Whatever be the correct view with regard to sections 20 and 21 of the Code, a study of the careful judgment of Shaw J. indicates that a conviction under regulations 52 and 72 must have resulted if the charge had been so framed without reliance on these sections.

Their Lordships have, for the reasons herein appearing, humbly advised Her Majesty that this appeal should be dismissed.

Solicitors: Bischoff & Co.; Charles Russell & Co.

[HALLINAN, C. J. and ZANNETIDES, J.]
(September 18, 1956)

MUSTAFA HAMZA of Ayios Theodoros, *Appellant*.

v.

KYRIACOS A. VLACHOS of Ayios Theodoros, *Respondent*.

(Civil Appeal No. 4183).

Action for strict liability—Tort—Rule in Rylands v. Fletcher—Occupier liable for acts of his children—Non-supervision of children—Quaeve: negligence.

In the month of June the defendant left his flock of sheep in charge of his children, aged 11 and 9. The boys on the defendant's land lit a fire to cook birds they had caught. The fire spread and damaged the crops of the plaintiff.

The trial Court held the defendant liable for negligence. Under section 49 of the Civil Wrongs Law, the children had committed the tort of negligence and the defendant was negligent in not taking reasonable precautions to prevent the children committing this tort.

Upon appeal,

Held: (1) It was doubtful whether, on the facts, the want of supervision by the defendant of his children amounted to the tort of negligence.

(2) The provisions of the Civil Wrongs Law (sections 48, 49 and 50, in particular) did not exclude the application of the Common Law action for strict liability (the rule in *Rylands* v. *Fletcher*), and to start a fire on agricultural land in Cyprus in the month of June is to introduce a dangerous thing giving rise to strict liability.

(3) The defendant as occupier of the land from which the fire escaped was, under the rule in *Rylands* v. *Fletcher*, liable for the acts of his children.

Appeal dismissed.

Appeal by defendant from the judgment of the District Court of Larnaca (Action No. 658/55).

K. Halil for the appellant.

E. Emilianides for the respondent.

The facts sufficiently appear in the judgment of this Court which was delivered by:

HALLINAN, C.J.: In this case the plaintiff is a farmer who, on the 12th June, 1955, had reaped his crops of wheat and corn. Some adjoining land was in the occupation of the defendant who had there on that day his flock of sheep. About 9 or 10 in the morning he left his flock and went to the neighbouring village leaving in charge his two sons, aged 11 and 9 respectively. Soon after noon the boys, who wanted to roast some birds that they had caught, started a fire which, fanned by the breeze, got out of control, spread to the land of the plaintiff, and damaged his corn and an olive tree. The fire was eventually put out by villagers from another village who ran to save their crops.

In the Statement of Claim the plaintiff alleges that the defendant negligently started a fire which caused damage on the plaintiff's land; but in the alternative the plaintiff claims damages to his corn and tree by reason of the fire started "by the defendant's children and/or his servants, in the aforementioned field of which the defendant is the owner and/or the occupier and spread to the adjoining fields of which the plaintiff is the owner and/or the occupier."

It is clear from the judgment of the Court that the learned trial Judge treated the plaintiff's claim as a claim for negligence and that the burden of proving that there was no negligence for which the defendant was liable fell on the defendant under section 49 of the Civil Wrongs Law, Cap. 9. The defendant sought to discharge the onus of proof thus laid on him by submitting that he was not liable for a wrong committed by the boys. On this aspect of the case the trial Judge referred to Lindsell on Torts, 10th Edition, page 86:—

> "A parent is not ordinarily responsible for the torts of his child. If, however, the circumstances are such as to constitute them master and servant, he will be liable if the act was done in the course of the service; and he may be liable for his own personal negligence in allowing his child the opportunity to commit a tort."

It would appear from the judgment (although it is not expressly stated) that the trial Court did not consider that the relationship of master and servant existed or that the fire started in the course of the servant's employment. Indeed in our view this would be the correct finding of the evidence. The trial Court decided the case, not on a question of agency but on the question "whether the defendant was negligent in allowing his two children of that age to remain in charge of the flock for a considerable time while he was away at the village." The

trial Court answered that question as follows:— "The failure of the defendant to take reasonable precautions against his two young children starting a fire while he was away, amounts, in my opinion, to negligence on his part in the duty he owed to his neighbours, to prevent a fire starting on his property which could spread to their property and cause them damage."

The liability of a parent for the torts of his child is discussed in Winfield on Tort, 6th Edition, pages 117-118. We have looked at the cases cited by Winfield and we have some hesitation in finding for the plaintiff on this ground in the present case.

At common law there are three and possibly four causes of action or remedies for damage caused by the escape of fire. These are set out in Winfield, 6th Edition, page 610:

"(1) Special action of trespass upon the case for negligent keeping;

(2) an action of the *Rylands* v. *Fletcher* type; query whether this has totally absorbed this first action;

(3) an action for nuisance;

(4) an action for negligence."

For the purposes of this case we adopt the opinion of Winfield as to the merger of the action of trespass on the case for negligent keeping with the action of the *Ryland* v. *Fletcher* type. Winfield at page 613 concludes his discussion on this subject in these words:

> "We are probably safe in saying that if the rule relating to escape of fire is to be regarded as a special instance of the rule in *Rylands* v. *Fletcher*, then the defences which are pleadable in the latter case are also pleadable in the former; if that be so, the act of God would be one such defence even if inevitable accident would not be; so, too, would natural users of the premises from which the fire escaped (*Sochacki* v. *Sas*, 1947 (1) A.E.R., 344)."

Sections 48, 49 and 50 of the Civil Wrongs Law (dealing with damages caused by dangerous things, by fire and any animals) deals with matters which are now dealt with in textbooks on tort under the heading "Strict Liability" or "the rule in *Rylands* v. *Fletcher*". In Halsbury's Laws of England, 2nd Edition, page 46, paragraph 83, the rule in *Rylands* v. *Fletcher* is set out under the title relating to nuisance but the better opinion to-day is that this type of strict liability contained in the rule of *Rylands* v. *Fletcher* differs from both negligence and nuisance and is an independent tort.

The question, therefore, falls for decision in this case as to whether an action for negligence under the Civil Wrongs Law is the only remedy open to a person who has suffered the type of damage specified in section 49, namely, damage caused by fire which originates from premises of which the defendant is the owner or occupier. This section deals with the question of damage by fire merely as a special case of negligence and throws the burden of proof on the defendant. But it is clear that at common law there is also a cause of action under the rule in *Rylands* v. *Fletcher* and under the law of nuisance.

Section 33 (1) (c) of the Courts of Justice Law, 1953, provides that every Court in Cyprus shall apply the common law save in so far as other provision has been or shall be made by any law of the Colony. It has been decided by this Court in the case of the *Universal Advertising and Publishing Agency* v. *Panayiotis A. Vouros*, 19 Cyprus Law Reports, 87, at p. 94: "A cause of action at Common Law should after 1935 be available unless this remedy is either expressly taken away by any law of the Colony or is clearly repugnant to any such Law." In our view section 49 of the Civil Wrongs Law by making provision for the burden of proof in actions for damage caused by the negligent use of fire has not excluded the application of the common law action for strict liability, where the damage is caused by fire spreading from premises owned or occupied by the defendant to the plaintiff's land; and it is open to the plaintiff in this case on his statement of claim to rely on the rule in *Rylands* v. *Fletcher*.

It is well known in Cyprus that the lighting of a fire on a farmland in the month of June is a dangerous proceeding; in our view any person who does so has introduced on his land a dangerous thing for which he must be strictly liable if it escapes and does damage to his neighbour. The only defence open to argument in this case is whether the defendant's children are "strangers"; if they are, then there is clear authority that even under the law of strict liability, a defendant is not liable for the act of stranger. The question of who is a stranger is discussed in Salmond on Torts, 10th Edition, p. 528 in the following passage:

> "It does not clearly appear, however, who is to be deemed a stranger within the meaning of this rule. The term certainly includes a trespasser, and also any person who, without entering the defendant's premises at all, wrongfully and without the defendant's authority causes the escape of dangerous things from those premises: as in the case of *Box* v. *Jubb* itself. It is equally clear that the term "stranger" does not include any person employed or authorized by the defendant to deal in any way with dangerous things on his land; for the acts of such

a person, even though he is an independent contractor, and even though he acts in excess or disregard of his authority, the occupier is vicariously liable. But what shall be said of persons lawfully upon the defendant's land with his permission, but without authority to bring upon it, or to deal with, dangerous things—for example, the members of his family, his servants, his guests, or licensees permitted to use the land? It is submitted that for the acts of all such persons in bringing or keeping dangerous things on the premises, or in meddling with such things already on the premises, the occupier is liable under the rule in *Rylands* v. *Fletcher*."

Winfield (6th Edition, 600) refers to this passage in Salmond and doubts whether the owner or occupier should in all cases be responsible for guests or licensees on his land and states:

"It would be harsh to hold a person liable for the act of every casual visitor who has bare permission to enter his land and of whose propensities to evil he may know nothing; e.g. an afternoon caller who leaves the garden gate open or a tramp who asks for a can of water and leaves the tap on."

Whatever may be the position with regard to guests or licensees, we have no doubt that the defendant in this case must be held responsible for the acts of his children in starting a fire in the month of June on open land in the defendant's occupation.

The appeal is, therefore, dismissed.

[HALLINAN, C. J. and ZANNETIDES, J.]
(September 25, 1956)

1. LEONIDHAS DEMOSTHENOUS,
2. ANDREAS ZENONOS, both of Limassol, *Appellants.*

v.

THE QUEEN, *Respondent.*

(Criminal Appeal No. 2064)

Criminal Law—Possession of incendiary article—Regulation 53 (a) of Emergency Powers (Public Safety and Order) Regulations, 1955 — Purpose of article must be unambiguously aggressive — Defence of reasonable excuse.

The accused was convicted under Regulation 53 (a) of the Emergency Powers (Public Safety and Order) Regulations, 1955, of being in possession of "an incendiary article, substance or liquid". The article consisted of a coca-cola bottle filled with petrol with hemp stuffed in the top.

Upon appeal,