Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of the Madras Railway Company v. *the Zemindar of Carvetinagarum, from the High Court of Judicature at Madras; delivered the 3rd July,* 1874.

Present:

Sir James W. Colvile.
Sir Barnes Peacock.
Sir Robert P. Collier.

Sir Lawrence Peel.

THE Madras Railway Company claimed in this suit damages against the Defendant, the Zemindar of Carvetinagarum for injuries occasioned to their railway and works by the bursting of two tanks upon his land.

The Defendant denied that the injuries complained of resulted from the bursting of the tanks; he asserted that if they did so arise, the bursting was caused by no act or negligence of his, but by vis-major, or the act of God. He further pleaded in these terms:—

"4. The tanks referred to in the Plaint have existed from time immemorial, and are requisite and absolutely necessary for the cultivation and enjoyment of the land, which cannot be otherwise irrigated; and the practice of storing water in such tanks in India, and particularly in this district and in the Zemindary of Carvetinagarum and the adjacent districts, is lawful, and is sanctioned by usage and custom. The said zemindary is a hilly district, and the Ryots will be unable to carry on their cultivation without such tanks, they being the chief source of irrigation, and the omission to store quantities of water in such tanks will be attended with consequences dreadful to the inhabitants of the country.

"7. The Defendant could not have avoided collecting a

quantity of water in the tanks during the monsoon, and he has not failed to use any reasonable care that may be expected from him. There were also several tanks and channels above his tank belonging to Government and other people, which also burst at the same time."

He also contended that the damage arose through want of proper care on the part of the Defendants in the construction of their works, but this contention was abandoned. It was found by both Courts, and is not now disputed, that the works of the Plaintiffs did suffer serious damage from the bursting of the tanks; these last two questions, therefore, need not be further referred to.

The issues, as far as they are material to this Appeal, agreed to by the parties, were—

1. Whether the injuries complained of were the result of vis-major, or the act of God, or other influences beyond the Defendant's control.

2. Whether Defendant is liable for any, and if so what, damages sustained by the Plaintiffs.

The evidence given in the cause may be summarized as follows:—It was shown that the tanks of the Defendant, which were ancient tanks, the date of their origin not appearing, were constructed in the usual manner, that the banks were properly attended to and kept in repair, that sluices and outlets for the water were provided of the kind usually employed both in private and Government tanks, and usually found sufficient, and which had proved sufficient to prevent any overflow or bursting of the tanks in question for twenty years; but that an improved description of sluice, of recent introduction, would be still more efficacious. That at or some days before the accident there had been an unusual and almost unprecedented fall of rain, described by the Deputy-Inspector of the Railway as the heaviest he had ever seen during his residence of thirteen years in the locality, and by witnesses for the Defendant as exceeding any fall of rain for twenty years; that this extraordinary flood, which caused the neighbouring river to overflow, and possibly brought down to the tanks, whose overflowing is complained of, the contents of other tanks at higher levels, proved more than the sluices could carry off, that the banks of the tanks were overflowed, and finally carried away.

Upon these facts the Acting Civil Judge of the

Civil Court of Chittoor found for the Defendant, holding that he was not liable in the absence of negligence, and that he had not been negligent.

This Judgment was affirmed by the High Court on appeal.

The Appellant now contends that the Judgment of the High Court should be reversed on two grounds—

1st. That the Defendant, by storing up water on his land, rendered himself liable in damages should it escape and do injury to other persons, even though he might not have been guilty of negligence.

2nd. That both the Indian Courts have applied an erroneous rule of law to the consideration of the question of negligence.

The case mainly relied upon in support of the first contention is Fletcher *v.* Rylands, Law Reports, 3, House of Lords, 330, which it becomes necessary to examine. In that case the Plaintiffs, the owners of a mine, sued for damages, the Defendants, owners of some adjacent land, who had constructed a reservoir on their land for the purpose of working a mill, from which reservoir water flowed through some disused mining works into the Plaintiff's mine, and flooded it. It was held by the Exchequer Chamber and by the House of Lords that the Plaintiffs were entitled to damages against the Defendants.

The grounds of this Judgment are stated very clearly and shortly by the then Lord Chancellor (Lord Cairns), and Lord Cranworth.

The Lord Chancellor says :—

" The principles on which this case must be determined appear to me to be extremely simple. The Defendants, treating them as the owners and 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 the land, be used ; and if, in what I may term the natural use 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. . . . On the other hand, if the Defendants, not stopping at the natural use of their close, had desired to use it for any pur-

pose 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 off 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 . . . 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."

Lord Cranworth thus states the principle of the decision:—

"If a person brings and 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 . . . . and the doctrine is founded in good sense. For when one person in managing his own affairs, causes, however innocently, damage to another, it is obviously only just that he should be the party to suffer. He is bound *sic uti suo ut non lædat alienum.*"

But the principle that a man, in exercising a right which belongs to him, may be liable, without negligence, for injury done to another person, has been held inapplicable to rights conferred by Statute.

This distinction was acted upon in Vaughan *v.* the Taff Vale Railway Company, 5, Hurlston and Norman, 679, where it was held by the Exchequer Chamber that a Railway Company were not responsible for damage from fire kindled by sparks from their locomotive engine, in the absence of negligence, because they were authorized to use locomotive engines by Statute. Cockburn, C. J., observes, "where the Legislature has sanctioned and authorized the use of a particular thing, and it is used for the purpose for which it was authorized, and every precaution has been observed to prevent injury, the sanction of the Legislature carries with it this consequence, that if damages result from the use of such a thing independently of negligence, the person using it is not responsible." This view is fortified by the consideration that the Legislature may be presumed not to

have conferred special powers on persons or companies, without being satisfied that the exercise of them would be for the benefit of the public, as well as of the grantees. On the same principle it was decided that a waterworks company laying down pipes by a statutory power, were not liable for damages occasioned by water escaping in consequence of a fire-plug being forced out of its place by a frost of unusual severity. (Blyth *v.* The Birmingham Waterworks Company, 25 Law J., p. 212.)

On the other hand, in Jones *v.* the Festiniog Railway Company (3 Law Rep., Q. B., 733) it was held that a Railway Company which had not express statutable power to use locomotive engines, was liable for damage done by fire proceeding from them, though negligence on the part of the Company was negatived.

It has been argued on the part of the Respondent that the case of Rylands *v.* Fletcher, decided on the relations subsisting between adjoining landowners in this country, has no application whatever to India. Though that case would not be binding as an authority upon a Court in India not administering English law, their Lordships are far from holding that, decided as it was, on the application of the maxim, *sic utere tuo ut alienum non lædas,* expressing a principle recognized by the laws of all civilized countries, it does not afford a rule applicable to circumstances of the same character in India,—they are of opinion, however, that the circumstances of the present case are essentially distinguishable.

The tanks are ancient, and formed part of what may be termed a national system of irrigation, recognized by Hindoo and Mahomedan Law, by regulations of the East India Company, and by experience older than history, as essential to the welfare, and, indeed, to the existence of a large portion of the population of India. The public duty of maintaining existing tanks, and of constructing new ones in many places, was originally undertaken by the Government of India, and upon the settlement of the country has, in many instances, devolved on zemindars, of whom the Defendant is one. The zemindars have no power to do away with these tanks, in the maintenance of which large numbers of people are interested, but are charged

under Indian Law, by reason of their tenure, with the duty of preserving and repairing them. From this statement of facts referred to in the Judgment of the High Court, and vouched by history and common knowledge it becomes apparent that the Defendant in this case is in a very different position from the Defendants in Rylands *v.* Fletcher.

In that case the Defendants, for their own purposes, brought upon their land and there accumulated a large quantity of water by what is termed by Lord Cairns "a non-natural use" of their land. They were under no obligation, public or private, to make or to maintain the reservoir; no rights in it had been acquired by other persons, and they could have removed it if they had thought fit. The rights and liabilities of the Defendant appear to their Lordships much more analogous to those of persons or corporations on whom statutory powers have been conferred and statutory duties imposed. The duty of the Defendant to maintain the tanks appears to their Lordships a duty of very much the same description as that of the Railway Company to maintain their railway; and they are of opinion that, if the banks of his tank are washed away by an extraordinary flood without negligence on his part, he is no more liable for damage occasioned thereby than they would be for damage to a passenger on their line, or to the lands of an adjoining proprietor occasioned by the banks of the railway being washed away under similar circumstances. (See Withers *v.* the North Kent Railway Company, 27 Law Journal, Exch., p. 417.)

The second ground on which the Appellant relied was not so clearly stated; their Lordships understood it to be, in substance, that the Court below and the High Court estimated by a wrong standard the amount of care which the law requires of the Defendant.

It should be observed that the question of negligence was little, if at all, argued in the High Court.

The Judge of the Court below quotes and applies to the case the following definition of negligence by Baron Alderson:—"Negligence consists in the omitting to do something that a reasonable man would do, or in the doing something that a reasonable man would not do, in either case unintentionally causing mischief to a third party;" and the High Court confirm this view of the law. Without

adopting every expression of the Judge of the inferior Court, their Lordships are unable to say that the case has been decided on an erroneous view of the law. On the question of fact whether or not negligence was proved by the evidence, they see no sufficient reason for departing from their ordinary rule of not disturbing the concurrent finding of two Courts.

For these reasons their Lordships will humbly advise Her Majesty that the Judgment of the Court below should be affirmed, and the Appeal dismissed with costs.

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