

makes them dangerous for purposes of the defendant's own, is a liability transcending the rule in *Fletcher v. Rylands* (L.R. 3 H.L. 330) and *Nichols v. Marsland* (2 Ex. D. 1) and might work great injustice; that Article 1054 does not begin with the words "Toute personne est responsable," but with the words "Elle est responsable," *Elle* referring to the words of Article 1053, viz., "Toute personne capable de discerner le bien du mal," a reference which is pointless if the *faute* of such "personne" is immaterial and if all that is needed is that in fact the thing should be under his care. To all this the plain words of the Article, if they are plain as their Lordships conceive them to be, are a sufficient answer. In enacting the Code the legislature may have foreseen cases of the kind now in question many years before any of them arose. In construing it *Fletcher v. Rylands* and *Nichols v. Marsland* had better be left out of account. There is no reason why the Code should be made to conform to them. The mere title given to a group of Articles is not in itself enough to contradict the prescriptions of one of them. As to the fact that the Article begins with "Elle" and not with "Toute personne," it may be that a person incapable of knowing good from evil would be also incapable of having others under his control or of having things under his care, or at any rate would by that very incapacity be entitled to exculpation, on the ground that, if he could not tell right from wrong, neither could he prevent the *fait* which caused the damage. Even if this be not so, the only result would be to exempt from liability under Article 1054 persons incapable of knowing right from wrong, though they may occupy the positions mentioned. As no case of this kind arises here, no decision or opinion need be given about it. The positive words of the Article stand and must have effect.

Two other points may be briefly disposed of. The poplar tree grew in the field of one of the plaintiffs and belonged to him and both the houses burnt belonged to customers of the defendant Company. Though these points were touched upon, it is not clear what legal consequence was supposed to result from them. The owner of the poplar was not shown to have been in fault and, even if every tree that grows is "in the charge" of its owner, the tree was not the cause of the damage, but only an antecedent prerequisite. As to the other point there was no evidence that the owner of the houses consented to take the risk of what happened or even knew of it, and if it is said that the exploitation of the electricity was not solely for the supplier's benefit but also for the consumer's, which is somewhat far-fetched, the Article says nothing about the liability of exploiters. On neither of these points have the facts been found, so as to raise in

the appellants' favour any contention requiring decision.

Apart from the articles of the Code the appellants resorted to a separate line of argument. The powers under which they carry on their undertaking are statutory and are contained some in private and some in public statutes. Their Lordships think there is no substance in the objection taken by the respondents that under Article 10 of the Code private statutes must be pleaded, which implies proof, and that evidence was not given of the private statutes in this case. The Article does not provide that if such evidence is not forthcoming the same result may not be obtained by admissions and as all the statutes without distinction were the subject of discussion in the Courts below, as if the terms of both kinds of legislation had been duly brought before the Court, and as the printed text was in fact readily available, their Lordships think that this objection is not now open to the respondents.

The powers which these statutes give are of a very familiar type. The undertakers are authorized to carry and distribute high tension electricity over cables, which may be either overhead or underground. Section 13 of 58 and 59 Vict., ch. 58, expressly provides that the Company may erect equip and maintain poles in the streets for the purpose of working and maintaining its lines for the conveyance of electric power upon, along, across, over and under the same. It was contended by the respondents that Subsection (c) of this section, by the words, "the Company shall be responsible for all damage which its agents, servants or workmen cause to individuals or property in carrying out or maintaining any of its said works," made the Company absolutely liable for the damage sued for in the present case. Their Lordships think that, as an independent cause of action, this case fails. The damage here is not, in any view of the construction of the subsection, caused in carrying out or maintaining works.

The appellants, however, rely on the authority to carry their wires overhead which the statutes give, as an answer to the claim, and contend that the statutes exclude the operation of Articles 1053 and 1054 of the Code in matters concerning the distribution of high tension electricity by overhead cables, as repugnant to the power which the legislature has bestowed. The application of enactments of this kind is familiar and well settled. Such powers are not in themselves charters to commit torts and to damage third persons at large, but that which is necessarily incidental to the exercise of the statutory authority is held to have been authorized by implication and therefore it is not the foundation of a cause of action in favour of strangers, since otherwise the application of the general