

1914.

Present : Lascelles C.J. and De Sampayo A.J.

SILVA v. SILVA.

173—D. C. Galle, 11,747.

Fire—Spreading on to neighbour's land—Liability for damages.

A person who introduces a dangerous element such as fire on his land must be responsible for whatever damage he causes to others by its spreading, whether he has taken all the obvious precautions or not.

THE facts appear from the judgment.

A. St. V. Jayewardene, for the defendant, appellant.—The plaintiff must abide by his plaint and the issues framed. The District Judge has held in defendant's favour on the second issue, and had no right to give judgment against him on the footing that defendant was liable whether negligent or not. Under the Roman-Dutch law the plaintiff must prove negligence on the part of the defendant. *4 Maas 60, 61* ; *Voet 9, 2, 9* ; *Kulatungam v. Sabapathi Pillai et al.*¹

V. Grenier, for the plaintiff, respondent.—Defendant has suffered no prejudice by reason of the omission to frame an issue as to whether he was liable, even in the event of no negligence being proved against him. In any case there is evidence of negligence. *Elphinstone v. Boustead*,² which followed the case of *Fletcher v. Rylands*,³ is a direct authority. Counsel also referred to *Jones v. Festing Ry. Co.*⁴

A. St. V. Jayewardene, in reply.

Cur. adv. vult.

¹ (1908) 11 N. L. R. 350.

² (*Ram*) (1872-76) 268.

³ (1868) L. R. 2 H. L. 330.

⁴ (1868) L. R. 3 Q. B. 733.

July 1, 1914. LASCELLES C.J.

This is an appeal from a judgment of the District Court of Galle awarding the plaintiff Rs. 340 as damages for injury sustained by him by reason of a fire which spread from the land of the defendant to that of the plaintiff.

The plaintiff in his plaint averred that the fire spread to his land owing to the defendant's gross neglect and want of due diligence, and on the pleadings the following issues were framed:—

- (1) Did the fire spread from the defendant's land to the plaintiff's land ?
- (2) If so, was it owing to the defendant's gross neglect and want of due diligence ?
- (3) What damages has the plaintiff suffered ?
- (4) Is the defendant liable to pay such damage ?

The District Judge found that the fire spread from the defendant's land to that of the plaintiff's but not owing to any gross neglect or want of due diligence on the part of the defendant. But he gave judgment for the plaintiff on the ground that the defendant, having introduced the dangerous element of fire, must be responsible for whatever damage he caused to others by its spreading, whether he has taken all the obvious precautions or not.

On appeal, it is contended that this judgment cannot be sustained on two grounds. First it is said that the judgment is wrong in law; and secondly, that even if the judgment is sound in law, it proceeds on a ground which was not indicated in the plaint and was not the subject of an issue.

With regard to the first ground, the learned District Judge has proceeded on a well-known principle of English law, which is enunciated in the leading case of *Fletcher v. Rylands*,¹ where it was held that any one who brings upon his land anything which is not naturally on it, and is in itself dangerous, and may become mischievous if not kept under proper control, is liable in damages, although in so doing he acted without negligence.

It is contended that under the Roman-Dutch law the principle is different in the case of damage caused by fire spreading from the land of one person to that of another, and that in such a case damages are not recoverable without proof of want of due diligence on the part of the defendant.

So far as the Roman-Dutch law is concerned, I think that this is the case. A person who starts a fire on his own land is bound to use the utmost diligence and care to prevent the fire spreading on to his neighbour's property. And a plaintiff cannot recover damages without proof that the defendant has neglected to observe the diligence which the law requires of him (see *Maasdorp*, vol. IV. p. 60, and *Nathan*, vol. III., p. 1783).

¹ (1868) L. R. 3 H. L. 300.

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But as far back as 1876, in the case of *Elphinstone v. Boustead*,² the principle laid down in *Fletcher v. Rylands*² was adopted by this Court. The case was one on all fours with the present case, and the ruling is directly in point. No subsequent case has been cited which in any way shakes the authority of *Elphinstone v. Boustead*.¹ The case of *Kulatungam v. Sabapathi Pillai et al.*³ which was cited for the appellant is not in point. There a fire had broken out in a dwelling house, and the question, in an action by the landlord against the lessee, was whether the onus of proving negligence was on the landlord, or whether it was incumbent on the tenant to prove that the fire was caused by an accident.

The decision in *Elphinstone v. Boustead*¹ must, I think, be taken to have introduced the principle of English law which is applicable to such cases.

Then, it is said that the issues and the pleadings are so framed that it was not open to the learned District Judge to have decided the case on this ground. I do not agree. The defendant had the fullest opportunity of eliciting all material facts at the trial, and he has been able to place before us any legal considerations on which he relies. He is in no way prejudiced by the course which the trial has taken.

In *Elphinstone v. Boustead*¹ the course of the trial was the same as here. The plaintiff alleged negligence on the part of the defendant. It was held by this Court that proof of negligence was unnecessary, and judgment was entered for the plaintiff on the principle to which I have referred. I would add that if the plaintiff and the issues had been framed in strict accordance with the Roman-Dutch law, the result could hardly have been different. The issue would have been, not whether there had been gross neglect on the part of the defendant, but whether the defendant had used the utmost diligence and care and taken every precaution to prevent the fire spreading. On this issue I do not think that the defendant could have possibly succeeded.

In my opinion the judgment of the Court below is right, and I would dismiss the appeal with costs.

DE SAMPAYO A.J.—I agree.

Appeal dismissed.

¹ *Ram.* (1872-76) 268.

² (1868) *L. R.* 3 *H. L.* 300.

³ (1908) 11 *N. L. R.* 350