TORTS OPINION - MODERN DEVELOPMENT OF THE RULE IN RYLANDS v. FLETCHER (1868), L.R. 3 H.L. 330.

[The problem stated below was posed as one of the exercises for the Torts class in 1955. The writer of this opinion, G.E. Gay, was awarded a prize donated by Mr E.T.E. Hogg, to be given to the author of the best opinion of the year prepared in any of the classes for the LL.B. degree.]

The New Zealand Government purchased a block of land in Makara Valley from a local farmer, John Hayseed, and erected an atomic pile there.

One day Hayseed was riding along a sheep track on his own land past the Government building which housed the atomic pile and which was close to the sheep track when, due to a pure accident inside, attributable to no-one's negligence, a small amount of radiation escaped and contaminated Hayseed and his horse. As a result Hayseed had to spend three months in hospital and suffered permanent disability. His horse had to be destroyed.

Hayseed sued for damages for personal injury and the loss of his horse.

I am asked to explain how I would decide the action.

Sections 6 (1) (c) of the Crown Proceedings Act 1950 renders the Crown liable in respect of any breach of the duties attaching at common law to the ownership, occupation, possession or control of property to the same extent as a private person of full age and capacity would be liable; it therefore falls to be decided whether a private person would be liable in the circumstances of this case. In the absence of negligence the possible heads of liability are the so-called rule in Rylands v. Fletcher (1868), L.R. 3 H.L. 330, and nuisance.

The common law principle, of which Rylands v. Fletcher was an instance, was that it is an unreasonable use of property to allow premises to be applied for dangerous purposes (R. v. Taylor (1742), 2 Str. 1167 - storing gunpowder; R. v. Lister and Briggs (1857), Dears. & B. - storing highly

inflammable substances; Hepburn v. Lordan (1865), 2 Hem. and M. 345; Crowder v. Tinkler (1816), 19 Ves. 617 - gunpowder factory; Rainham Chemical Works, Ltd. v. Belvedere Fish Guano Co., [1921] 2 A.C. 465 - manufacturing explosives) so as to occasion, or to be likely to occasion, serious injury or damage to the persons or property of others whilst lawfully exercising their rights. This principle gave rise to criminal or civil liability, according to the circumstances. As crystallised in the famous judgment of Blackburn J. in Fletcher v. Rylands (1866), L.R. 1 Ex. 279, and the subsequent decisions explaining that case, the principle may now be said to be that a person who for his own purposes brings on his land and collects and keeps anything which has a tendency to escape beyond his control and, if it does escape, is likely to do injury to his neighbour, must keep it at his peril and he is liable for the damage caused by its escape. It is immaterial that the thing escapes without his wilful act or default or neglect.

When the decision in Fletcher v. Rylands was upheld in the House of Lords (sub. nom. Rylands v. Fletcher) Lord Cairns added, perhaps inadvertently, a qualification that before liability could attach the activity complained of must amount to a "non-natural" user of land and it is out of this qualification that many of the difficulties attending a definition of the limits of this liability arise. As was said by Wright J. in Blake v. Woolf, [1898] 2 Q.B. 426 at 428 (approved by the Judicial Committee in Rickards v. Lothian, [1913] A.C. 263 at 280, 281):

> That general rule [laid down in Rylands v. Fletcher] is, however, qualified by some exceptions, one of which is that, where a person is using his land in the ordinary way and damage happens to the adjoining property without any default or negligence on his part, no liability attaches to him.

What constitutes a natural or ordinary as opposed to a "non-natural" use is not always easy to define and this difficulty has led the Courts in a number of cases to consider whether the "thing" involved was naturally on the land or not, or whether the bringing of it there, or the use of the land in such a way was such a use as is proper for the general benefit of the community (see Rickards v. Lothian, supra).

It is easy to see that if a thing is naturally on the land the occupier of that land cannot be made liable on any ground depending upon his having brought it there unless he caused it to accumulate in greater quantity or volume than would happen naturally and it may be that only in this connection is any such consideration relevant. On the other hand, there is no clear line of demarcation between what is a "natural" and what is a "non-natural" use of land and the true distinction might be between land which has on it a dangerous thing, not naturally there, which tends to escape unless controlled, and land without such a thing. If this be the case, it would be no defence if the dangerous thing escapes from land of the former kind, to say that it is a natural or ordinary use of the land to have such a thing upon it. The question of naturalness of user should from its nature be one of fact but some, at least, of the cases indicate that it is almost a proposition of law that the bringing onto land of a dangerous thing cannot be a natural user of land and it may well be that through this line of reasoning rationalisation of this particular aspect of the problem might be achieved in the future. Be that as it may, the present state of the authorities is such that it is impossible to say with any degree of certainty which test should be adopted in all cases.

As far as the test of benefit to the community is concerned, it would seem that such a benefit alone is not sufficient to exclude the application of the rule when there is a dangerous thing on the land, since it has been applied to gas companies (Northwestern Utilities v. London Guarantee and Accident Co. Ltd., [1936] A.C. 108), water companies (Charing Cross Electricity Supply Co. v. Hydraulic Power Co. Ltd., [1914] 3 K.B. 772), tramway companies (National Telephone Co. v. Baker, [1893] 2 Ch. 186; West v. Bristol Tramways Co., [1908] 2 K.B. 14), railway companies (Jones v. Festiniog Railway Co. (1868), L.R. 3 Q.B. 733), colliery companies (Rylands v. Fletcher itself) and the manufacture of explosives in war time (Rainham Chemical Works Ltd. v. Belvedere Fish Guano Co. Ltd. (supra).

A further doubt arises as to the question whether the "thing" which escapes must be something which is inherently dangerous. Although Lord Macmillan in Read v.

Lyons and Co. Ltd., [1947] A.C. 156 doubted (at 172) whether there could be any such class of things, there were many cases before Read v. Lyons (e.g. Dominion Natural Gas Co. Ltd. v. Collins and Perkins, [1909] A.C. 640; Glasgow Corporation v. Muir, [1943] A.C. 448) and there has been at least one Court of Appeal decision after it (Ball v. London County Council, [1949] 2 K.B. 159) in which a distinction of this nature was made. In determining whether such a thing is capable (whether inherently or not) of doing mischief if it escapes, the factor of capacity for movement would appear to be of prime importance although not conclusive. There are considerable philosophical difficulties in determining whether a thing is dangerous in itself, or even whether any such distinction can be made, but added to this there are legal difficulties arising out of the confusion of the Rylands v. Fletcher rule with the rule relating to liability for dangerous chattels. A careful consideration of the cases dealing with the latter aspect shows that it is really a branch of the law of negligence where the standard of care exacted is so high that it virtually amounts to absolute liability but, nevertheless, a standard of care is a relevant consideration, whereas it is not relevant in cases coming under the rule in Rylands v. Fletcher.

Taking the law as enunciated up to this point, it is now proposed to see how it can be applied to the facts of this case. There is little doubt that fissionable material is not naturally on land in the Makara Valley in the quantities in which it is required to be accumulated for the purposes of an atomic pile nor can it be denied that radiation is likely to cause mischief if it escapes from control. Furthermore, if anything can ever be said to be inherently dangerous then radioactive particles must be. That there has been an escape from control causing injury is admitted and the remaining considerations are whether the working of an atomic pile is a natural user of land and to what extent the plaintiff can recover.

In the absence of any authority directly in point it is impossible to say whether this is a natural user or not as even in the more common case of explosives the question is not free from doubt. It was argued in Read v. Lyons and Co. Ltd. (supra) that to extend Rylands v. Fletcher to all

forms of industrial activity would involve a return, inappropriate in an industrial age, to medieval legal theory and that it is not desirable to restrict industrial activities beneficial to the community by laying down that those who engage in them do so at their peril. The law should be maintained in harmony with the existing circumstances of the time and regard must be had to the march of time and to modern developments on which depend the conditions of modern civilisation. This approach obviously found favour with Lord Macmillan who said (at 174) that he would "hesitate to hold that in these days and in an industrial community it was a non-natural use of land to build a factory on it and conduct there the manufacture of explosives . . . ."

Viscount Simon pointed out (at 169) that in the Rainham case (supra) it was admitted in the King's Bench Division that the person in possession of and responsible for the explosive was liable under the doctrine of Rylands v. Fletcher for the consequences of its explosion and that the point was not, therefore, open for argument to the contrary before the House of Lords. In fact, Lord Carson in Rainham's case (at 491) began his opinion by stating that "it was not seriously argued" and that the real point to be determined was as to the liability of two directors of the appellant company. Viscount Simon, therefore, (at 169, 170) thought

> . . . it not improper to put on record, with all due regard to the admission and dicta in that case, that if the question had hereafter to be decided whether the making of munitions in a factory at the Government's request in time of war for the purpose of helping to defeat the enemy is a "non-natural" use of land, adopted by the occupier "for his own purposes", it would not seem to me that the House would be bound by this authority to say that it was.

The observations in Rickards v. Lothian (supra) and Read v. Lyons (supra) show that what is, or is not, a natural user of land for the purpose of the rule awaits authoritative determination but it would appear that the modern tendency is to regard activities which are necessary for the community as a whole and must therefore be engaged in somewhere as not being "non-natural" user if the locality

chosen is a reasonable one having regard to the nature of the activity. If this is so it would seem to follow that the setting up of an atomic pile in the Makara Valley is not a "non-natural" user. It is not clear whether the atomic work here engaged in is for the purposes of defence or is in connection with atomic energy for industrial use. Possibly the knowledge gained could be applied in both fields, but whichever it be it would seem to be in the interests of the community, under present world conditions, that atomic research should be carried on. Clearly it would be reasonable to site the station as far from centres of population as possible but in view of the vast range of atomic radiation it would be impossible to choose a spot in New Zealand from which, given the appropriate atmospheric conditions, radiation could not spread to every point in the country. This being so, it would not seem to render the situation chosen unsuitable merely because it is close to the boundary of an adjoining owner's property or to a sheep track on that property running near the boundary. Where radiation is concerned 100 miles could be just as dangerous proximity as 100 yards. If this be the true view of the modern trend of the law in this regard, then it would follow that the benefit of the country as a whole must outweight the damage caused to the plaintiff and he would not be entitled to recover on this ground.

There is also a further defence which may possibly be open to the Crown and that is the implied consent of the plaintiff to the activity. That such a consent affords a defence to an action based on Rylands v. Fletcher is well established (see, for example, Attorney-General v. Cory Bros. and Co. Ltd., [1921] 1 A.C. 521) and it may be that the plaintiff when he sold his land to the Crown knew that it was being acquired for the erection thereon of an atomic pile and might therefore be held to have impliedly consented to its erection. Unfortunately the facts given do not reveal whether this is so and it is therefore impossible to proceed further with this consideration.

The argument up to this point and the conclusion tentatively reached, are, however, relevant only insofar as damages for the loss of the horse are concerned, but different considerations come into play as regards the personal

injuries. It is clear from cases such as Wilson v. Newberry (1871), L.R. 7 Q.B. 31 and Crowhurst v. Amersham Burial Board (1878), 4 Ex.D. 5 that a person can be liable for damage caused to his neighbour's horses and cattle by the escape of a Rylands v. Fletcher "thing" but it is far from clear whether damages can be recovered in respect of personal injuries. In Read v. Lyons (supra, at 173) Lord Macmillan was strongly of opinion that they could not in the absence of negligence, his reason being that the principle behind Rylands v. Fletcher was that expressed in the maxim sic utero tuo ut alienum non laedas and that, as the operative word used was alienum and not alium, the principle manifestly had nothing to do with personal injuries. Lord Simonds (at 181) in that case expressed doubts as to whether recovery could be had for personal injuries. Viscount Simon said (at 168) it was unnecessary to consider this question and Lord Porter said (at 178) that cases which applied the rule to personal injuries undoubtedly extended the application of the rule and "may some day require examination."

Up to the time of these expressions of opinion on the part of some of the Law Lords in Read v. Lyons, this point seems to have received little, if any, attention, it having been assumed, apparently, that such damages could be recovered and no subsequent opportunity has as yet arisen for an authoritative decision to be given. In Aldridge v. Van Patter, [1952] 4 D.L.R. 93, however, the High Court of Ontario considered the views expressed in Read v. Lyons but nevertheless gave judgment for the plaintiff. The latest editions of the various textbooks on torts are disconcertingly at variance. Professor Davis in his book, The Law of Torts in New Zealand (1st ed. 1951), at 175 regards the question as still open, as does Professor Goodhart in 63 L.Q.R. at 160. In Winfield on Tort (6th ed. 1954), at 590-591, it is said that the views of the Law Lords in Read v. Lyons cast some doubt on the earlier decisions in Miles v. Forest Rock Granite Co. (Leicestershire),Ltd. (1918), 34 T.L.R. 500, Shiffman v. Order of St. John of Jerusalem, [1936] 1 All E.R. 557, and Hale v. Jennings Bros., [1938] 1 All E.R. 579. The editors of Clark and Lindsell on Torts, (11th ed.) at 621, and Pollock on Torts, (15th ed.) at 373, appear to consider that an action does lie in this type of situation where injury is caused to the person, their

opinion being based on these three cases. In an interesting article on reason and logic in the common law, Dennis Lloyd in 64 L.Q.R., at 472, accepts the dicta and uses them to support his thesis that these two principles have by no means guided the common law and its development. Wing v. London General Omnibus Co., [1909] 2 K.B. 652, has also been cited in support of the view that damages are recoverable in respect of personal injuries.

In view of this considerable conflict of opinion, it becomes necessary to examine more closely the cases referred to above. In Miles v. Forest Rock Granite Co. (Leicestershire), Ltd., the plaintiff in an action for negligence had been injured by flying rock resulting from blasting in connection with quarrying operations and the jury found that negligence had been established. In the Court of Appeal Swinfen Eady M.R. said (at 581): "The doctrine of Rylands v. Fletcher applied to the present case." But he also said (idem):

> If the case had been put at the trial, as it might have been put, independently of any question of negligence the plaintiff must have succeeded. The case was not so put but was based on the negligence of the defendants . . . ." (at 501)

It is clear, therefore, that this was not a decision on the rule in Rylands v. Fletcher and the observations of the Master of the Rolls were just as much dicta as were those in Read v. Lyons.

The observation of Fletcher Moulton L.J. in Wing v. London General Omnibus Co. (supra) is of even less assistance. He said (at 665):

> 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 today it is sufficient to describe this class of actions as arising out of cases where by excessive use of some private right a person has exposed his neighbour's property or person to danger.

But the case before him concerned injury to a passenger in a bus which skidded and struck a lamp post and it is difficult to see how such a situation could be fitted into the doctrine of Rylands v. Fletcher.

In Shiffman v. Order of St. John of Jerusalem (supra) the plaintiff was injured by the fall of a flagpole which Atkinson J. held had been negligently erected and, while so holding, he remarked (at 561): "I cannot see why this is not within the rule in Rylands v. Fletcher." But the issue was not raised in the pleadings nor was the case decided on this ground since Atkinson J. himself said (at 561, 562):

> I do not decide the case on this basis, on the ground of Rylands v. Fletcher, although I cannot see myself why on the pleading it would not be open if it were necessary to the plaintiffs to rest the case on that rule. But I decide the case on the ground that negligence has been proved.

Once again this is clearly not a decision on the Rylands v. Fletcher principle.

Perhaps the strongest of these supposed authorities is Hale v. Jennings Bros. (supra) where the "thing" involved was a chair which became detached from a chair-o-plane while in motion and fell on and injured the plaintiff.

It was held that the rule in Rylands v. Fletcher applied and the plaintiff could recover but in both the lower court and the Court of Appeal the question of personal injuries was not referred to once, either by counsel or by the Court. All that the judgments were concerned with was deciding whether a machine is dangerous in itself when there is no danger if it is properly used and not subject to any latent defect.

Even in the Canadian case of Aldridge v. Van Patter (supra) where the Court was considering the matter expressly in the light of the obervations made in Read v. Lyons, Spence J. merely says (at 105):

> Liability under Rylands v. Fletcher was found for personal injuries in Hale v. Jennings Bros., Shiffman v. Order of St. John of Jerusalem, and Miles v. Forest Rock Granite Co. . . . I am of opinion, therefore, in view of the cases in the English Court of Appeal which I have cited, that a Court is justified in finding a liability under the principle of Rylands v. Fletcher for personal damages and for personal damages sustained not by the owner or occupant of adjoining lands but by anyone to whom the probability of such damage would naturally be foreseen.

No attempt was made to examine these cases to see whether they really supported the proposition for which they were cited.

It appears, therefore, that these cases, far from being decisions on the point, merely contain dicta of no more force than the observations against which they are alleged to be authorities. In fact, the observations in Read v. Lyons were not as clearly obiter as might appear at first sight. It was strongly urged by counsel for the plaintiff in that case that it would be illogical to deny her claim when, if she happened to have a friend waiting for her outside the gate and the friend was injured by the explosion, the friend could recover, but the plaintiff could not and it was in answering this contention that some of the Law Lords became involved in the question of personal injuries. Even though they were prepared to concede that decisions are not always reached through logic, they were not prepared to concede that logic would be violated by this decision since it was by no means certain that the hypothetical friend would have been able to recover for personal injuries sustained.

It is difficult, therefore, to escape the conclusion that if any dicta are to be adopted when a court eventually has to decide this point, those most likely to find favour are those expressed in Read v. Lyons since not only have they the aura which utterance in the House of Lords gives but they would seem to be more consistent with the historical development of the principle under examination.

The House of Lords in Read v. Lyons was emphatic that plaintiffs seeking to recover under the rule in Rylands v. Fletcher must take that rule subject to the qualifications which subsequent decisions have put upon it and the position following that case seems to be that one is liable without negligence for damage to property caused by the escape from a place where he has some measure of control to a place outside his control of something not naturally there, which he knows to be mischievous if it escapes and which he, for his own purposes as opposed to the general benefit of the community, has brought or collected or kept there, thus putting the place to a "non-natural" use. The plaintiff in this case would fail to obtain his damages if, as seems probable, this use of the land would be held to be natural and, in any event, he would seem to be unable to recover in respect of his personal injuries.

The question whether, apart from the principle of Rylands v. Fletcher the plaintiff can recover as for a nuisance is no less difficult. The roots of nuisance go deep into the history of the common law and originally constituted one of the three ways in which a man might be interfered with in his rights over land. If a man were dispossessed of his land an action lay in respect of disseisin but to interfere with his right over the land without going so far as to dispossess him was transgressio or nocumentum according to whether the act complained of was done on or off the plaintiff's land. Nuisance could never be committed on the plaintiff's land for an act done on the land would be disseisin or trespass, according to the circumstances.

The essense of nuisance was, therefore, that it was a tort to land or, to be more accurate, a tort directed against the enjoyment of rights over land, for nuisance might also be brought for interference with a man's right over the land of another by way of easment or profit. Since nuisance was so essentially a tort to land the idea than an action for nuisance could be brought in respect of personal injury never occurred to early lawyers. That such an idea did eventually come to be held appears to be the result of an incautious obiter dictum which was let fall in the Common Pleas in 1535 when Fitzherbert J. said (Y.B. 27 Hen. VIII, Mich. Pl. 10):

> If a man make a trench across the highway, and I come riding that way by night, and I and my horse together fall in the trench so that I have great damage and inconvenience in that, I shall have an action against him who made the trench across the road because I am more damaged than any other man.

Although the last nine words quoted make it clear that the illustration was given in support of the proposition that a public nuisance is actionable at the suit of a private person if that person has suffered damage greater than that suffered by the public in general and although the action in the case then being decided arose not because of any personal injury but because the highway was obstructed in such a way that the plaintiff was denied access to his close (and therefore it should have been obvious that these remarks were obiter), subsequent generations of lawyers seized upon this dictum avidly and at that point nuisance moved into the realm of personal injuries and away from its original conception as purely a tort to the enjoyment of rights over or interests in land. This hypothetical instance of Fitzherbert J.'s was really a case of negligence born before its time and was the precursor of the long line of cases, starting with Michael v. Alestree (1676), 2 Lev. 172), concerning the duty to take care owed to users of the highway but, as well as being responsible for the introduction of the element of personal injury, it must bear responsibility for having aided in the wearing down of the idea that the true nuisance must have some permanence about it. Though this idea cannot strictly be called a principle, since it has never been laid down decisively in any case, there are plenty of dicta scattered through the reports to support it and this must surely have been Blackburn J.'s opinion as had he considered an isolated escape actionable as a nuisance between adjoining owners he would not have needed to invoke and formulate so clearly the principle in Fletcher v. Rylands.

On the surface it might appear that the law has now developed too far for it to be set back at this date onto the right track but a careful examination of many of the cases where a person has recovered for personal injuries suffered as the result of what has been held to be a

nuisance shows that the interest of the plaintiff which is invaded is not the interest of bodily security but the interest of liberty to exercise rights over land in the amplest manner. A sulphurous chimney in a residential area is a nuisance not because it makes householders cough and splutter but because it prevents them taking their ease in, and thus making the fullest use of, their gardens. It is for this reason that the plaintiff in an action for nuisance must show some title to or interest in realty (see for example, Cunard v. Antifyre Ltd., [1933] 1 K.B. 551). Likewise, it is because the plaintiff must show some act which disturbs the actual or prospective enjoyment of rights over land that it is felt that the true nuisance should normally have some degree of permanence about it or about its effect on the land or the enjoyment of the land. It may well happen, of course, that where an actionable nuisance is committed which in addition to interfering with the plaintiff's enjoyment of rights in land also damages his person or his chattels, he can recover in respect of the personal injuries as consequential damages. Moreover, the interference with the plaintiff's right of enjoyment of his land might take the shape of a risk of personal injury to which, because of the nuisance, the plaintiff might be exposed if he used his land to the fullest extent consistent with his rights. In both these instances the personal injury factor is material but only insofar as it bears on the primary question of interference with the enjoyment of rights in the land.

The problem resolves itself, therefore, into a question of the extent to which a particular personal injury carries within itself the essence of an interference with the injured person's enjoyment of rights in the land. A clue to the solution is to be found in the direction to the jury by Mellor J. in St. Helen's Smelting Co. v. Tipping (1863), 4 B. & S. 608 at 610:

> . . . every man is bound to use his own property in such a manner as not to injure the property of his neighbour, unless, by the lapse of a certain period of time, he has acquired a prescriptive right to do so. But the law does not regard trifling inconveniences; every thing must be looked at from a reasonable point of view; and therefore, in an action for nuisance to

> property by noxious vapours arising on the land of another, the injury to be actionable must be such as visibly to diminish the value of the property and the comfort and enjoyment of it.

This direction, together with the relevant authorities, was exhaustively examined when the case came to the House of Lords (11 H.L. Cas. 642), and was there expressly approved. It suggests, as Fry J. pointed out in Fritz v. Hobson (1880), 4 Ch.D. 542, that the duration of the alleged nuisance is not the criterion (else it would be impossible to draw the line between what duration is sufficient to constitute a nuisance and what is not) but rather the duration of the effect of it upon the plaintiff's enjoyment of his property, and it is this distinction which explains cases such as Knight v. Isle of Wight Electric Light and Power Co., [1904] 1 Ch. 707, Metropolitan Properties, Ltd. v. Jones, [1939] 2 All E.R. 202 and Fritz v. Hobson itself, where the act complained of was itself of single occurrance or momentary but the effect on the enjoyment of the property was substantial. This is what is meant when it is said that the injury must be "of a substantial character, not fleeting or evanescent" per Brett J. in Benjamin v. Storr (1874), L.R. 9 C.P. 400, at 407.

This phrase is, however, liable to be misapplied unless it is remembered that the injury referred to is injury to the enjoyment of property. The plaintiff in the present case suffered injury that was substantial, both in regard to himself and to his horse, but it did not "diminish the value of the property and the comfort and enjoyment of it." No doubt, if it could be shown that there was a probability or a likelihood of a recurrence of the escape of radiation it could be said that the property and the enjoyment of it had been so impaired, since it would then be unsafe to venture onto it, but there is no suggestion that this is the case. There has been a single damnifying episode causing substantial injury to the plaintiff's person and to his horse but there does not seem to have been an interference with his rights in the land sufficient to constitute an actionable private nuisance. In the result, therefore, the unfortunate plaintiff is left without remedy and a further instance of damnum absque injuria has arisen. That this result has been foreseen and anticipated in the United Kingdom is shown

by Section 5 (3) of the Atomic Energy Authority Act, 1954, which imposes on the Authority an absolute duty to prevent damage to persons or property from ionising radiations. This enactment, without concluding the question either way, seems at least to recognise that the state of the law on this point is doubtful and that there is a possibility that the doubt would have been resolved in the way in which I have felt compelled by the existing authorities to resolve it.

NOTE:

The question of the recovery of damages for personal injury under the rule in Rylands v. Fletcher (supra) was discussed in a recent decision of the Court of Appeal in England, Perry v. Kendricks Transport, Ltd., [1956] 1 W.L.R. 85. The decision of the Court was based on the application of an exception to the rule, namely that an occupier of land is not liable if the harm done was due to the act of a stranger. Parker L.J. stated however (at 92), that he did not think "it is open to this Court to hold that the rule only applies to damage to adjoining land or to a proprietary interest in land and not to personal injury." Singleton L.J. (at 87) was prepared to assume that an action for damages for personal injuries would lie when there was an escape within the rule. Jenkins L.J. did not advert to the problem.