IS NEGLIGENCE MATERIAL IN ASCERTAINING LIABILITY.—Is the second rule above quoted absolute, or may the defendant escape if he has been guilty of no negligence. Can a man bring water upon his land and in answer to an action for its escape say that he did all he could to keep it there. If there is any doubt of his ability to keep it there, should he have brought it? And if there is no doubt then he must be guilty of negligence.

"The question in general is, not whether the defendant has acted with due care and caution, but whether his acts have occasioned the damage. He can excuse himself by showing that the escape was owing to the plaintiff's fault; or, *perhaps*, that the escape was the consequence of *vis major* or the act of God." *Per Lord Canworth, in Rylands v. Fletcher, L. R. 3 H. L. 341.* The careful "perhaps" of Lord Cranworth was altogether unnecessary if the decision in *Nichols v. Marsland, 2 Ex. Div. 1,* be sound. In that case it was held, not only that the act of God was a sufficient defence to an action for the bursting of the defendant's ornamental pools, (whereby the plaintiff was damaged), but that an extraordinary rain-fall which could not reasonably have been anticipated was an interposition of Providence. It is hard to see why the plaintiff in this case should have failed in his action. Extraordinary rain-falls will happen, and the damage was caused by the ornamental ponds being only strong enough for ordinary showers. An analogy may be sought in the spreading of fire by a sudden wind, in which case there is no liability. But the authorities apply to fires set out in the course of good husbandry, or for some other useful purpose. We know of no case where a man built a bonfire for his own amusement and was held not to be liable in case it got beyond his control and did damage. And the analogy between a sudden wind, which in all possibility will not arise during the continuance of a necessary fire, and an unusual rain-fall, which is sure to come some time, is not very convincing.