

under the erroneous impression that the mortgagors would become members of the defendant society and as such liable to pay fines in accordance with the rules in case of default. Lawrence, J., who tried the action, held that the contract was not *ultra vires* of the defendant society, and though conceding that the Court would not decree specific performance involving a breach of trust, yet he found that the contract had been fairly entered into even if there had been some breach of duty by the directors of which the plaintiffs had no notice, and though the defendant might not be able to impose fines on the mortgagors that was no ground for refusing specific performance.

NEGLIGENCE—NUISANCE—COAL MINE—COLLIERY SPOIL—TIPPING
ON MOUNTAIN SIDE—LANDSLIDE OCCASIONED BY TIPPING—
LICENCE TO CARRY ON TRADE.

Attorney-General v. Cory, and Kennard v. Cory (1921), 1 A.C. 521. This was an appeal by the plaintiffs in two separate actions against the same defendants. The defendants carried on a coal mine and by leave of the plaintiffs in the second action had tipped spoil from the colliery on their land which was a mountain side. The result was that a landslide took place and injured certain houses of the licensors and also a public road. The first action was brought by the Attorney-General on the relation of the municipality in which the road was vested, to restrain the nuisance and for damages done to the road. The other action was brought by the licensors claiming damages and an injunction on the ground that the defendants had tipped to an unreasonable extent and in an unreasonable manner. The House of Lords (Lords Haldane, Finlay, Atkinson, Shaw and Buckmaster) gave judgment (Lord Buckmaster dissenting) finding on the evidence that the landslide was due to the defendants having neglected to drain the tips, and that they were liable to both plaintiffs for the damage done both on the principle of *Rylands v. Fletcher* (1868), L.R. 1 Ex 265, and also on the ground of negligence, and the judgment of the Court of Appeal to the contrary was reversed. Lord Finlay was of the opinion that apart from negligence the defendants would not have been liable to the plaintiffs in the second action either on the principle of *Rylands v. Fletcher* or on the principle that a licensee to carry