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Judgment
12, 1966

IN THE PRIVY COUNCIL

No. 30 of 1966

ON APPEAL FROM THE HIGH COURT OF AUSTRALIA

B E T W E E N :

ALLAN WILLIAM GOLDMAN (Defendant)
- and - Appellant

RUPERT WILLIAM EDESON HARGRAVE
and WINIFRED HAZEL HARGRAVE
(Trading under the firm name of
GIDGEGANNUP AGENCY) (Plaintiffs)
Respondents

A N D BETWEEN :

ALLAN WILLIAM GOLDMAN (Defendant)
- and - Appellant

EDWARD R. TAYLOR and ELIZABETH
E. TAYLOR (Plaintiffs)
Respondents

A N D BETWEEN :

ALLAN WILLIAM GOLDMAN (Defendant)
- and - Appellant

RICHARD BRENNAN (Plaintiff)
Respondent

A N D BETWEEN :

ALLAN WILLIAM GOLDMAN (Defendant)
- and - Appellant

FREDERICK W. PRICE and GLADYS
J. PRICE (Plaintiffs)
Respondents

A N D BETWEEN :

ALLAN WILLIAM GOLDMAN (Defendant)
- and - Appellant

REGINALD V. COUSINS (Plaintiff)
Respondent

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A N D BETWEEN :

ALLAN WILLIAM GOLDMAN (Defendant)
 - and - Appellant

PETER W. WILLIAMSON and EILEEN
 G. WILLIAMSON (Plaintiffs)
Respondents

A N D BETWEEN :

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25 APR 1967

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 LONDON, W.C.1.

ALLAN WILLIAM GOLDMAN (Defendant)
 - and - Appellant

JOHN R. GARSIDE and GWENDOLINE
 M. GARSIDE (Plaintiffs)
Respondents

(CONSOLIDATED BY ORDER DATED 13th APRIL, 1962)

CASE FOR THE APPELLANT

- RECORD 1. This is an appeal by special leave from
 a judgment of the High Court of Australia de-
 p.38 livered on the 22nd of November 1963 allowing,
 subject to the grant by the Trial Judge of a
 new trial, an appeal from the judgment given
 p.11 on the 9th day of January 1963 in the Supreme
 Court of Western Australia dismissing the
 Respondents' claims for damages.
2. At all material times the Appellant was
 the owner and occupier of a grazing property 10
 at Gidgegannup in Western Australia. On
 February 25th 1961 between 5 and 6 p.m. a
 tall redgum tree upon this property was struck
 by lightning and commenced to burn in a fork
 84 feet from the ground. In order to control
 the fire the Appellant caused the tree to be
 felled and subsequently contained the fire in
 p.14 the tree, and other fires thereby caused, in
 a manner held by the trial judge to be careful
 and proper. After the fires had subsided the 20
 Appellant took no further action and allowed
 one or more logs to continue to smoulder. The
 p.26 trial judge held that he could have extin-
 guished them by the use of water. Several
 days later a fire held to have originated
 from one of the smouldering logs spread into

the adjacent properties of the Respondents. RECORD

3. The Respondents claimed damages against the Appellant in the Supreme Court of Western Australia. The seven actions were consolidated by Order dated April 13th 1962 and came on for hearing on August 14th, November 6th to 9th and December 4th, 1962. The Respondents based their claims on these grounds :-

- 10 (a) That the Appellant adopted and used as his what was in the first instance an accidental fire so that it might be said to have become his fire; that it then escaped and that he was liable for damage resulting from such escape. pp.5 to 8 and 10
- 20 (b) That the Appellant was under a duty to the Plaintiffs as nearby owners or occupiers of land to extinguish a fire on his land, even though it commenced by accident; that he negligently failed to do so, and was hence liable for the damage caused when it escaped.
- (c) That the Appellant was liable for breach of statutory duties imposed on him by Sections 17 and 28 of the Bush Fires Act 1954-1958 (W.A.)

30 By consent the issue of damages was not canvassed.

4. Giving judgment on January 9th 1963 Senior Puisne Judge Jackson found the facts as described in paragraph 2 above and held:-

- (a) That the Appellant had not so acted as to use or adopt or continue the fire as his own and could not, therefore, be held liable under the rule in Rylands v. Fletcher (1868) L.R. 3 H.L. 330 or in nuisance. pp.11 to 34
- 40 (b) That the Appellant owed no duty to the Respondents to extinguish the fire.
- (c) That the Fires Prevention (Metropolis)

RECORD

Act, 1774, Section 86 of which lays down that no action lies against any person in whose house or on whose estate "any fire shall accidentally begin", applies to Western Australia.

(d) That the Bush Fires Act 1954 - 1958 (W.A.) does not give rise to a civil cause of action.

p.35 5. The Respondents' appeal to the High Court of Australia was heard between June 17th and 19th 1963. The Appellant in arguing the appeal whilst supporting the trial judge's conclusions of law attacked his findings of fact as to the origin of the fire which damaged the Respondents' properties. The Respondents argued that the trial judge was wrong in law upon his conclusions as to negligence, nuisance and breach of statutory duty, but supported his findings of fact. 10

pp. 35 to 37

p.38 6. The decision of the High Court was given on the 22nd November 1963. The trial judge's findings of fact were upheld, but the Appeal was allowed. Mr. Justice Taylor and Mr. Justice Owen, in a joint judgment, held or stated : 20

pp. 40 to 51 (a) That the test of liability is correctly stated in a passage in the 5th edition of "Salmond on Torts" (1920) page 260 - 30

"When a nuisance has been created by the act of a trespasser, or otherwise without the act, authority or permission of the occupier, the occupier is not responsible for that nuisance unless, with knowledge or means of knowledge of its existence, he suffers it to continue without taking reasonably prompt and efficient means for its abatement." 40

That on the findings of fact made by the trial judge, namely that the Appellant failed to extinguish the

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fire in the logs (the residual fire) by using water on them the Appellant had so suffered the fire to continue and the "Test of liability" was so satisfied.

RECORD

10 (c) "..... When the tree in question here was cut down a hazard of a different character was created and it is beyond doubt that the Respondent (Appellant) was under a duty to use reasonable care to prevent it causing damage to his neighbours in the countryside. The finding that, in the circumstances prevailing, he failed to discharge this duty with the result that the Appellants (Respondents) sustained the damage of which they complain is we think unassailable. We add that on this view it is of no consequence whether his liability rests in negligence or nuisance."

20

(d) That the decision of the trial judge as to the effect of the Bush Fires Act 1954-1958 (W.A.) was correct.

They made no specific finding on liability under Rylands v. Fletcher.

7. Mr. Justice Windeyer, the third member of the appeal court, held :-

pp.51
to 77

30 (a) That Rylands v. Fletcher was excluded simply because the Appellant did not bring the fire upon his land or keep it there for any purpose of his own.

(b) That as the Appellant took steps to eliminate the potential nuisance, he could not be said to have continued or adopted it and was therefore not liable in nuisance.

40 (c) That the Appellant did owe a duty to the Respondents to exercise reasonable care to render the fire harmless or its danger to his neigh-

RECORD

bours diminished and by reason of his failure so to do by the use of water was in breach thereof.

(d) That the Fires Prevention (Metropolis) Act 1774 applies to Western Australia, but did not apply when a fire, although beginning without negligence, spread as the result of negligence.

(e) That the decision of the trial judge as to the application of the Bush Fires Act 1954-1958 (W.A.) was correct. 10

p.39 8. The High Court of Australia remitted the action to the Supreme Court of Western Australia to consider an application by the Appellant for leave to reopen his case by adducing fresh evidence and, in the event of such application being refused or the findings of fact remaining unchanged, to assess damages. 20

9. On December 16th 1963 Senior Puisne Judge Jackson heard the Appellant's application to reopen his case and on December 19th refused the same. Judgment was entered for the Respondents for damages to be assessed.

10. On April 9th and May 21st 1964 the Appellant applied to the Supreme Court of Western Australia to extend his time for appealing to the full court against the refusal of his application to reopen his case. Both applications were refused. 30

11. On June 19th 1964 damages were assessed at a total of £3,600.

p.77 12. By Her Majesty's Order in Council dated the 10th of August, 1964, the Appellant was granted special leave to appeal from the said judgment of the High Court of Australia.

13. The Appellant submits that the decision of the High Court of Australia should be reversed and the action dismissed for the following among other 40

R E A S O N S

1. BECAUSE an occupier of land is under no liability for anything which happens to or spreads from his land in the natural course of affairs. RECORD
2. BECAUSE an occupier of land is under no duty at common law to extinguish a fire on his property which occurs by act of God, as by lightning, or to prevent it spreading to the property of his neighbour. 10
3. BECAUSE, in the alternative, any duty owed by an occupier of land at common law to extinguish or prevent the spread of a fire on his property which occurs by act of God, as by lightning, is discharged if he takes reasonable care to extinguish and prevent the spread of such fire as first discovered by him and by reference to the circumstances then prevailing. 20
4. BECAUSE Mr. Justice Taylor and Mr. Justice Owen were wrong in applying the passage from "Salmond on Torts" to the circumstances of a fire started by lightning.
5. BECAUSE the Appellant did not suffer the fire to continue and discharged any duty resting upon him at common law. 30
6. BECAUSE the Appellant was not liable in nuisance for the reasons stated in the judgment of Mr. Justice Windeyer.
7. BECAUSE Mr. Justice Taylor and Mr. Justice Owen were wrong in holding that by cutting down the tree the Appellant had created a new hazard of a different character and was thereby under a duty to use reasonable care to prevent it causing damage to his neighbour in the countryside. 40

- RECORD
8. BECAUSE section 86 of the Fires Prevention (Metropolis) Act, 1774, applied and protected the Appellant from liability in the circumstances of this case.
 9. BECAUSE liability under Rylands v. Fletcher was excluded for the reasons stated in the judgment of Mr. Justice Windeyer.
 10. BECAUSE the Bush Fires Act 1954-1958 (W.A.) did not give the Respondents a civil remedy for the reasons stated in the judgment of Senior Puisne Judge Jackson, and the judgments of the High Court of Australia.
 11. And upon the grounds stated in the reasons for judgment of Senior Puisne Judge Jackson.

PETER BRISTOW
F.T.P. BURT
MICHAEL KEMPSTER.

30 OF 1965

IN THE PRIVY COUNCIL

ON APPEAL FROM THE HIGH COURT
OF AUSTRALIA

G O L D M A N

- v -

HARGRAVE AND OTHERS

APPELLANT'S CASE

INGLEDEW BROWN BENNISON
& GARRETT,
51, Minories,
LONDON, E.C.3.

Appellant's Solicitors.