

negligence on the part of the person injured, and with, in the defendant, a right over against any other person who may have been solely responsible. The section is unsatisfactory in that part of it consists in an attempt to state compendiously, and therefore dangerously, some fundamental propositions of law of whose application, in the circumstances, there would be no doubt, by its apparent omission to cover cases of wreck, and by the imposition of liability independently of responsibility.

There is no lack of analogies by reference to which, if it is equitable to do so, the Courts may apply to cases which may come before them such presumptions and rules of law as the justice of the case requires, and if the Courts do not reach a conclusion that a liability to the surface owner arises from the fact of damage being caused by him from the air, or that this liability is to be imposed on the owner, whatever that may mean, of an aircraft even if it was at the time under the control of a thief, it will only be because it appears unreasonable and unjust to do so. There is authority, if circumstances require reliance upon it. The principle of *Rylands v. Fletcher* (1) might suffice, but as early as 1822 it was held in the United States that both the direct damage caused by the fall of a balloon and that resulting indirectly from the concurrence of the curious public could be recovered from the balloonist apart from negligence on his part (2). The longer final decision on the applicability of this rule is delayed, the less likely its adoption will become, and it seems, on the whole, much more satisfactory to leave the principles to be worked out on the facts of individual cases than to attempt to deal with the subject by statute. There is always danger, on subjects of this kind of falling into the error into which the British Parliament fell in 1865 when it directed that every vehicle propelled by steam or any other than animal power should be in charge of at least three men employed to drive and con-

(1) (1868) L.R. 3 H.L. 330.

(2) *Guille v. Swan* (1822), 19 Johns (N.Y.) 331. See also *Canney v. Rochester* (1911), 78 N.H. 60.

(3) 28-29 Victoria, c. 83, s. 3.