different lines of cases were cited to the Court. Scott L.J. after a survey of both lines of authority considers that the Court is faced with a conflict between its own previous decisions, and considers himself bound and entitled to choose the authority he considers good law. Luxmoore and Du Parcq L.JJ. take the view that the lines of authority are reconcilable and that they are bound by the line of cases not chosen by Scott L.J. Thus it appears that though text-book writers will now be free to delete the word " semble " from the statement that the Court of Appeal is bound by its own decisions, and to insert the reservations, yet there is still room for difference of opinion as to whether the Court is faced with conflicting decisions or not.

A. W. PHILLIPS.

## ESCAPE IN RYLANDS v. FLETCHER.

*Norah Read v. J. Lyons & Co. Ltd.* (1944) 2 *All. E.R.* 98.

Since Blackburn J.'s famous judgment in *Rylands v. Fletcher*[1] there has been doubt as to the precise limits of the application of the principles of strict liability formulated by him. His decision and its effects afford perhaps the best illustration of the fact that the law of tort must still be regarded as fluid for we can see through the reports an extension of the principles to types of damage which could not possibly have been within the learned judge's contemplation.[2]

A number of articles have in the past been written on the problem of whether the principles should apply to cases where the damage occurs on the land where the dangerous " thing " is kept. It does not appear that the matter received full judicial consideration until 1944 when the case under consideration was decided by Cassels J. But leading text-book writers seem to have held the opinion that strict liability should only apply where damage is done by the " escape " of the dangerous thing. Thus the learned author of Salmond on Torts[3] without dealing specifically with this question emphasizes throughout his paragraphs the necessity of escape. He says " the rule was limited to cases in which the defendant had made use of his own land in such a way as to case damage to others. The basis of the action was the disturbance of the plaintiff's possession."[4] So too, the footnote to the relevant paragraph of Halsbury's Laws of England states " the principle does not apply unless there is an escape from defendant's premises."[5] See also a recent article by Professor G. W. Paton[6] wherein the authorities for the proposition that the rule should not be extended to damage done by users of the land on which the danger is kept are fully set out.

Cassels J. was not, however, prepared to allow the authorities contained in the text books to outweigh a dictum of Lord Buckmaster. In

1. (1869) L.R. 3 H.L. 330.
2. See Dig. Vol. 36, pp. 189-194.
3. 9th Edit., pp. 576-578.
4. At p. 578.
5. Hailsham Edit., Vol. 24, p. 48, NP
6. 10 A.L.J. 472.

*Rainham Chemical Works Limited v. Belvedere Fish Guano Co. Ltd.*[7] Lord Buckmaster said, " . . . that even apart from negligence the use of land by one person in an exceptional manner that causes damage to another and not necessarily an adjacent owner, is actionable." Cassels J. had to decide on the following facts :—The defendants were the manufacturers of high explosive shells and the plaintiff was employed by them against her will and under directions from the Department of Labour and National Service. As a result of an explosion the plaintiff was injured. The defendants argued that even if any action lay it was met by the defence of *volenti non fit injuria*. This defence was shortly disposed of by the learned judge on the ground that the plaintiff was employed against her will.

The other defence caused greater difficulties. The defendant contended that no cause of action was disclosed, arguing that the principles of strict liability should not apply to a case like this. In the first place, Cassels J. found no difficulty in holding that the manufacture of explosives is a non-natural user—in spite of the defendants' contention that it was not a non-natural user having regard to the benefit to the community in a time of grave national danger.[8] Having so found, His Honor had to decide whether the rule of *Rylands v. Fletcher* could be applied—was it necessary to aver negligence ? He held the defendants were under a strict liability because they were dealing with dangerous things which got out of control.

Probably Counsel for the defendant had the balance of authority in his favour in contending that it is not a case of strict liability where the damage has occurred on the land where the danger is kept and that the foundation of *Rylands v. Fletcher* is trespass to adjoining land. The only cases cited by him and dealt with by the learned Judge in his judgment ment were *Ponting v. Noakes*[9] where the plaintiff's horse reached over a dividing fence and ate yew tree leaves resulting in death and *Howard v. Furness Houlder*[10] where the plaintiff was injured through the escape of steam on board the defendant's boat. As to the first case, His Honor distinguished it because the decision really turned on the fact that the horse was a trespasser. The Court held in the second case that there was no non-natural user. It is submitted, with respect, that this decision was not given its full effect, for it is, in part, clear authority for the proposition in favour of which it was cited by Counsel. It has in fact been relied on by at least one text book author as establishing that proposition.[11]

The extent to which the rule is extended is summed up in the following passage from the learned judge's judgment: " My view further is that the plaintiff's position inside the factory when she suffered the damage made no difference to her rights which were the same as if she had been outside the factory and had there been injured by the explosion."[12] He pointed out that if the defendant's contentions were accepted they would lead to very strange results and puts the position of a friend of the plain-

7. (1921) 2 A.C. 465 at 471.
8. On this point see *Rainham* case, (1921) 2A.C. 465.
9. (1894) 2 Q.B. 281.
10. (1936) 2 All E.R. 281.
11. Halsbury, p. 48, Vol. 24 N.P
12. At p. 101.

tiff's waiting outside the premises having a good cause of action whilst the plaintiff inside would have no action without proof of fault. He said, " I cannot see on principle why the plaintiff inside should be faced with the difficulty of proving negligence as the specific cause of the danger . . . whilst the friend outside need only say that the defendants were putting their land to a non-natural user."[13]

No doubt the decision is a logical and a just one. It appears, however, that the dictum of Lord Buckmaster on which Cassels J. so strongly relied was concerned, not with a case like this, but with cases where the plaintiff was not on adjacent property in the strict sense of the word. The rule had already been extended to people injured on the highway and to other cases where the plaintiff was not on adjacent property[14]—and it was probably to these cases that Lord Buckmaster was directing his attention.

Whether or not the decision will have the effect of simplifying the at present obscure position remains to be seen. It appears a new field has been opened and the rule in *Rylands v. Fletcher* should now be regarded as " having left behind the lowly station of its birth and as having assumed the status of a broad principle similar to the French Risque."[15]

JAMES B. DUGGAN.

NOTE.—The decision of Cassels J. in the above case has now been reversed by the Court of Appeal (Scott, MacKinnon and du Parcq, L.JJ.).[16] The chief ground for reversing this decision is that in the opinion of the court escape is a necessary element to found liability in *Rylands v. Fletcher* (*supra*). MacKinnon and du Parcq L.JJ. refer to the case of *Howard v. Furness Houlder*[17] where the argument that escape was unnecessary was pressed and rejected by Lewis J. Scott L.J. went further and held that the making of munitions in war-time was not a non-natural activity. MacKinnon L.J. held that the plaintiff was not *volens* but the remainder of the court avoided this issue. As leave to appeal to the House of Lords has been granted and therefore it is still possible that the extension to *Rylands v. Fletcher* contained in the judgment of Cassels J. may be reinstated, it has been thought advisable to let the above note be published.

—THE EDITORS.

13. At p. 105.
14. See e.g. *Charing Cross Electricity Supply Coy. v. Hydraulic Power Coy.*, (1914) 3 K.B. 785.
15. 10 A.L.J. 475.
16. *Read v. J. Lyons & Co. Ltd.*, 61 T.L.R. 148, [1945] 1 All E.R. 106.
17. [1936] 2 All. E.R. 281.