one must so use his own property, and exercise the rights incident thereto, in such a manner as not to injure the property of another. And it is equally true, that the *mere lawfulness of the act* is not in itself a test in all cases of exemption from liability for injuries resulting therefrom to the property of others. But yet there are certain rights incident to the dominion and ownership of property, in the exercise and enjoyment of which a person will not be liable for damages, although injury may be occasioned thereby to the property of another.

The books are full of cases of this kind and it is unnecessary to cite them here. The question, then, is, what is the true test in actions of this kind, by which the *exemption from liability is to be determined*? We think it may be safely said, both on principle and on authority, that the true test is, whether, in the act complained of, the owner has used his property in *a reasonable, usual and proper manner*, taking care to avoid unnecessary injury to others.

This is the rule laid down by the House of Lords, in the recent case of *Rylands* v. *Fletcher*, L. R., 3 Eng. and Ir. App. 330. There the defendant built a reservoir for the purpose of keeping and storing water, and the weight of the water broke through some old disused mining passages and works and injured the mine of the plaintiff.

The Court of Exchequer, Bramwell, B., dissenting, were of opinion that the plaintiff was not entitled to recover; but on appeal to the Exchequer Chamber, this judgment was reversed; and on appeal to the House of Lords, the judgment of the Exchequer Chamber was affirmed.

The Lord Chancellor said :—"The defendants, treating them as the owners or occupiers of the close in which the reservoir was constructed, might lawfully have used that close for any purpose for which it might in the ordinary course of the enjoyment of land be used: and if in what I may term the natural user of that land, there had been any accumulation of water either on the surface of the ground, or under water, and if by the operation of the laws of nature that accumulation of water had passed off into the close occupied by the plaintiff, the plaintiff could not have complained that that result had taken place.

"On the other hand, if the defendants not stopping at the natural use of their close had desired to use it for any purpose which I may term a *non-natural* use, for the purpose of introducing into the close that which in its natural condition was not in or upon it, for the purpose of introducing water, either above or below ground, in quantities and in the manner not the result of any work or operation on or under the land, and if, in consequence of their doing so, or in consequence of any imperfection in the mode of their doing so, the water came to escape and to pass off into the close of the plaintiff, then it appears to me, that which the defendants were doing, they were doing at their own peril."

The right of the plaintiffs to maintain their action was based entirely upon the ground that the defendants had used their land in an unusual, or, in the language of the Lord Chancellor, in a "non-natural" manner, but the right to use it for any purpose for which it might, in the ordinary course of the enjoyment of land be used, was distinctly asserted.

Now in this case the appellee was entitled under its charter and the ordinancesof the city of Baltimore to the use of the bed of the street for the purpose of a horse railway, and if its track was obstructed by snow, it had beyond all question the right to remove it. And the only question is, whether in clearing its track, and in throwing the snow on the bed of the street adjoining thereto, it can be said that the appellee was, under the circumstances, using the bed of the street in an *unusual or unreasonable manner*. We think not. The removal of the snow from its track being necessary in order to enable the company to use it for the public benefit and conveyance, it was obliged either to throw it on the bed of the street or to haul it away, and no one will pretend that it was under any obligation to do the latter. It had no right, of course, to throw the snow in the gutter, and thereby obstruct the natural flow of water from the street, because in so doing the appellee would have been guilty of negligence. Nor are we to