RYLANDS v. FLETCHER IN SINGAPORE

Yat Yuen Hong Co. Ltd. v. *Sheridan-Lea*

Is a person who fills a steep slope with loose earth making a "non-natural use" of his own land? This was the question which arose in the recent case of *Yat Yuen Hong Co. Ltd.* v. *Sheridan-Lea*[1] which was an appeal from Chua J. The defendants, who were land developers, in the course of developing land adjacent to, but on a higher level than the land occupied by the plaintiffs, who were nursery gardeners, filled the natural slope with earth, and then erected a retaining wall 80 feet long between their land and the land occupied by the plaintiffs. During heavy rains on 28th August, 1958, the filled earth slipped and "as a result, part of the retaining wall collapsed on to the plaintiffs' land and destroyed the plaintiffs' plants, fencing, bower, stands, and other equipment".[2] Affirming the decision of Chua J., Wee Chong Jin C.J. with Tan Ah Tah and Buttrose JJ. concurring, held that the defendants were liable under the rule in *Rylands* v. *Fletcher*[3] because the piling of loose earth on a steep slope so that more flat land would be available is "non-natural use" of the land.

Whether a particular use is "non-natural" is a question of fact subject to a ruling of the judge and, as was pointed out by Lord Porter in *Read* v. *Lyons,*[4] "in deciding this question, all the circumstances of the time and place and practice of mankind must be taken into consideration so that what might be regarded as.... non—natural may vary according to those circumstances." Wee Choong Jin C.J. thought Chua J. was "entitled on the evidence and on the facts as found by him to come to that conclusion *(i.e.* that the user was non-natural) having regard to the case of *Att.-Gen.* v. *Cory Bros. &* Co.[5] It is unfortunate that this case was relied on, because in the *Cory Bros,* case the "thing" brought on the land was 500,000 tons of colliery refuse whereas in the present case the "thing" was approximately 44½ tons of filled earth. It requires a big feat of judicial imagination to see some similarity in the cases. Further, as Stallybrass points out,[6] the rule in *Rylands* v. *Fletcher* "was founded in part upon a consideration of the law relating to the escape of filth.... it is not therefore surprising that it has been held to cover an artificially accumulated slagheap" *(Att.-Gen.* v. *Cory Bros.*[7]*)* That it should now apply to filled earth or ordinary soil is certainly an extension and one that merits further consideration. Filled earth after a few years could be said to become part of the land, and it would certainly be difficult to distinguish the filled earth from the land itself. Further, suppose a tree takes root in the filled earth and after a few years falls on to the adjoining land causing damage. Here we have the anomalous situation of the occupier not being liable under the rule of *Rylands* v. *Fletcher* for the damage caused by the tree because the growing of a tree has been held to be natural user in *Noble* v. *Harrison,*[8] but the occupier would be liable under the rule of *Rylands* v. *Fletcher* for damage caused by the soil or filled earth. It is submitted therefore that the filling of a slope with earth is not "non-natural user".

But even if the decision on the facts that the filling of the slope with loose earth is "non-natural user" is correct, there is still another difficulty in accepting the judgment of Wee Chong Jin C.J. In *Read* v. *J. Lyons & Company Ltd.*,[9] Viscount Simon said: "Now, the strict liability recognised by this House to exist in *Rylands* v. *Fletcher* is conditioned by two elements which I may call the condition of "escape" from the land of something likely to do mischief if it escapes, and the condition of "non-natural use" of the land". Where then is the "escape" in the present case? Nowhere in the judgment is there any indication that the filled earth had escaped.

1. (1963) 29 M.L.J. 279.
2. *Ibid.*, *per* Wee Chong Jin C.J. at p. 280.
3. (1868) L.R. 3 H.L. 330.
4. [1947] A.C. 156 at p. 176.
5. [1921] A.C. 521.
6. "Dangerous Things and the Non-Natural User of Land" (1929) 3 C.L.J. 376 at p. 383.
7. [1921] A.C. 521.
8. [1926] 2 K.B. 332.
9. [1947] A.C. 156 at p. 167.

Wee Chong Jin C.J. merely says,[10] "as a result part of the retaining wall collapsed on to the plaintiffs' land and destroyed the plaintiffs' plants, fencing, bower, stands and other equipment". This indicates that only the "retaining wall" collapsed or "escaped" on to the plaintiffs' land. But in *Ilford Urban Council* v. *Beal,*[11] Branson J. decided that the erection of a retaining wall on land was a normal use of land, and in *St. Anne's Wells Brewery Co.* v. *Roberts,*[12] Lawrence L.J. decided that a retaining wall which collapsed did not come within the principle of *Rylands* v. *Fletcher.* If we are to apply the principle of *Rylands* v. *Fletcher* to the present case, we must, therefore, either argue that "filled earth" escaped together with the retaining wall, a statement for which we have no evidence (except a dubious headnote) or that there was some constructive "escape", *i.e.* that the "filled earth" was directly responsible for the "escape" of the wall, and hence can be said to have "escaped" itself, a proposition for which we have no authority (except perhaps *Att.-Gen.* v. *Cory Bros. &* Co.[13]) and which we will find difficult to support in view of Viscount Simon's *dictum* in *Read* v. *J. Lyons &* Co.[14] where he says "Escape, for the purpose of applying the proposition in *Rylands* v. *Fletcher* means escape from a place where the defendant has occupation of or control over land to a place which is outside his occupation or control".

Having held that the principle of *Rylands* v. *Fletcher* applied to the piling of loose earth on a steep slope, Wee Chong Jin C.J. then went on to consider whether the doctrine applies only where the claim is for damage to some proprietary interest in land, or whether it applies to damage to personal property as well. On the authority of *Jones* v. *The Festiniog Railway* Co.[15] and *Halsey* v. *Esso Petroleum* Co.[16] he held that "an occupier can recover for damage to his chattels under the rule in *Rylands* v. *Fletcher".*

It is interesting that the heavy rainfall was not put forward as a defence in the present case. In *Nichols* v. *Marsland*[17] extraordinary rainfall was considered as an Act of God and hence a defence to an action based on the principle of *Rylands* v. *Fletcher.* It is true that in *Greenock Corporation* v. *Caledonian Rly.*[18] heavy rainfall was not regarded as a defence by Lord Dunedin who said:[19] "Whatever might be a *damnum fatale* [Act of God] an extraordinary fall of rain in the climate of Scotland could not be so considered. .. ." but he also stated,[20] "it always comes to a question of fact whether such and such an occurrence was a *damnum fatale... ."*

To summarize the points made in this note, it is submitted that it is difficult to accept the view that filling a steep slope with loose earth is "non-natural user". Even if it is accepted that it is "non-natural user", the principle of *Rylands* v. *Fletcher* does not apply in the present case because there is no escape of the loose earth. To hold the defendants liable under the doctrine of *Rylands* v. *Fletcher,* because of the collapse of the retaining wall is to invert a new category of "constructive escape" of the loose earth. This would involve an unwarranted extension of the doctrine of *Rylands* v. *Fletcher.* As Lindley L.J. said in *Green* v. *Chelsea Waterworks Co.*[21]

10. *Ibid,* at p. 280.
11. [1925] 1 K.B. 671.
12. (1928) 44 T.L.R. 703.
13. [1921] A.C. 521.
14. [1947] A.C. 156 at p. 168.
15. (1868) L.R.3 Q.B. 733.
16. [1961] 1 W.L.R. 683.
17. [1875] L.R. 10 Ex. 255.
18. [1917] A.C. 556.
19. *Ibid,* at p. 575.
20. *Ibid,* at p. 577.
21. (1894) 70 L.T. 547 at p. 549.

"That case [i.e. *Rylands* v. *Fletcher] is* not to be extended beyond the legitimate principle on which the House of Lords decided it. If it were extended as far as strict logic might require, it would be a very oppressive decision". By the development of defences such as Act of God, act of third parties *etc.* the courts in England have indicated that they would like to restrict the application of the doctrine of *Rylands* v. *Fletcher,* which was beginning to become oppressive. It is to be hoped that the Courts in Singapore will emulate this judicial attitude, and confine the doctrine of *Rylands* v. *Fletcher* within sensible limits.

F. A. TRINDADE.