

all events, it is clear that, under such circumstances, the maxim, *Volenti non fit injuria*, would in most instances furnish a perfect protection to a defendant. On the other hand, it seems undeniable that the courts, in establishing the doctrine imposing a more than usually stringent rule of responsibility upon those who deal with things of this kind, have been much influenced by the fact that the persons who will handle or come into proximity to them, after they have left the possession of the original transferor, are commonly, in the very nature of the case, ignorant of the dangers to which contact or proximity will expose them (f).

In some cases the special duty alleged to have been violated in regard to articles exceptionally dangerous was that of notifying the transferee of their properties (g), and although the language used by the judges seems to show that they viewed the injurious agency merely as things which required more care and caution than ordinary merchandise (h), rather than as things inherently dangerous in the sense with which we are now concerned, the analogy is sufficiently close to justify vouching these decisions in aid of our position that a rule, essentially identical in its practical results with that formulated in (E) above, and far more precise and rational, would be secured if the courts were simply to lay it down that one who transfers an exceptionally dangerous thing does not exercise the measure of care which the circumstances demand, unless, at the time of the transfer, he sees that the transferee is not under any misapprehension as to its properties, and that for an omission to discharge this duty he must respond in damages to anyone, whether a remote transferee or not, whom the article injures while its properties remain undisclosed and undiscovered by the persons through whose hands it passes. (See also XI., post.).

IX. A rule expressed in this form would place the liability for injuries caused by articles of this class on the same basis as that to which a person who has created a trap is subject. In fact it

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(f) In the American cases as to the sale of poisonous drugs see the last note. Much emphasis was laid on the fact that the plaintiff did not know and had no reasonable means of knowing that the drug was dangerous.

(g) *Brass v. Matland*, 6 El. & Bl. 470; *Farrant v. Barnes* (1862), 11 C.B. N.S. 553; *Lyell v. Ganga Dai* (1875), Indian L. Rep. 1 All. 60, where the persons injured were the servants of a carrier to whom the dangerous article had been delivered for transportation. *S. P. Standard Oil Co. v. Tierney* (1891) 92 Kentucky Rep. 367; 14 Lawy. Rep. Ann. 677.

(h) See especially the opinion of Willes, J. in *Farrant v. Barnes*, supra.