In *Prince* v. *Gregory*, [2] the plaintiff, a boy of 10, claimed damages against the first defendant, another boy, aged 15 years, and also against a second defendant, for injuries sustained while the plaintiff was playing in the street. By his statement of claim the plaintiff alleged that the second defendant was the owner of a pile of lime mortar situated in the gutter outside his home; that while the plaintiff was playing in the street the first defendant unlawfully picked up a quantity of the mortar and threw it at the plaintiff striking him in the right eye with the result that he suffered injury. The plaintiff claimed, inter alia, that the accident was occasioned or contributed to by the negligence of the second defendant, in that he placed the mortar in the gutter when he ought to have known that children habitually played in the road; that he failed to take any reasonable steps to cover the mortar or to prevent children from playing with it; that he caused the existence of a danger which he ought to have known to be an allurement to children and that he failed to take reasonable care to avoid acts which he could reasonably have foreseen to be likely to injure children.

The Court of Appeal held that the statement of claim disclosed no cause of action against the second defendant, on the facts stated therein, as he had acted reasonably in placing or leaving the lime mortar in the gutter; it was not a dangerous thing or something which would be an allurement to children, and the second defendant had no reason to apprehend that some mischievous boy would use it to injure another boy; accordingly, the plaintiff was not a neighbour of the second defendant within the principle of *Donoghue* v. *Stevenson*;[3] there was no question to be left to a jury and the court was entitled to exercise its inherent jurisdiction and order the claim against the defendant to be struck out.

A point worthy of note in this case is the treatment accorded by the Court of Appeal to one of its own previous decisions involving very similar facts, *Jackson* v. *London County Council and Chappell*.[4] The actions in both cases were framed in negligence; in both cases injury was caused to the eye by mortar being thrown by one boy at another. In both cases actions were brought against parties responsible for allowing the deposited mortar to be 'at large.' In *Jackson's* case, the mortar was left in a school-yard, whilst in the instant case, the mortar was left in the street. The decision of the Court of Appeal in the earlier case was that the trial judge properly left the question of negligence to the jury, i.e. that there was evidence which

1. LL.M. (London); of the Middle Temple, Barrister-at-Law; of the Federation of Malaya and of Singapore. Advocate and Solicitor; Deputy Registrar of the Supreme Court and Sheriff of Singapore; Part-time Lecturer in Civil Procedure in the University of Malaya in Singapore.
2. [1959] 1 W.L.R. 177 [1969] 1 All E.R. 133. [c.f. *A. V. Tucker* v. *Ang Oon Hue* (1957) 26 M.L.J. 115 — Ed.]
3. [1932] A.C. 562; 101 L.J.P.C. 119; 147 L.T. 281; 48 T.L.R. 494; 76 Sol. Jo. 396; 37 Com. Cas. 850.
4. (1912) 28 T.L.R. 359; 76 J.P, 217; 56 Sol. Jo. 428; 10 L.G.R. 348.

might properly be left to the jury. The substance of the appeal in the present case was against the decision of Thesiger J. in chambers reversing a decision of his Registrar that the statement of claim against the second defendant be struck out as frivolous and vexatious.

The argument of counsel for the plaintiff on the basis of the earlier case was rejected by the Court of Appeal. In his judgment, which was concurred in by Hodson L.J., Ormerod L.J. referred to this argument as one which "could be used in every case, I suppose, where something is left and an accident happens."[1] It appeared to his Lordship to be a question of degree. "In *Jackson's* case the place in question was a place where boys were intended to play, and were no doubt sent to play at certain intervals of the day. It is not unreasonable to say in those circumstances that anything left in the playground was something with which they would be likely to play. That seems to me to be a *very different* thing from something left in the street for a *useful and necessary purpose."*[2]

Such a finding could not but delight fact- and rule-sceptics both. *Jackson's* case demonstrates that anyone who expects from a jury an understanding and application of the fine distinctions of the law of negligence and dangerous chattels runs a high risk of frustration whilst the instant case is clear evidence that if rules (as opposed to 'indications') do exist, either their content is fluctuating or their operation is confined to very narrow bounds. A 'rule' of fluctuating content is, of course, a contradiction in terms, whilst one which operates only within such bounds as are laid down in the two cases under discussion is at the most of very limited practical usefulness. This is emphasised by the fact that in *Jackson's* case, we are told that the accident occurred not whilst the boys were undergoing a prescribed term of internecine amusement in the playground but after they had been discharged for the day. There was even doubt on the issue of fact as to whether the accident had occurred within the bounds of the school or in the street outside.

At all events, it seems that, according to the traditional view, although they exist in their immutable entirety, much patient judicial research remains to be carried out before the rules with regard to liability for mortar abandoned in a public amusement park, or outside a school-gate, can be 'discovered.'

H. G. CALVERT.[3]

1. It would seem that in every such case there would be *some* evidence upon which a finding of negligence could be based.
2. Italics supplied. This particular passage (the kernel of the judgment) would seem to beg the following comments: —
   (a) At the material time, the boys were not intended to play in the yard at all. School had closed and they were presumably intended to go home using, inter alia, both school-yard and street for that purpose.
   (b) It is difficult to see why the "difference" referred to should require the emphatic modification of "very."
   (c) It is difficult to see why the purpose for which the mortar was required in *Prince's* case was more "useful and necessary" than that in the *Jackson* case, yet this is the implication of the phraseology used by the court.
   (d) It is perhaps worthwhile noting that, although the 'purpose' was stated to be 'useful and necessary,' there seems no reason to suppose that the 'leaving in the street' was either useful or necessary, let alone both,
3. LL.B. (Leeds); Lecturer in Law in the University of Malaya in Singapore.