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Court : House of Lords

Decided On : Feb-21-1963

Judge : Lord Reid, Lord Jenkins, Lord Morris of Borth-Y-Gest, Lord Guest, Lord Pearce

Appeal No. : No.

Appellant : Hughes (A.P.)

Respondent : Lord Advocate (as Representing the Postmaster General)

Judgement :

Lord Reid

MY LORDS,

I have had an opportunity of reading the speech which my noble and learned friend, Lord Guest, is about to deliver. I agree with him that this appeal should be allowed and I shall only add some general observations. I am satisfied that the Post Office workmen were in fault in leaving this open manhole unattended and it is clear that if they had done as they ought to have done this accident would not have happened. It cannot be said that they owed no duty to the Appellant. But it has been held that the Appellant cannot recover damages.

It was argued that the Appellant cannot recover because the damage which he suffered was of a kind which was not foreseeable. That was not the ground of

judgment of the First Division or of the Lord Ordinary, and the facts proved do not, in my judgment, support that argument. The Appellant's injuries were mainly caused by burns, and it cannot be said that injuries from burns were unforeseeable. As a warning to traffic the workmen had set lighted red lamps round the tent which covered the manhole, and if boys did enter the dark tent it was very likely that they would take one of these lamps with them. If the lamp fell and broke it was not at all unlikely that the boy would be burned and the burns might well be serious. No doubt it was not to be expected that the injuries would be as serious as those which the Appellant in fact sustained. But a defender is liable, although the damage may be a good deal greater in extent than was foreseeable. He can only escape liability if the damage can be regarded as differing in kind from what was foreseeable.

So we have (first) a duty owed by the workmen, (secondly) the fact that if they had done as they ought to have done there would have been no accident, and (thirdly) the fact that the injuries suffered by the Appellant, though perhaps different in degree, did not differ in kind from injuries which might have resulted from an accident of a foreseeable nature. The ground on which this case has been decided against the Appellant is that the accident was of an unforeseeable type. Of course, the pursuer has to prove that the defender's fault caused the accident, and there could be a case where the intrusion of a new and unexpected factor could be regarded as the cause of the accident rather than the fault of the defender. But that is not this case. The cause of this accident was a known source of danger, the lamp, but it behaved in an unpredictable way.

The explanation of the accident which has been accepted, and which I would not seek to question, is that, when the lamp fell down the manhole and was broken, some paraffin escaped, and enough was vaporised to create in explosive mixture which was detonated by the naked light of the lamp the experts agree that no one would have expected that to happen: it was so unlikely as to be unforeseeable. The explosion caused the boy to fall into the manhole: whether his injuries were directly caused by the explosion or aggravated by fire which started in the manhole is not at all clear. The essential step in the Respondent's argument is that the explosion was the real cause of the injuries and that the explosion was

unforeseeable.

The only authority cited to us from which the Respondent can derive any assistance is Muir v. Glasgow Corporation, 1943 S C. (h.l.) 3, and I shall examine that case. The accident occurred in premises occupied by the Corporation. The manageress had given permission for a tea urn to be brought in by visitors and had not cleared some children out of the way. For some unknown reason one of the men carrying the urn let it slip and hot tea poured out and scalded the children. On 'the question whether the manageress had been negligent Lords Macmillan, Wright and Gauson held that she had no reason to anticipate danger and therefore was not in breach of duty. And that was also the first ground of judgment of Lord Thankerton. So far the case is of no assistance to the present Respondent because in this case there was a breach of duty.

The difficulty is caused by further observations of Lord Thankerton and by the judgment of Lord Romer. Lord Thankerton said that even if he had held that the manageress was in breach of duty. I would hold that the Respondents must fail here as they have not proved what the event was that caused the accident" (p. 9). It may be that that should be linked to an earlier passage: In my opinion it has long been held in Scotland that all that a person can be held bound to foresee are the reasonable and probable consequences of the failure to take care, judged by the standard of the ordinary reasonable man. I am unable to agree with Lord Carmont (1942 S.C. at p. 140) that the Appellants could be made liable 'even if it' were proved that the actual damage to the invitees happened through the 'tea-urn being spilt in a way that could not reasonably have been anticipated'. (p. 8). If that means that the mere fact that the way in which the accident happened could not be anticipated is enough to exclude liability although there was a breach of duty and that breach of duty in fact caused damage of a kind that could have been anticipated, 'then I am afraid that I cannot agree with Lord Thankerton. No authority for this was cited in Muir's case and no authority for it other than Muir's case has been cited in the present case. I find Lord Romer's judgment a little difficult to follow. I think that it is to the same effect, but towards the end of his judgment he points out, I think rightly, that if the ceiling had fallen and upset the urn the Corporation could not have been liable merely because they had failed in a

duty to clear the children away. The fall of the ceiling would have been the cause of the damage and not the breach of duty.

It may be that what Lord Romer, and possibly also Lord Thankerton, had in mind was that if the cause of an accident cannot be proved then the accident may have been due to the intrusion of some new and unforeseeable cause like the falling of a ceiling so that the damage cannot be said to have resulted from the defenders' breach of duty. If they meant no more than that, then their observations would be in line with the well-established principle that a pursuer must prove, in the sense of making it more probable than not, that the defender's breach of duty caused the accident; but then those observations would not help the Respondent because we know the cause of this accident. This accident was caused by a known source of danger, but caused in a way which could not have been foreseen, and in my judgment that affords no defence. I would therefore allow the appeal.

Lord Jenkins

MY LORDS,

The facts of this case have been so fully and clearly stated in the Opinions of the Lord Ordinary (Lord Wheatley) and the Lord President (Lord Clyde) that I need not repeat them at length.

It appears that on the 8th November, 1958, workmen employed by the Post Office were working on certain cables under the roadway of a public street known as Russell Road. Two manholes, by descending which access could be had to the cables, were provided in the surface of the street. One only of these manholes was in use. The other was closed and for present purposes can be ignored. The effective manhole was some nine feet deep and provided with a ladder. There was a weather tent covering the area of roadway in which the manholes were placed. This tent was provided with a tarpaulin to improve the shelter afforded, and as positioned at the material time it left at one end a gap between its edge and the ground of some two feet, six inches. It was dark after 5 p.m. on the 8th November, 1958, and about 3.30 p.m. red warning lamps were put in position on the site.

The workmen had a tea break just after 5 p.m. and went for their tea to a neighbouring telephone exchange. They were absent for about a quarter of an hour. Before going they had taken the ladder out of the manhole and laid it on the ground outside the tent.

While the workmen were away the pursuer and his 10-year old uncle David Leishman arrived on the scene and set about meddling with the gear on the site. They pulled up the ladder, brought one of the lamps into the hole and amused themselves by swinging it from the end of a rope. Soon after this the pursuer (according to his own account) stumbled over the lamp and knocked it into the hole, when a violent explosion took place, and the pursuer himself fell into it, sustaining terrible injuries from burns. A passer-by named Bruce who was 100 yards or so along the street at the time described the explosion as having made a roar of sound like a "woof". and said that a flame shot up some 30 feet.

That being the nature of the accident, the next question is, who was to blame. It was originally suggested that the children were trespassers, but this was given up on a consideration of the statutory position of the Post Office, which did not include a sufficiently exclusive interest in any part of the roadway to support a claim in trespass.

Then it was said that the children were guilty of contributory negligence, but this was not pressed, the view ultimately accepted on both sides being that having regard to the children's tender years they were not to be blamed for meddling with " allurements" such as the lamps, the tent, the hole and the ladder, disposed as they were in the public street without a watchman to guard them or a fence to keep children away.

As to the liability of the Post Office, it was not, I think, ever seriously doubted that the standard of care required of them was the well known standard thus described by Lord Atkin in Donoghue v. Stevenson, 1932 S.C. (H.L.) at p. 44: You must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbour. He then went on to say that it is not enough that the event should be such as can reasonably be foreseen; the further result that injury is likely to follow must also be such as a reasonable man would

contemplate, before he can be convicted of actionable negligence. Nor is the remote possibility of injury occurring enough ; there must be sufficient probability to lead a reasonable man to anticipate it.

In a word, the Post Office had brought upon the public highway apparatus capable of constituting a source of danger to passers-by and in particular to small and almost certainly inquisitive children. It was therefore their duty to see that such passers-by, "neighbours", in the language of Donoghue v. Stevenson, were so far as reasonably practicable protected from the various obstacles, or (to children) allurements, which the workmen had brought to the site. It is clear that the safety precautions taken by the Post Office did not in this instance measure up to Lord Atkin's test.

The only remaining question appears to be whether the occurrence of an explosion such as did in fact take place in the manhole was a happening which should reasonably have been foreseen by the Post Office employees. This is the critical point in the case, and I think I should next refer to some of the observations upon it by the Lord Ordinary, the Lord President, and Lords Sorn and Guthrie.

In the report of the present case 1961 S.C. p. 320 the Lord Ordinary recognises the allurements to children provided by the Post Office gear, and suggests various attractions from their point of view, but goes on: What I have to consider, in this case, however, is whether a reasonable man would have anticipated that a child doing these things was likely to be thrown into the hole in consequence of an explosion initiated by the lamp breaking and causing the flame to come in contact with inflammable vapour ... or whether the risk of such occurrences was so small that a reasonable man would have been entitled to disregard them ... In the light of the evidence, I cannot find that this danger ought reasonably to have been foreseen. The greater the degree of improbability of the explosion being caused in the manner in which I have held that it was caused (in the absence of any other reasonable explanation), the more a reasonable man must be excused for not anticipating it. The pursuer's case must, accordingly, fail. Even if the ordinary dangers of a child playing with a lamp and falling into an open manhole should have been reasonably foreseen, I do not consider that injuries resulting from an

explosion such as occurred could have been reasonably foreseen-of. Overseas Tankship (U.K.) Ltd. v. Mort's Dock and Engineering Co. Ltd. (The Wagon Mound) [1961] A.C. 388.

The Lord President (Lord Clyde) said this: In these circumstances, and in the absence of any evidence to the contrary, the Lord Ordinary was well entitled to conclude that the combination of circumstances necessary to create this paraffin explosion was so unforeseeable that a reasonable man would be excused if he disregarded them and took no precautions against them. It appears to me undeniable that the cause of the present accident was the explosion. If there had been none, the pursuer would not have fallen into the hole and so sustained his injuries. For his case, both on record and in his evidence, is that, prior to it, he was on the roadway, and it was the explosion which caused him to fall into the manhole and get burned. If that explosion was not a foreseeable eventuality, the pursuer's whole case fails.

Lord Sorn at p. 333 says: Looked at in that way, it seems to me, upon the evidence, that the explosion in the present case was a thing that differed in kind from the kind of things which could be said to have been reasonably foreseeable. It was not merely an unpredictable incident in the kind of chain of events which might have been foreseen; it was an essential event outside the kinds of events which might have been foreseen.

Lord Guthrie, after mentioning precautions which it would have been reasonable to take but were not taken, observed: Therefore, the defender's liability to the pursuer in damages depends on the answer to the question whether the fact that the explosion was not reasonably foreseeable is fatal to the pursuer's claim.

Lord Carmont, who dissented, said this at p. 331: " Having provided an allurement to a child which brought about the injury, I do not think the defender can escape liability by saying that he did not foresee the exact way in which the allurement would affect the mind of a child. Even if the exact way in which injury was caused to the child is not conclusively proved, it is certainly proved that an explosion was caused in the open manhole because the light from the lantern fired an explosive mixture of vapour in the manhole.

I find it impossible to accept the view taken by the Lord Ordinary and the majority of the Court of Session.

It is true that the duty of care expected in cases of this sort is confined to reasonably foreseeable dangers, but it does not necessarily follow that liability is escaped because the danger actually materialising is not identical with the danger reasonably foreseen and guarded against. Each case must depend on its own particular facts. For example (as pointed out in the Opinions), in the present case the paraffin did the mischief by exploding, not burning, and it is said that while a paraffin fire (caused, for example, by the upsetting of the lighted lamp or otherwise allowing its contents to leak out) was a reasonably foreseeable risk so soon as the pursuer got access to the lamp, an explosion was not.

To my mind the distinction drawn between burning and explosion is too fine to warrant acceptance. Supposing the pursuer had on the day in question gone to the site and taken one of the lamps, and upset it over himself, thus setting his clothes alight, the person to be considered responsible for protecting children from the dangers to be found there would presumably have been liable. On the other hand, if the lamp, when the boy upset it, exploded in his face, he would have had no remedy because the explosion was an event which could not reasonably be foreseen. This does not seem to me to be right.

I think that in these imaginary circumstances the danger would be a danger of fire of some kind, for example, setting alight to his clothes or causing him bodily hurt. If there is a risk of such a fire as that I do not think the duty of care prescribed in Donoghue v. Stevenson is prevented from coming into operation by the presence of the remote possibility of the more serious event of an explosion.

I would allow this appeal.

Lord Morris of Borth-y-Gest

MY LORDS,

It is within common experience and knowledge that children may be allured by and tempted to play and meddle with objects which for others would have no special

attraction. In such playing or meddling children may be heedless of danger and may bring neither method nor reason nor caution to bear. If by the exercise of reasonable foresight there can be avoidance of the risk that as a result of being so allured children may get themselves hurt it is not over-exacting to require such foresight, and where a duty is owed such reasonable and practicable measures as foresight would prompt.

When shortly after 5 p.m. on Saturday, the 8th November, 1958, the Appellant (then aged 8) and his companion (then aged 10) were in Russell Road, Edinburgh, they could not resist the opportunity of exploring the unattended canvas shelter. In and around it they found aids to exploration readily at hand. Within the canvas shelter or tent was the uncovered man-hole. Nearby was a section of a ladder. Nearby also there were lighted lamps. Pursuing their boyish whims, they must have thought that as a place for play it was bounteously equipped. Furthermore, somewhere out-side the tent they found a rope and a tin can (which apparently were no part of the Post Office material). The ladder and the rope and a lamp proved helpful in exploring the hole and the chamber below the road. In all this, however, as anyone might have surmised, was the risk that in some way one of the boys might fall down the hole or might suffer some burn from a lamp. The lamps were doubtless good and safe lamps when ordinarily handled, but in the hands of playful, inquisitive or mischievous boys there could be no assumption that they would be used in a normal way.

Exercising an ordinary and certainly not an over-exacting degree of pre-vision the workmen should, I consider, have decided, when the tea break came, that someone had better be left in charge who could repel the intrusion of inquisitive children. If, of course, there was no likelihood that children might appear different considerations would apply. But children did appear, and I find no reason to differ from the conclusion of the Lord Ordinary that the presence of children in 'the immediate vicinity of the shelter was reasonably to be anticipated. No question as to trespassing has been raised before your Lordships.

When the children did appear they found good scope for moments of adventure. Then came disaster for the pursuer. A risk that he might in some way burn himself

by playing with a lamp was translated into reality. In fact he was very severely burned. Though his severe burns came about in a way that seems surprising, this only serves to illustrate that boys can bring about a consequence which could be expected but yet can bring it about in a most unusual manner and with unexpectedly severe results. After the pursuer tripped against the lamp and so caused it to fall into the manhole and after he contrived to be drawn into or to be blown into or to fall into the manhole he was burned. His burns were, however, none the less burns although there was such an immediate combustion of paraffin vapour that there was an explosion. The circumstance that an explosion as such would not have been contemplated does not alter the fact that it could reasonably have been foreseen that a boy who played in and about the canvas shelter and played with the things that were thereabouts might get hurt and might in some way burn himself. That is just what happened. The pursuer did burn himself, though his burns were more grave than would have been expected. The fact that the features or developments of an accident may not reasonably have been foreseen does not mean that the accident itself was not foreseeable. The pursuer was in my view injured as a result of the type or kind of accident or occurrence that could reasonably have been foreseen. In agreement with Lord Carmont, I consider that the defenders do not avoid liability because they could not have foretold the exact way in which the pursuer would play with the alluring objects that had been left to attract him or the exact way in which in so doing he might get hurt.

In the circumstances of Haynes v. Harwood [1935] 1 K.B. 146, Greer, L.J. at p. 156 said:-"There can be no doubt in this case that the damage was the result of the wrongful act in the sense of being one of the natural and probable consequences of the wrongful act. It is not necessary to show that this particular accident and this particular damage were probable: it is sufficient if the accident is of a class that might well be anticipated as one of the reasonable and probable results of the wrongful act. So in Carmarthenshire County Council v. Lewis [1955] A.C.549 it was held that it was foreseeable that a four-year-old boy who was left unattended in a nursery school might wander on to the highway through an open gate and that as a result some driver of a vehicle might suffer injury through taking action to avoid the child. But as Lord Tucker said (at p. 571): It is not necessary that the precise result should be foreseen.

To the same effect were the observations of Lord Keith of Avonholm in Miller v. South of Scotland Electricity Board, 1958 S.C.20, when (at p. 34) he said: It has been pointed out in other cases that it is not necessary to foresee the precise accident that happened and similarly it is not necessary, in my opinion, to postulate foreseeability of the precise chain of circumstances leading up to an accident. There does not seem to me to be anything fantastic or highly improbable in the series of happenings that are alleged to have led to the accident here. If it is reasonably probable that an accident may happen from some act of neglect or commission that may be enough to discharge the initial onus on the pursuer, though it would remain, of course, to show that the pursuer was within the class of persons to whom a duty was owed. The question is:-Was what happened so remote that it could not be reasonably foreseeable? See also the judgments in Harveyv. Singer Manufacturing Co., 1960 S.C.155.

My Lords, in my view there was a duty owed by the defenders to safeguard the pursuer against the type or kind of occurrence which in fact happened and which resulted in his injuries, and the defenders are not absolved from liability because they did not envisage the precise concatenation of circumstances which led up to the accident. For these reasons I differ, with respect, from the majority of the First Division, and I would allow the appeal.

Lord Guest

MY LORDS,

In November, 1958, some Post Office employees had opened a manhole in Russell Road, Edinburgh, for the purpose of obtaining access to a telephone cable. The manhole from which the cover had been removed was near the edge of the roadway. A shelter tent had been erected over the open manhole. The manhole was some nine feet deep, and a ladder had been placed inside the manhole to give access to the cable. Around the area of. the site had been placed four red warning paraffin lamps. The lamps were lit at 3.30 p.m. About 5 p.m. or 5.30 p.m. the Post Office employees left the site for a tea break, for which purpose they went to an adjoining Post Office building. Before leaving (they removed the ladder from the manhole and placed it on the ground beside the shelter and pulled

a tarpaulin cover over the entrance to the shelter, leaving a space of two feet to two feet, six inches between the lower edge of the tarpaulin and the ground. The lamps were left burning.

After they left, the Appellant, aged eight, and his uncle, aged ten, came along Russell Road and decided to explore the shelter. According tothe findings of the Lord Ordinary, the boys (picked up one of the red lamps, (raised up the tarpaulin sheet and entered the shelter. They brought the ladder into the shelter with a view to descending into the manhole. They also brought a piece of rope which was not the Post Office equipment, tied (the rope to the lamp and, with the lamp, lowered themselves into the manhole. They both came out carrying the lamp. Thereafter, according to the evidence, the Appellant tripped over the lamp, which fell into the hole. There followed an explosion from the hole with flames reaching a height of thirty feet. With the explosion the Appellant fell into the hole and sustained very severe burning injuries.

In an action by the pursuer directed against the Lord Advocate, as representing the Postmaster-General, on the ground that the accident was due to the fault of the Post Office employees in failing to close the manhole before they left or to post a watchman while they were away, the Lord Ordinary assoilzied the Respondent. His judgment was affirmed by a majority of the First Division, Lord Carmont dissenting.

Before the Lord Ordinary and the Division a preliminary point was taken by the Respondent that the Appellant was a trespasser in the shelter and that the Post Office employees therefore owed no duty to take precautions for his safety. This point was not persisted in before this House, and it is therefore unnecessary to say anything about it.

The Lord Ordinary, after a very careful analysis of the evidence, has found that the cause of the explosion was as a result of the lamp which the Appellant knocked into the hole being so disturbed that paraffin escaped from the tank, formed vapour and was ignited by the flame. The lamp was recovered from the manhole after the accident; the tank of the lamp was half out and the wick-holder was completely out of the lamp. This explanation of the accident was rated by the

experts as a low order of probability. But as there was no other feasible explanation k was accepted by the Lord Ordinary, and this House must take it as the established cause.

The Lord Ordinary has held that the presence of children in the shelter and in the manhole ought reasonably to have been anticipated by the Post Office employees. His ground for so holding was that the lighted lamps in the public street adjacent to a tented shelter in which there was an open manhole provided an allurement which would have been an attraction to children passing along the street.

I pause here to observe that the Respondent submitted an argument before the Division and repeated in this House that having regard to the evidence the presence of children in Russell Road on that day, which was a Saturday, could not reasonably have been anticipated. This argument received only the support of the Lord President in the Court below. It was founded on the fact that Russell Road is a quiet road and has no dwelling-house fronting it, the nearest house being four hundred yards away and the evidence of the Post Office employees that they were never bothered with children. This contention was rejected by the Lord Ordinary, who was in a better position than we are to judge of its validity. Having regard to the fact that this was a public street in the heart of the city there was no necessity, in my view, for the Appellant to prove the likelihood of children being present. If the Respondent had to establish the unlikelihood of the presence of children, his evidence fell far short of any such situation. It was entirely dependent on the experience of the Post Office employees during the preceding five days of the week. They had no previous experience of traffic at any other time. The Lord Ordinary, in my view, was well entitled to reach the conclusion which he did.

The next step in the Lard Ordinary's reasoning was that it was reasonable to anticipate that danger would be likely to result from the children's interference with the red lamps and their entrance to the shelter. He has further held that in these circumstances the normal dangers of such children falling into the manhole or being in some way injured by a lamp, particularly if it fell or broke, were such that a reasonable man would not have ignored them. This view of the evidence was not, as I read the judgments, dissented from in the Inner House. Reference may be

particularly made to Lord Guthrie's remarks, 1961 S.C. page 337, where he says: The Lord Ordinary had held that it should have been anticipated that a boy might in the circumstances fall into the manhole and sustain injuries by burning from the paraffin lamp. It seems to have been accepted by both parties in the hearing before the Division that burning injuries might reasonably have been foreseen. But whether this be the position, there was ample evidence upon which the conclusion could be drawn that there was a reasonable probability of burning injuries if the children were allowed into the shelter with the lamp.

The Solicitor-General endeavoured to limit the extent of foreseeability in this connection by references to certain passages in the evidence regarding the safety of the red paraffin lamps. It might very well be that paraffin lamps by themselves if left in the open are not potentially dangerous even to children. But different considerations apply when they are found in connection with a shelter tent and a manhole all of which are allurements to the inquisitive child. It is the combination of these factors which renders the situation one of potential danger.

In dismissing the Appellant's claim the Lord Ordinary and the majority of the Judges of the First Division reached the conclusion that the accident which happened was not reasonably foreseeable. In order to establish a coherent chain of causation it is not necessary that the precise details leading up to the accident should have been reasonably foreseeable: it is sufficient if the accident which occurred is of a type which should have been foreseeable by a reasonably careful person (Miller v. South of Scotland Electricity Board, 1958 S.C. (H.L.) 20, Lord Keith of Avonholm, at p. 34; Harvey v. Singer Manufacturing Co., 1960 S.C. 155, Lord Patrick, at p. 168); or as Lord Mackintosh, at p. 172, expressed it in Harvey, the precise concatenation of circumstances need not be envisaged. Concentration has been placed in the Courts below on the explosion which it was said could not have been foreseen because it was caused in a unique fashion by the paraffin forming into vapour and being ignited by the naked flame of the wick. But this, in my opinion, is to concentrate on what is really a non-essential element in the dangerous situation created by the allurement. The test might better be put thus:- Was the igniting of paraffin outside the lamp by the flame a foreseeable consequence of the breach of duty? In the circumstances there was a combination

of potentially dangerous circumstances against which the Post Office had to protect the Appellant. If these formed an allurement to children it might have been foreseen that they would play with the lamp, that it might tip over, that it might be broken, and 'that when broken the paraffin might spill and be ignited by the flame. All these steps in the chain of causation seem to have been accepted by all the Judges in the Courts below as foreseeable. But because the explosion was the agent which caused the burning and was unforeseeable, therefore the accident, according to them, was not reasonably foreseeable. In my opinion this reasoning is fallacious. An explosion is only one way in which burning can be caused. Burning can also be caused by the contact between liquid paraffin and a naked flame. In the one case paraffin vapour and in the other case liquid paraffin is ignited by fire. I cannot see that these are two different types of accident. They are both burning accidents and in both cases the injuries would be burning injuries. Upon this view the explosion was an immaterial event in the chain of causation. It was simply one way in which burning might be caused by the potentially dangerous paraffin lamp. I adopt with respect Lord Carmont's observation in the present case (1961 S.C. p. 331): The defender cannot, I think, escape liability by contending that he did not foresee all the possibilities of the manner in which allurements-the manhole and the lantern-would act upon the childish mind.

The Respondent relied upon the case of Muir v. Glasgow Corporation, 1943 S.C. (H.L.) 3, and particularly on certain observations by Lords Thankerton and Macmillan. There are, in my view, essential differences between the two cases. The tea urn was, in that case, not like the paraffin lamp in the present circumstance, a potentially dangerous object. More-over, the precise way in which the tea came to be spilled was never established, and, as Lord Romer said at page 18: It being thus unknown what was the particular risk that materialised, it is impossible to decide whether it was or was not one that should have been within the reasonable contemplation of Mrs Alexander or of some other agent or employee of the appellants, and it is, accordingly, also impossible to fix the appellants with liability for the damage that the children sustained.

I have therefore reached the conclusion that the accident which occurred and which caused burning injuries to theAppellant was one which ought reasonably to

have been foreseen by the Post Office employees and that they were at fault in failing to provide a protection against the Appellant entering the shelter and going down the manhole.

I would allow the appeal.

Lord Pearce

My lords,

I agree with the Opinion of my noble and learned friend, Lord Guest.

The dangerous allurement was left unguarded in a public highway in the heart of Edinburgh. It was for the defenders to show by evidence that, although this was a public street, the presence of children there was so little to be expected that a reasonable man might leave the allurement unguarded. But in my opinion their evidence fell short of that, and the Lord Ordinary rightly so decided.

The defenders are therefore liable for all the foreseeable consequences of their neglect. When an accident is of a different type and kind from anything that a defender could have foreseen he is not liable for it (see The Wagon Mound [1961] A.C.388). But to demand too great precision in the test of foreseeability would be unfair to the pursuer since the facets of misadventure are innumerable (see Miller v. South of Scotland Electricity Board, 1958 S.C. (H.L.) 20 at p. 34; Harvey v. Singer Manufacturing Co., 1960 S.C. 155). In the case of an allurement to children it is particularly hard to foresee with precision the exact shape of the disaster that will (arise. The allurement in this case was the combination of a red paraffin lamp, a ladder, a partially closed tent, and a cavernous hole within it, a setting well-fitted to inspire some juvenile adventure that might end in calamity. The obvious risks were burning and conflagration and a fall. All these in fact occurred, but unexpectedly the mishandled lamp instead of causing an ordinary conflagration produced a violent explosion. Did the explosion create an accident and damage of a different type from the misadventure and damage that could be foreseen? In my judgment it did not. The accident was but a variant of the foreseeable. It was, to quote the words of Denning, L.J. in Roe v. Minister of Health and Another {19541

2 Q.B.66 at p. 85, " within the risk created by the negligence." No unforeseeable extraneous, initial occurrence fired the train. The children's entry into the tent with the ladder, the descent into the hole, the mishandling of the lamp, were all foreseeable. The greater part of the path to injury had thus been trodden, and the mishandled lamp was quite likely at that stage to spill and cause a conflagration. Instead, by some curious chance of combustion, it exploded and no conflagration occurred, it would seem, until after the explosion. There was thus an unexpected manifestation of the apprehended physical dangers. But it would be, I think, too narrow a view to hold that those who created the risk of fire are excused from the liability for the damage by fire because it came by way of explosive combustion. The resulting damage, though severe, was not greater than or different in kind from that which might have been produced had the lamp spilled and produced a more normal conflagration in the hole.

I would therefore allow the appeal.

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