1868
July 6, 7, 17.

JOHN RYLANDS AND JEHU HORROCKS . . { PLAINTIFFS IN ERROR;

AND

THOMAS FLETCHER . . . . . { DEFENDANT IN ERROR.

Mine—Negligence—Use of own Property—Water.

Where the owner of land, without wilfulness or negligence, uses his land in the ordinary manner of its use, though mischief should thereby be occasioned to his neighbour, he will not be liable in damages.

But if he brings upon his land any thing which would not naturally come upon it, and which is in itself dangerous, and may become mischievous if not kept under proper control, though in so doing he may act without personal wilfulness or negligence, he will be liable in damages for any mischief thereby occasioned.

A. was the lessee of mines. *B.* was the owner of a mill standing on land adjoining that under which the mines were worked. *B.* desired to construct a reservoir, and employed competent persons, an engineer and a contractor, to construct it. *A.* had worked his mines up to a spot where there were certain old passages of disused mines; these passages were connected with vertical shafts which communicated with the land above, and which had also been out of use for years, and were apparently filled with marl and the earth of the surrounding land. No care was taken by the engineer or the contractor to block up these shafts, and shortly after water had been introduced into the reservoir it broke through some of the shafts, flowed through the old passages and flooded *A.*'s mine:—

Held, that *A.* was entitled to recover damages from *B.* in respect of this injury.

THIS was a proceeding in Error against a judgment of the Exchequer Chamber, which had reversed a previous judgment of the Court of Exchequer.

In November, 1861, *Fletcher* brought an action against *Ryland & Horrocks*, to recover damages for an injury caused to his mines by water overflowing into them from a reservoir which the Defendants had constructed. The declaration contained three counts, and each count alleged negligence on the part of the Defendants, but in this House the case was ultimately treated upon the principle of determining the relative rights of the parties independently of any question of personal negligence by the Defendants in the exercise of them.

The cause came on for trial at the *Liverpool* Summer Assizes of

1862, when it was referred to an arbitrator, who was afterwards directed, instead of making an award, to prepare a special case for the consideration of the Judges. This was done, and the case was argued in the Court of Exchequer in Trinity Term, 1865.

The material facts of the case were these:—The Plaintiff was the lessee of certain coal mines known as the *Red House Colliery*, under the Earl of *Wilton*. He had also obtained from two other persons, Mr *Hulton* and Mr. *Whitehead*, leave to work for coal under their lands. The positions of the various properties were these:—There was a turnpike road leading from *Bury* to *Bolton*, which formed a southern boundary to the properties of these different persons. A parish road, called the *Old Wood Lane*, formed their northern boundary. These roads might be described as forming two sides of a square, of which the other two sides were formed by the lands of Mr. *Whitehead* on the east and Lord *Wilton* on the west. The Defendants' grounds lay along the turnpike road, or southern boundary, stretching from its centre westward. On these grounds were a mill and a small old reservoir. The proper grounds of the *Red House Colliery* also lay, in part, along the southern boundary, stretching from its centre eastward. Immediately north of the Defendants' land lay the land of Mr. *Hulton*, and still farther north that of Lord *Wilton*. On this land of Lord *Wilton* the Defendants, in 1860, constructed (with his Lordship's permission) a new reservoir, the water from which would pass almost in a southerly direction across a part of the land of Lord *Wilton* and the land of Mr. *Hulton*, and so reach the Defendant's mill. The line of direction from this new reservoir to the *Red Colliery* mine was nearly south-east.

The Plaintiff, under his lease from Lord *Wilton*, and under his agreements with Messrs. *Hulton* and *Whitehead*, worked the mines under their respective lands. In the course of doing so, he came upon old shafts and passages of mines formerly worked, but of which the workings had long ceased; the origin and the existence of these shafts and passages were unknown. The shafts were vertical, the passages horizontal, and the former especially seemed filled with marl and rubbish. Defendants employed for the purpose of constructing their new reservoir persons who were admitted to be competent as engineers and contractors to perform the work,

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and there was no charge of negligence made against the Defendants personally. But in the course of excavating the bed of the new reservoir, five old shafts, running vertically downwards, were met with in the portion of the land selected for its site. The case found that "on the part of the Defendants there was no personal negligence or default whatever in or about, or in relation to, the selection of the said site, or in or about the planning or construction of the said reservoir; but, in point of fact, reasonable and proper care and skill were not exercised by, or on the part of, the persons so employed by them, with reference to the shafts so met with as aforesaid, to provide for the sufficiency of the said reservoir to bear the pressure of water which, when filled to the height proposed, it would have to bear."

The reservoir was completed at the beginning of December, 1860, and on the morning of the 11th of that month the reservoir, being then partially filled with water, one of the aforesaid vertical shafts gave way, and burst downwards, in consequence of which the water of the reservoir flowed into the old passages and coal-workings underneath, and by means of the underground communications then existing between them and the Plaintiff's workings in the *Red House Colliery*, the colliery was flooded and the workings thereof stopped.

The question for the opinion of the Court was whether the Plaintiff was entitled to recover damages by reason of the matters hereinbefore stated. The Court of Exchequer, Mr. Baron *Bramwell* dissenting, gave judgment for the Defendants (1). That judgment was afterwards reversed in the Court of Exchequer Chamber (2). The case was then brought on Error to this House.

Sir *R. Palmer*, Q.C., and Mr. *T. Jones*, Q.C., for the Defendants (now Plaintiffs in Error):—

In considering this case it is important to remember that the communications between the workings of the Plaintiff and the old shafts and pits were not known to the Defendants. The question, therefore, is, whether they can be held responsible for an injury which, as the possible cause of it was unknown to them, they could not by any care on their part prevent. It is submitted that they

(1) 3 H. & C. 774. (2) 4 Ibid. 263; Law Rep. 1 Ex. 265.

are not liable. Every man has a right to use his own land for lawful purposes, and if he does so, and does so without knowledge that he will thereby occasion injury to another, he cannot be held responsible should injury occur. For that is a case which comes within the legal description of *damnum absque injuriâ*. The principle adopted by the Exchequer Chamber here, that though a man uses his lawful rights without malice and without knowledge of danger, he may still be liable for any mischief occurring from such use, is too wide. It would make every man responsible for every mischief he occasioned, however involuntarily, or even unconsciously. Now knowledge of possible mischief is of the very essence of the liability incurred by occasioning it: *Acton* v. *Blundell* (1); *Chasemore* v. *Richards* (2). That has always been recognised as one of the principles of our law, and has, as such, been adopted by the Courts in *America*: *Pixley* v. *Clark* (3). *Smith* v. *Kenrick* (4) shewed that where two rivers lay contiguous to each other, but neither was subject to a servitude to the other, each owner had a right to work

(1) 12 M. & W. 324.

(2) 7 H. L. C. 349.

(3) 32 Barbour's Reports (*New York*). The head-note of the case is as follows:—"Individuals owning the bed of a stream, and each bank thereof, have the right to build a dam and embankment, and raise the water of the stream as high as they please, subject only to the restriction resting upon all, so to enjoy their own property as not to injure that of another person, with the qualifications and limitations incident to that right of property.

"And if they, in the exercise of that right, build with due care an embankment to prevent the water, when raised by their dam above the natural banks of the stream, from overflowing the lands of adjacent owners, and in consequence of raising their dam the water finds its way through their own natural soil and below the surface thereof, by filtration, percolation, or otherwise, to the land of an adjacent proprietor, the owners of such dam and embankment are not, in the absence of any unskilfulness, negligence, or malice, liable to such adjacent proprietor for any damage he may sustain thereby; the injury being *damnum absque injuriâ*.

"A party is liable for any defect in his artificial erections which might have been remedied by reasonable care and skill, but not for any defect in the natural banks of a stream.

"Where persons have the right to use the waters of a stream for manufacturing purposes, the right to dam the water and detain it a reasonable time follows as a necessary incident to the right of user; and they cannot be compelled to make an artificial reservoir for that purpose.

"The banks of the stream are theirs for that purpose; and so long as the water is only nominally detained for this lawful, customary, and proper purpose, the adjacent landowners must submit to the indirect and consequential damages resulting to their lands from such use."

(4) 7 C. B. 515.

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his own mine in the best way for his own benefit, and, if he did so without negligence, was not liable to the other for prejudice to his property which might thereby arise. That case is very important, for there knowledge existed which it is not pretended existed here. In the time of *Bracton* the rule existed that injury created to one man by the lawful act of another, if that act was done without wilfulness or negligence, would not afford a title to a claim of damages (1). That must be the rule in the present day, for otherwise no man could use his property, however carefully, without being liable to pay damages for mischief which, without any fault or even any knowledge of his own, might afterwards occur. *Chadwick* v. *Trower* (2) gives the answer to that proposition. There it was held that a man who pulled down his own wall was not bound to give notice to his neighbour of his intention to do so, and was not liable to that neighbour in damages merely because, in pulling it down, he damaged an underground wall of his neighbour's, of the existence of which he had no knowledge. That case, so far as principle is concerned, exactly resembles the present. *Tenant* v. *Goldwin* (3) does not affect the Defendants here, for there all the facts were fully known to both parties, and the Court merely decided that, that being so, the Defendant was bound to keep his own property in such a state that it should not injure his neighbour. *Bagnall* v. *The North Western Railway Company* (4) at first sight appears much nearer the present case; but there all the facts as to the condition of the soil and the parts worked through were known, and in that respect, therefore, the difference between the two cases is complete. The want of knowledge here is an essential ingredient in the case. The principle laid down by Mr. Baron *Bramwell* in this case, that a man in the use of his own property must take care that he does not injure that of his neighbour, is true in itself, but cannot be applied to a case like the present, where the injury which happens is merely consequential, and is the result of circumstances as to which neither knowledge of them, nor negligence in providing against them, can be imputable to the Defendants. Indeed, the fault, if any, is with the Plaintiff. He began the work in his mines some years ago, and in the

(1) Bract. bk. 4, c. 37, fol. 221.
(2) 6 Bing. N. C. 1.
(3) 1 Salk. 360; 2 Ld. Raym. 1089.
(4) 7 H. & N. 423; 1 H. & C. 544.

progress of it he came to know of these passages. He ought to have communicated his knowledge of them to the Defendants, who might then have provided against this mischief, but he did not. The obligation to give notice of the circumstances, if they were to be relied on as creating any liability in another party, was recognised in *Partridge* v. *Scott* (1). Here, too, the Defendants employed competent persons to do something which was in itself perfectly lawful, and they cannot be held liable in damages without clear evidence of impropriety or negligence on their own parts. The person who actually does the work is alone liable: *Baker* v. *Hunter* (2); *Richards* v. *Hayward* (3); *Peachey* v. *Rowland* (4); *Allen* v. *Hayward* (5). *Sutton* v. *Clarke* (6) is clearly in favour of the Defendants. No pretence for setting up this charge of neglect was suggested in this case. On the facts, therefore, as well as on the principles of law, the judgment against the Defendants cannot be supported.

Mr. *Manisty*, Q.C., and Mr. *J. A. Russell*, Q.C., for the Plaintiff below (now the Defendant in Error):—

The mines here were worked in the ordinary way, and their owner is entitled to be protected against a flow of water which destroyed his works, and which was occasioned by the act of others. If the water had come into his mine from natural causes alone, he could not have complained; but it came in through the act of the Defendants in making their reservoir. They introduced there water which would not have come there in a natural way, and they were therefore bound to see that it did not produce mischief to any one. They brought the mischief on the land, and they were bound to guard against the consequences. *Baird* v. *Williamson* (7) really disposes of this case, on the ground of the distinction between water flowing on to land, from natural gravitation, and water brought there through the act of an adjoining landowner. *Smith* v. *Kenrick* (8) had established that each of two mine owners might work his own mine in the ordinary and proper way, and that if, from such working, and without negligence on the part of the one, an injury was

(1) 3 M. & W. 220.
(2) 31 L. J. (Ex.) 214; 7 H. & N. 1.
(3) 2 Man. & G. 575.
(4) 13 C. B. 182.
(5) 7 Q. B. 960.
(6) 6 Taunt. 29.
(7) 15 C. B. (N. S.) 376.
(8) 7 C. B. 515.

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occasioned to the property of the other, the former was not liable. That proposition is not contested; but that case implied that if the injury was occasioned by something which was not ordinary working, the injury thereby occasioned would be the subject of a claim for damages. Here the construction of the reservoir was not an ordinary working of the property of the Defendants. *Baird* v. *Williamson* completed what *Smith* v. *Kenrick* had left deficient, and the two, taken together, established beyond all question the title of the Plaintiff here to recover damages. The case of *Sutton* v. *Clarke* (1) merely decided that a public functionary acting to the best of his judgment and without malice, and obtaining the best assistance he can, is not liable to a claim for damages if what he does operates to the prejudice of an individual. That case does not affect the present, except that it indirectly confirms the doctrine now contended for, namely, that though the act was in itself lawful, yet if the doing of it occasions an injury to any one, the person injured has a right of action. The principle that an injury, though only consequent on an act, and not developing itself till some years after the act done, may still be the subject of a claim for damages, was settled in *Backhouse* v. *Bonomi* (2), and there the act which occasioned the injury was in itself a lawful act, and there had been nothing but the mere ordinary working of the mines; yet, as it resulted in a mischief to the property of other people, it was held to be a subject for compensation. In *Hodgkinson* v. *Ennor* (3) the Defendant had polluted a stream by works on his own land, which works were not in themselves illegal, but they were not the natural mode of working the property, and they produced a mischief to his neighbour; he was therefore held responsible in damages. Lord Chief Justice *Cockburn* there said, that it was a case in which the maxim "*Sic utere tuo ut alienum non lædas*" applied; and Mr. Justice *Blackburn* declared "the law to be as in *Tenant* v. *Goldwin* (4), that you must not injure the property of your neighbour, and, consequently, if filth is created on any man's land, 'he whose dirt it is must keep it that it may not trespass.'" Making a shaft to mine a is, no doubt, a part of the proper and ordinary way of working mining property, but the shaft must be so made and

(1) 6 Taunt. 29.
(2) El. Bl. & El. 622; 9 H. L. C. 503.
(3) 4 B. & S. 229.
(4) 2 Ld. Raym. 1089; Salk. 360.

fenced that it shall not occasion injury to the property of others, and if not so made and kept, any injury thereby occasioned must be compensated. *Williams* v. *Groucott* (1), and *Imperial Gas Company* v. *Broadbent* (2), went altogether on that principle; so did *Bamford* v. *Turnley* (3), and *Tipping* v. *St. Helen's Smelting Company* (4).

As was said in *Lambert* v. *Bessey* (5), "if a man doeth a lawful act, yet if injury to another ariseth from it, the man who does the act shall be answerable;" and many illustrations of the principle are there given. Every one of them justifies the argument which seeks to fix liability on these Defendants.

The millowners are liable here, though they employed a competent engineer and contractor, and were not themselves guilty of any personal negligence. The principle, *qui facit per alium facit per se*, applies here, and the principal is liable for the negligence of his agent: *Paley* (6); *Pickard* v. *Smith* (7).

Mr. *T. Jones* replied.

THE LORD CHANCELLOR (Lord *Cairns*):—

My Lords, in this case the Plaintiff (I may use the description of the parties in the action) is the occupier of a mine and works under a close of land. The Defendants are the owners of a mill in his neighbourhood, and they proposed to make a reservoir for the purpose of keeping and storing water to be used about their mill upon another close of land, which, for the purposes of this case, may be taken as being adjoining to the close of the Plaintiff, although, in point of fact, some intervening land lay between the two. Underneath the close of land of the Defendants on which they proposed to construct their reservoir there were certain old and disused mining passages and works. There were five vertical shafts, and some horizontal shafts communicating with them. The vertical shafts had been filled up with soil and rubbish, and it does not appear that any person was aware of the existence either of the vertical shafts or of the horizontal works communicating with them. In the course of the working by the Plaintiff of his mine,

(1) 4 B. & S. 149.
(2) 7 H. L. C. 600.
(3) 3 B. & S. 62.
(4) 4 B. & S. 609; 11 H. L. C. 642.
(5) Sir T. Raym. 421.
(6) Pr. & Ag. 262.
(7) 10 C. B. (N. S.) 470.

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he had gradually worked through the seams of coal underneath the close, and had come into contact with the old and disused works underneath the close of the Defendants.

In that state of things the reservoir of the Defendants was constructed. It 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, when the special case stating the facts to which I have referred, was argued, was of opinion that the Plaintiff had established no cause of action. The Court of Exchequer Chamber, before which an appeal from this 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 (1).

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 to 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* (2), 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 Mr. Justice *Blackburn* 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 true 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 *primâ facie*

(1) 7 C. B. 515. (2) 15 C. B. (N. S.) 317.

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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. 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 Mr. Justice *Blackburn* 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 considering whether a Defendant is liable to a Plaintiff for damage which the Plaintiff may have sustained, the question in general is not whether the Defendant has acted with due care and caution, but whether his acts have occasioned the damage. This is all well explained in the old case of *Lambert* v. *Bessey*, reported by Sir *Thomas Raymond* (1). And the doctrine is founded on 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*. This is the principle of law applicable to cases like the present, and I do not discover in the authorities which were cited anything conflicting with it.

The doctrine appears to me to be well illustrated by the two modern cases in the Court of Common Pleas referred to by my noble and learned friend. I allude to the two cases of *Smith* v. *Kenrick* (2), and *Baird* v. *Williamson* (3). In the former the owner of a coal mine on the higher level worked out the whole of his coal, leaving no barrier between his mine and the mine on the lower level, so that the water percolating through the upper mine flowed into the lower mine, and obstructed the owner of it in getting his coal. It was held that the owner of the lower mine had no ground of complaint. The Defendant, the owner of the upper mine, had a right to remove all his coal. The damage sustained by the Plaintiff was occasioned by the natural flow or percolation of water from the upper strata. There was no obligation on the Defendant to protect the Plaintiff against this. It was his business to erect or leave a sufficient barrier to keep out the water, or to adopt proper means for so conducting the water as that it should not impede him in his workings. The water, in that case, was only left by the Defendant to flow in its natural course.

But in the later case of *Baird* v. *Williamson* the Defendant, the owner of the upper mine, did not merely suffer the water to flow through his mine without leaving a barrier between it and the mine below, but in order to work his own mine beneficially he pumped up quantities of water which passed into the Plaintiff's mine in addition to that which would have naturally reached it, and so occasioned him damage. Though this was done without

(1) Sir T. Raym. 421. (2) 7 C. B. 564. (3) 15 C. B. (N. S.) 376.

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negligence, and in the due working of his own mine, yet he was held to be responsible for the damage so occasioned. It was in consequence of his act, whether skilfully or unskilfully performed, that the Plaintiff had been damaged, and he was therefore held liable for the consequences. The damage in the former case may be treated as having arisen from the act of God; in the latter, from the act of the Defendant.

Applying the principle of these decisions to the case now before the House, I come without hesitation to the conclusion that the judgment of the Exchequer Chamber was right. The Plaintiff had a right to work his coal through the lands of Mr. *Whitehead*, and up to the old workings. If water naturally rising in the Defendants' land (we may treat the land as the land of the Defendants for the purpose of this case) had by percolation found its way down to the Plaintiff's mine through the old workings, and so had impeded his operations, that would not have afforded him any ground of complaint. Even if all the old workings had been made by the Plaintiff, he would have done no more than he was entitled to do; for, according to the principle acted on in *Smith* v. *Kenrick*, the person working the mine, under the close in which the reservoir was made, had a right to win and carry away all the coal without leaving any wall or barrier against *Whitehead's* land. But that is not the real state of the case. The Defendants, in order to effect an object of their own, brought on to their land, or on to land which for this purpose may be treated as being theirs, a large accumulated mass of water, and stored it up in a reservoir. The consequence of this was damage to the Plaintiff, and for that damage, however skilfully and carefully the accumulation was made, the Defendants, according to the principles and authorities to which I have adverted, were certainly responsible.

I concur, therefore, with my noble and learned friend in thinking that the judgment below must be affirmed, and that there must be judgment for the Defendant in Error.

Judgment of the Court of Exchequer Chamber affirmed.

Lords' Journals, 17th July, 1868.

Attorneys for Plaintiffs in Error: *N. C. & C. Milne.*
Attorneys for Defendant in Error: *Norris & Allen.*