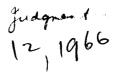
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IN THE PRIVY COUNCIL No. 30 of 1965

ON APPEAL FROM THE HIGH COURT OF AUSTRALIA

BETWEEN:

ALLAN WILLIAM GOLDMAN (Defendant) - and - <u>Appellant</u> 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

AND BETWEEN:

ALLAN WILLIAM GOLDMAN (Defendant) - and - <u>Appellant</u> RICHARD BRENNAND (Plaintiff)

Respondent

AND BETWEEN:

ALLAN WILLIAM GOLDMAN (Defendant) - and - <u>Appellant</u> FREDERICK W. PRICE and GLADYS J. PRICE (Plaintiffs)

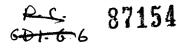
Respondents

A N D BETWEEN :

ALLAN WILLIAM GOLDMAN (Defendant) - and - <u>Appellant</u> REGINALD V. COUSINS (Plaintiff)

Respondent

ACCESSION NUMBER



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AND BETWEEN:

ALLAN WILLIAM GOLDMAN (Defendant) - and - Appellant

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

ALLAN WILLIAM GOLDMAN (Defendant)

- and -

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

Appellant

Respondents

BETWEEN :

UNIVERSITY OF LONDON A N D INSTITUTE OF ADVANCED LEGAL STUDIES

25APK 1967

25 RUSSELL SQUARE LONDON, W.C.1.

(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 delivered 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 on the 9th day of January 1963 in the Supreme Court of Western Australia dismissing the Respondents' claims for damages.

At all material times the Appellant was 2. the owner and occupier of a grazing property 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 the tree, and other fires thereby caused, in p.14 a manner held by the trial judge to be careful and proper. After the fires had subsided the 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 extinguished them by the use of water. Several days later a fire held to have originated from one of the smouldering logs spread into

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the adjacent properties of the Respondents. RECORD

3.

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 p.3 1962 and came on for hearing on August 14th, November 6th to 9th and December 4th, 1962. p.11 The Respondents based their claims on these grounds :-

- (a) That the Appellant adopted and used pp.5 to as his what was in the first instance 8 and an accidental fire so that it might 10 be said to have become his fire; that it then escaped and that he was liable for damage resulting from such escape.
 - (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.)
- By consent the issue of damages was not can-30 vassed.

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 pp.ll to use or adopt or continue the fire to 34 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.
- (b) That the Appellant owed no duty to the Respondents to extinguish the fire.
 - (c) That the Fires Prevention (Metropolis)

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p.35 pp.35 to37	Court of Australia 17th and 19th 196 arguing the appea trial judge's cond his findings of fa the fire which dan properties. The H the trial judge wa conclusions as to	ents' appeal to the High a was heard between June 3. The Appellant in 1 whilst supporting the clusions of law attacked act as to the origin of maged the Respondents' Respondents argued that as wrong in law upon his negligence, nuisance tutory duty, but support- f fact.	
p.38	given on the 22nd trial judge's find held, but the Appe	lings of fact were up- eal was allowed. Mr. 1 Mr. Justice Owen, in	
pp. 40 to 51	correctly st the 5th edit Torts" (1920 "When a nuis by the act of otherwise wi ity or permit the occupien for that nuis knowledge or its existent continue wit	at of liability is tated in a passage in tion of "Salmond on 0) page 260 - sance has been created of a trespasser, or thout the act, author- ission of the occupier, r is not responsible isance unless, with r means of knowledge of e, he suffers it to thout taking reasonably efficient means for its	
UNIVERSITY OF LOW	abatement."	findings of fact made	

cause of action.

UNIVERSITY OF LONDOR) That on the findings of fact made INSTITUTE OF ADVANCED by the trial judge, namely that the LEGAL STUDIES Appellant failed to extinguish the 25APR1967

25 RUSSELL SQUARE LONDON, W.C.1.

RECORD

(d)

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.

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

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

- (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."
- (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 mem- pp.51 ber of the appeal court, held :- to 77

- (a) That <u>Rylands v. Fletcher</u> 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.
- (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-

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- (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 10 as to the application of the Bush Fires Act 1954-1958 (W.A.) was correct.

The High Court of Australia remitted 8. 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.

On December 16th 1963 Senior Puisne 9. 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. 30 Both applications were refused.

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

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

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

p.39

REASONS

- an occupier of land is under 1. BECAUSE no liability for anything which happens to or spreads from his land in the natural course of affairs.
- 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.
- 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.
- 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.
- 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.

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RECORD

- 9. BECAUSE liability under <u>Rylands</u> v. <u>Fletcher</u> 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

GOLDMAN

- v -

HARGRAVE AND OTHERS

APPELLANT'S CASE

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

Appellant's Solicitors.