576

50. *Nugent V. Mursland* (1876) 1 C.P.D. 423, 444

51. Salmond, *op. cit.* p. 330

52. *Nicholas V. Mursland* (1875) L.R. 10 Ex. 255

53. *Greenock Corporation V. Caledonian Ry.* (1917) A.C. 556

person who brought an artificial danger there".[54] Absence of negligence on part of the defendant has to be proved[55].

(2) **Act of Stranger :**

In *Box V. Jubb*[56] the defendant was not held liable for the escape of water from his reservoir because of the act of a third person who without the defendant's authority or knowledge emptied the water of his own reservoir into the reservoir of the defendant. Thus act of third person acts as an exception to the rule. However, the defence requires that the plaintiff must prove that he was not negligent to take necessary precautions against the act of a stranger, be his (stranger's) act willful or negligent. Jenks L. J. said in *Perry V. Kendricks Transport Ltd*[57] that "the basis of the defence is the absence of any control by the defendant over the acts of stranger on his land and, therefore, the nature of the stranger's conduct is irrelevant". Strangers include defendant's servants, contractors, licensees on the land, etc.

(3) **Plaintiff's own fault, Plaintiff's consent and Statutory Authority :**

(a) A plaintiff cannot recover damages where he suffers injury for his own fault. Thus where X knows that there is a danger of his mine being flooded by his neighbor Y's operations on adjacent land, and does some act which accelerates the likelihood of the danger, X cannot claim damages[58].

(b) If there be any consent, express or implied, on the part of the plaintiff to the accumulation of any 'dangerous' things on the defendant's land, the plaintiff's claim will not succeed. The main application of the principle of implied consent is found in cases where different floors in the same building are occupied by different

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54. Per Scrutton L.J. in A-G V. *Corry Brothers,* supra note 28, at 570, 574
55. J. J. Makin Ltd. V. L.N.E.R (1943) 1 K.B. 467, 470
56. (1879) L.R. 4 Ex. D. 76
57. (1956) 1 W.L.R. 90
58. *Lomax V. Stott* (1870) 39 L.J. Ch. 834

persons and the tenant of a lower floor suffers damage as the result of water escaping from an upper floor[59].

(c) Statute sometimes exempts public bodies from liability where they store water, gas, electricity etc. provided they are not negligent. Thus if Parliament authorises a company to lay water main and it bursts out and floods Y's land in absence of any negligence on the part of the company, the company will not be liable[60].

The exceptions to the rule have practically narrowed the wide scope of its application Scrutton L.J. thus commented that there "are so many exceptions to it (the rule) that it is doubtful whether there is much of the rule left[61]".

LIMITS OF THE RULE : POSSIBILITY OF OVERLAPPING WITH OTHER TORTS

For true application of the rule the conditions laid down by the House of Lords in *Rylands V. Fletcher* must be strictly complied with, otherwise "it would be a very oppressive decision[62]". While the rule has been strictly applied in a number of cases, it has been loosely interpreted and applied in other cases and as a result the areas of nuisance and negligence have been invaded. Thus whereas escape of mischievous thing from the defendant's land is an essential condition, liability was held to have arisen under the rule for damage caused by the escape of water from a pipe laid down by the defendants under the highway[63]. Again, where under the rule liability arises for interference with the plaintiff's land resulting from escape of dangerous thing from the defendant's land, defendants were held liable for damage caused to person[64] or chattels on the plaintiff's land. These could have been decided as nuisance cases.

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59. Winfield and Jolowicz, *op. cit,* 438
60. *Green V. Chelsea Waterworks Co.* (1894) 70 L.T. 547
61. *St. Anne's Well Brewery* V. Roberts (1928) 140 L.T.I. 6(C.A.)
62. Per Lindley L.J. in *Green V. Chelsea Waterworks Co.* (1894) supra note 60.
63. (1914) 3 K.B. 772 CA *(Supra)*
64. (1938) 1 All ER 579, CA *(supra);* 1918 34 TLR 500 *(Supra)*

On the other hand, some cases decided under the rule could be decided as negligence cases. For instance, in *Shiffman V. Order of St. John* [65] where the defendant, though at fault, was held liable under the rule for injury caused by a falling flag-pole belonging to the defendant, the ground of liability could have been different namely, the principle of *res ipsa loquitur*. In *Dunn V. North Western Gas Board*[66], Sellers L.J. asserted that in the present time the defendant's liability in *Rylands V. Fletcher* itself could simply have been placed on the defendant's failure of duty to take reasonable care[67]. "In modern law there would have been no difficulty in holding John Rylands (and his partner Jehu Horrocks) liable for negligence of the contractors whom they had hired to build the reservoir for them. Building such a reservoir would have had sufficient possibilities for mischief, if done carelessly, to bring into play, what is now generally known as the doctrine of non-delegable duties".[68]

MODERN ATTITUDES OF COURTS TOWARDS THE RULE

Today the courts of law look upon the rule with a squinted eye like step-mother and tend to restrict its application. "The most restriction on any extended application of the rule is the requirement of non-natural user. As it is now interpreted this excludes from the ambit of the rule those accumulations which in the judgement of the court (there being no objective test) do not involve an unreasonable risk or an extra ordinary use of land. Such an interpretation allows the courts to hold that a common activity such as the collection and storage of gas or water does not constitute a non-natural use of land, even though the injury potential of the activity is high. Moreover, in determining what is extra ordinary or unreasonable the courts can have regard not only to the interests of the defendant but to the

65. (1936) 1 All E.R. 557

66. (1962) 2 Q.B. 806

67. *ibid,* at 831

68. George C. Christie, *Cases and Materials on the Law of Torts,* West Publishing Co., St. Paul, Minnesota, (1983) 557

public interest as well".[69] Thus in *British Celanese (Capacitors) Ltd. V. A.H. Hunt Ltd*[70] where the defendant, manufacturers of electronic components, stored on their land metal foil in such a way as to cause an escape of it on an insolated occasion resulting in a flash-over at a nearby electricity sub-station, Lawton J. refused to regard the act of storage of metal foil as a non-natural use of land. The defendants were held liable in nuisance for foreseeable harm through power loss to plaintiff's factory in vicinity. "The manufacturing of electrical and electronic components in the year 1964... can not be adjudged to be a special use nor can the bringing and storing on the premises of metal foil be a special use in itself. The metal foil was there for use in the manufacture of goods of a common type which at all material times were needed for the general benefit of the community".[71]

"Moreover as a result of the defences of act of God, act of third party and statutory authority, the courts must investigate not only the reasonableness of the accumulation but also the defendant's responsibility for its actual escape. The nature and quality of the defendant's conduct are therefore factors of great importance, and although the decisional process is different from that in negligence, the result is almost always the same. We have virtually reached the position where a defendant will not be considered liable when he would not be liable according to the ordinary principle of legligence".[72] Thus in *Turner V. Big Lake Oil Co*,[73] where salt water that had been pumped to the surface and stored in man-made ponds in the course of producing oil had somehow escaped from those ponds and eventually polluted natural waterholes some six miles away that were used by livestock, the court held that, in the absence of proof of negligence, there could be no liability. Thus "the usefulness of the rule has been reduced by the unwillingness of the

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69. Winfield and Jolowicz, *op. cit*, 449, Footnote ommited
70. (1969) 1 W.L.R. 959
71. *ibid*, 963
72. Winfield and Jolowicz, *op. cit*, p. 450
73. 128 Tex. 155, 96 S.W. 2d, 221 (1936)

court to apply it in circumstances where the defendant could not be said to have been at fault".[74]

In *Cambridge Water Company (CWC) V. The Eastern Counties Leather (ECL) Plc*[75], the appellant, ECL a tannery company for many years used a solvent known as PCE as part of its industrial process. Quantities of this solvent escaped from containers and eventually seeped into the ground beneath ECL's works. The solvent eventually percolated to the water supply in adjoining land. In 1976 the respondents (CWC), a water company, purchased a borehole at some distance from the land owned by ECL. Before doing so, CWC carried out tests on the water it could obtain from this borehole and these indicated that the water was wholesome and suitable for public consumption. The company, therefore, purchased the borehole in order to carry out its responsiblity of supplying water for public consumption. From 1970s on, concerns were expressed as to the presence of certain chemicals in drinking water. An EC Directive, dealing with quality of water intended for human consumption,was produced in 1980. It proposed new standards as to the concentrations in drinking water of such solvents as PCE. The Directive was implemented in the United Kingdom by the promulgation of new domestic standards dealing with the concentrations of these chemicals in drinking water. CWC decided to carry out tests to its water supplies to see whether they complied with the new standards. Analysis of samples of water taken from the borehole purchased in 1976 revealed excessive concentrations of PCE. Following a major geographical survey, CWC eventually traced the source of this contamination to ECL. CWC decided to take borehole out of commission and it developed a new source of supply. CWC then sued ECL, seeking compensation for its losses relying on negligence, nuisance and the rule in *Rylands V. Fletcher.*

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74. Winfield and Jolowicz, *supra,* 449

75. This case has been decided by the House of Lords (9 December, 1993). See New Law Journal (UK) January 14, 1994, 64-65, from which the facts and holdings by the courts have been summerized omitting the footnotes.

At trial, Ian Kennedy J. found that the spillage of the contaminant and its seepage into the ground water supply was cause of the contamination to the borehole. However, he held that a reasonable supervisor employed by the ECL at the time would not have foreseen this result; nor was it foreseeable that the detectable quantities of PCE would have spread and have led to any environmental damage or hazard. The judge held that ECL had not been negligent, that there was no liability in nuisance and he also dismissed the claim based on *Rylands V. Fletcher.* It is well known that the courts have developed an important qualification to the scope of liability under the rule in *Rylands V. Fletcher* by stating that a plaintiff has to show that the defendant's use of land was a non-natural use. Ian Kennedy J. held that the storage of PCE and other solvents was a natural use of land, being part of ECL's manufacturing process. He concluded that the company's activities served the general benefit of the community by providing employment. In consequence there could be no liability under the rule in *Rylands V.* Fletcher.

CWC appealed. It did not, however, appeal against the dismisal of its allegations of negligence and nuisance; rather it argued that the defendants were liable under the rule in *Rylands V. Fletcher* on the basis that its introductions of chemicals onto its land was a non-natural use, that the chemicals were likely to cause damage if they escaped and that the escape of the chemicals had damaged its water supply. The appeal, however, took a rather unusual course. The court decided that it was unnecessary to decide the issues under the rule in *Rylands V. Fletcher* since there was liability in nuisance. The court upheld CWC's appeal on the basis that the defendants were liable in nuisance. The reason the Court of Appeal felt it unnecessary to deal with the issues raised under *Rylands V. Fletcher* was that it concluded that where a defendant damages or interferes with an adjoining land owner's natural rights, such as the right to water, then liability is strict. Here, the Court relied on *Bollard V. Tomlison*, a 19th century case that was not apparently cited at trial. This case concerned a defendant who had poisoned the well which in turn contaminated the plaintiff's water supply. The court held that this

constituted an interference with the plaintiff's right to draw water from its land and was therefore an actionable nuisance.

From the appellate court the matter was taken to the House of Lords the decision of which was delivered in Lord Goff's speech. The main issue, as he put it, is whether foreseeability of damage is a prerequisite for the recovery of damages under the rule of *Rylands V. Fletcher* or not. Lord Goff stated that foreseeability as to damage is a prerequisite for recovery in the law of private nuisance and that it is therefore, logical to extend the same requirements to liability under the rule of *Rylands V. Fletcher*. He did not accept the views expressed by some writers on this subject to the effect that *Rylands V. Fletcher* should be treated as a developing principle of strict liability resulting from hazardous operations on land.

The House of Lords concluded, therefore, that there can be no liability under the rule in *Rylands V. Fletcher* unless it is established that the damage caused to the plaintiff was reasonably foreseeable. Applying this principle to the facts of the CWC claim, the House of Lords, not surprisingly, concluded that there no liability under *Rylands V. Fletcher* (or under the ordinary law of nuisance). At the time of contamination to the water supply, nobody working for ECL could reasonably have foreseen the consequential damage that was eventually caused; nor could it be held responsible for continuing contamination since it had passed beyond its control. Thus it is now established that foreseeability of harm is recognized as an essential ingredient of *Rylands V. Fletcher*.

FINDINGS OF THE STUDY AND CONCLUSION

From the above discussion it is found firstly that the rule in *Rylands V. Fletcher* has exceeded its original limit and invaded the sphere of nuisance and negligence and, secondly that at present time law courts are reluctant to apply the rule even if the conditions are fulfilled unless the defendant is at fault or has foreseen the risk of harm. Compared to the original state of application of the rule it is seen that with the change of time the attitude of the law courts has changed. It was the law courts that gave birth to the rule, it is again the courts which are putting it (the rule) to death. Now the courts are not prepared to hold anybody strictly liable for non-natural use of land meaning of which, as seen earlier, is also changing.

The present attitude of courts has created disappointment for those affected by non-natural use of land by presons not at fault and also for those concerned with promotion of environment, as it will be welcomed by industry and its insurers. This disappointment may be removed by legislature through enactment of laws effecting strict liability and that will not be unjust nor undesirable. Windeyer J. seems to share this idea when he says in *Benning V. Wong*[76] that

> "to regard negligence as the normal requirement of responsibility in tort, and to look upon strict liability as anomalous unjust seems to ..... mistake present values as well as past history. In an age when nuisance against all forms of liability is common place, it is surely not surprising or unjust if law makes persons who carry on some of hazardous undertakings liable for the harm they do, unless they can excuse or justify it on some recognisable ground".

Lord Goff opined in the *Cambridge Water company's case* [77] that it is more appropriate for strict liability to be imposed by statute, and not by the courts. To do this appropriate job the legislature should, it is suggested, come forward and enact laws giving protection against injuries caused by dangerous use of land taking the injured persons' interest, the interest of environmental protection of the public etc into consideration. Such attempts by now have of course begun in the UK[78] and the USA[79]. Bangladesh may follow their foot steps in this respect, specially, *inter alia,* for the protection of environment.

Thus today despite the courts' apathy to apply the rule, it still may survive through legislation to meet the need of time. Form and extent of the rule may be circumscribed, but its appeal cannot be altogether denied.

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76. (1969) 122 C.L.R. 249, 304

77. *Supra.* note 75

78. Eg., the Nuclear Installations Act 1965, the Merchant Shipping (Oil Pollution) Act 1971, the Control of Pollution Act 1974, etc.

79. The Restatements of Torts. These are, though not legislative enactments, followed by American courts with utmost respect.