

The Reception of Rylands V. Fletcher Rule in Ceylon: A Review on the Judicial Activism in Introducing Principles of English Law, in Colonial Era

G. I. D. Isankhya Udani

Department of Private and Comparative Law, University of Colombo,
SRI LANKA.

udanigammanpila@yahoo.com

ABSTRACT

In the British colonial era, even if the British administrative policy based on the decision of Campbell v. Hall was adopted by the proclamation of 1799 in Ceylon, the principles of English law have been introduced through the judicial activism. At times, this caused to create an overlap between the Roman Dutch law and English law in its domestic application. In coming up to this viewpoint, the question, “whether the tort rule in Rylands v. Fletcher is incorporated in the legal system of Sri Lanka” is a controversial issue and there is no judicial consensus in adopting this doctrine in introducing ‘strict liability’ for civil injuries. Therefore, the main objective of this research is to examine the “role of the judiciary” in introducing a tort doctrine to the legal system of Sri Lanka through the judicial interpretation. When considering the judicial attitude in Ceylon in adopting this doctrine, the approach that, “the principle laid down in Fletcher v. Rylands had been adopted in this colony” was followed in some judicial decisions; such as, Elphinstone v. Boustead, Silva v. Silva and Korossa Rubber Company v. Silva. Conversely, in Samed v. Segutamby, the court declared that, “the reception of this principle, didn’t mean that it was a part of the legal system of Sri Lanka. Therefore, the non-consensual judicial attitude on “adopting this tort doctrine in Ceylon” has created an academic debate in introducing the principles of English law through the judicial interpretation. This is a qualitative research, mainly carried out by the reference of secondary data such as judicial decisions, academic writings and e-sources.

Keywords: *Rylands v. Fletcher*, English Law, Legal System of Sri Lanka, Judicial Activism, Colonial Era

INTRODUCTION

The Nature of the Plural Legal System of Sri Lanka

As a consequential impact of the European colonization and the ethnic diversity in the island for centuries, Sri Lanka has become a country, which is enriched with the multiple systems of law, such as; Roman Dutch law, English law, *Kandyan* law, Buddhist law, *Tesawalamai* law and Muslim law. Weeramantry (1967) demonstrates that, “The legal system of Ceylon has often been likened to a many coloured mosaic; Laws springing from sources as diverse as England, Arabia, and the Gangetic plain stand side by side jostling for recognition with those taking their origin in Rome, in the Netherlands and in indigenous custom.” Likewise, Nadaraja (1972) pointed that, “Anyone who undertakes a serious study of the legal system of Ceylon, soon finds that, it cannot be properly understood without tracing several rules and institutions back to their origins in the past of a variety of countries; Ceylon, India and Arabia, Italy, the Netherlands and England.”

Nevertheless, it is strongly accepted that, this complexity of the legal system has affected the development of the laws of Sri Lanka, specially, by addressing the modern socio-economic-

legal transformations in the developing world and on the other hand, by ensuring the socio-cultural values and customs of the indigenous inhabitants of Sri Lanka. However, another key fact to remember that, the existence of a plural legal system has affected on arising overlaps between the major foreign legal systems in Sri Lanka; Roman Dutch law and English law in their domestic application, and according to Cooray (1972), “the co-existence of English law and Roman Dutch law in the legal system gives rise to interesting issues.” Similarity, by concerning the difficulties of having a multifarious system of laws, Sir Ivor Jennings and Tambiah (1952) argue that, “derived from so many different systems – Roman, English, Sinhalese, Hindu and Muslim – the law of Sri Lanka is embarrassed rather by the richness of its sources than by the lack of them.” With this in mind, it has to be pointed out that, one of the most appropriate illustrations in relating to the aforesaid discussion exists in the law of torts; namely, “the adaptation or reception of the Rylands v. Fletcher rule in the legal system of Sri Lanka.” But, it might be a difficult task to discuss the findings of the research without having proper knowledge about the British influence in the legal system of Ceylon.

The British Administrative and Judicial Policies in the Legal System of Colonial Sri Lanka in relating to the reception of English law principles

One of the most consequential outcomes of the British colonialism in Ceylon was introducing ‘English Law’ to the legal system of Sri Lanka’; mainly, by the legislative enactments and by the judicial decisions, and this can be recognized as one of the most significant factors in socio-legal transformations in 19th and 20th centuries in the country.” Sir Roberts Wray (1966) highlights that, “the introduction of English law into most British colonies was virtually total-the laws in force in England at a particular date being adopted.” Nevertheless, as per the view-point of Cooray (1972); “The influence in Sri Lanka of the English law is not as far-reaching as in some other former British colonies. In Sri Lanka different pattern was followed because of the existence of the Roman Dutch law and systems of communal personal law.”

Therefore, one of the crucial points, which must be emphasized in here is ‘the British administrative policy’, that “continuing in force the existing legal system in the conquered and ceded territories until changed by the deliberate act of the sovereign”, which was established as the 5th proposition of the Court of King's Bench judgment; *Campbell v. Hall* by Lord Mansfield (1774) had been adopted in Ceylon, by the preamble and the first clause of the Proclamation of 23rd September 1799, particularly because of the prevalence of the Roman Dutch Law, as an impact of the Dutch occupation in Ceylon. As per the proclamation of 1799 which was declared by the governor sir Frederick North, it stated that, "WHEREAS it is His Majesty's gracious Command, that for the present and during His Majesty's will and pleasure, the temporary Administration of Justice and Police in the Settlements of the Island of Ceylon now in His Majesty's Dominion, and in the Territories and Dependencies thereof, should, as nearly as circumstances will permit, be exercised by us, in conformity to the laws and Institutions that subsisted under the ancient Government of the United Provinces, subject to such deviations in consequence of sudden and unforeseen emergencies..”

But, it has to be clearly emphasized in here that, as declared by the chief justice H.N.G. Fernando (1969) in the judgment; *De Costa v Bank of Ceylon*, the proclamation did not authorize any such deviations or alterations to be made by the Courts of law to the “law under the ancient Government of the United Provinces or Roman-Dutch Law”. Nevertheless, when analyzing the legal history of Ceylon in British era, it was not difficult to ascertain the significance of the role of the judiciary in introducing English law principles which was caused to trespass the prevailing Roman Dutch law principles.

RESEARCH OBJECTIVE

The main objective of this research is to examine the “role of the judiciary” in introducing a tort doctrine to the legal system of Sri Lanka through the judicial interpretation.

RESEARCH METHODOLOGY

This is a qualitative research, mainly carried out by the reference of secondary data such as judicial decisions, academic writings, journal articles and e-sources. Comparative analysis of the jurisdiction in the United Kingdom is also used in arriving at the conclusion, in order to address the recent developments in tort law.

DISCUSSION

Introducing English Law Principles Through the Judicial Activism: The Background, Reasons and the Outcomes

As noted above, it has conclusively been accepted that, the judicial administration in the British conquest has effected on trespassing the Dutch principles, while introducing the English law principles, and according to Nadaraja (1971), “indeed, the task of directing the course of Legal Development in the first formative half century of the British rule was carried out chiefly by the courts.” Jennings and Tambiah (1952) have used interesting simile for describing this as; “The Roman Dutch law as applied by the British was like an old cadjan roof. As it got older, it let it in the outside elements and they were mainly English law.”

In point of fact, it is not a surprise of the likeableness of the judiciary of this era towards English law principles, yet, because of the effect of particular reasons such as, the attitude of the British judges on a strange legal system, English law background of the judges, lack of the Roman Dutch law sources and language difficulties, the principles of English law have been introduced through the judicial activism and occasionally, this caused to create an overlap between the Roman Dutch law and English law in its domestic application. As pointed out by Nadaraja (1971) reasons like; “English had become the language of administration, of the legislature and of the court of justice, Lawyers trained in England, Followed English models in statutes, Influence of English Legal Thinking, and English textbooks and digests of cases were more readily accessible and intelligible to judges and lawyers than the sources of Roman Dutch Law written in Dutch or Latin” have been effected on this judicial transformation.

More recent studies of Cooray (1972) have confirmed that, “the judicial reception of English law in derogation of the Roman Dutch law is seen particularly in the law of torts and contracts, though the latter system is still the basic or common law.” In addressing this point, the question, “whether the tort rule in *Rylands v. Fletcher* is incorporated in the legal system of Sri Lanka” is a controversial issue and moreover, there is no judicial consensus in adopting this doctrine in introducing ‘strict liability’ for civil injuries. Therefore, the main objective of this research is to examine the “role of the judiciary” in introducing a tort doctrine to the legal system of Sri Lanka through the judicial interpretation, while comparing the alteration of the judicial attitude in the colonial era.

Reception of *Rylands v. Flecher* Rule in Ceylon

An Introduction to the Rule

A famous scholar on Torts; Fleming (1983) has presented a comprehensive review on this principle by mentioning “the legal doctrine of “strict liability for the escape of dangerous substances” had its genesis in the leading case of *Rylands v. Fletcher*” (1866) and this rule

must be sought in the judgments of both the “the Court of Exchequer Chamber” and the “House of Lords” in the United Kingdom.

As per Justice Blackburn (1866) in the “Court of Exchequer Chamber”; it was declared that, “We think that the true rule of law is, that the person who for his own purposes brings on his lands and collects and keeps there anything likely to do mischief if it escapes, must keep it in at his peril, and, if he does not do so, is prima facie answerable for all the damage which is the natural consequence of its escape.” Subsequently, following the steps of Justice Blackburn, the House of Lords also affirmed the previous decision as; “any one who brings upon his land anything which is not naturally on it, and is in itself dangerous, and may become mischievous if not kept under proper control, is liable in damages, although in so doing he acted without negligence. In the House of Lords, Lord Chancellor Cairns rested his decision on the ground that the defendant had made a “*Non-natural Use*” of his land, though he regarded the judgment of Justice Blackburn (1866), as reaching the same result and said he entirely concurred in it”

However, it should be noticeable that, this tort principle has been restricted by introducing a new requirement, namely, the “damage must be foreseeable” by later developments in English tort law by the decisions in *Cambridge Water Co Ltd v. Eastern Counties Leather PLC* (1994) and *Transco PLC v. Stockport Metropolitan Borough Council* (2003).

Reception of the Rylands v Fletcher Rule, through the Judicial Activism

The judicial controversy on considering this strict liability rule as a part of the legal system of Sri Lanka has been basically affected by the existence of the introduced Roman Dutch law principle in Ceylon, which is based on negligence, apart from the strict liability. It is contended that under the Roman-Dutch law the principle is different in the case of damage caused by fire spreading from the land of one person to that of another, and that in such a case damages are not recoverable without proof of want of due diligence on the part of the defendant. Therefore, the adverse interest of these two legal principles created a judicial non-consensus on reception of the tort principle in Ceylon, based on the judicial interpretation on the obligation of the proclamation of 1979.

In this sense, when considering the early colonial judicial approach in Ceylon in adopting this doctrine, the full bench of the Supreme Court of Ceylon has declared in *Elphinstone v. Boustead* (1872-76) that, “the law as to the damage caused by such an element as fire to be that enunciated in *Fletcher v. Rylands* and that the principle laid down in *Fletcher v. Rylands* had been adopted in this Colony.” Likewise, the liability for damages in an incident of fire-spreading onto a neighbor's land was questioned in the case of *Silva v. Silva* (1914) and in this case, by affirming the above approach further, the chief justice Lascelles declared that “the decision in *Elphinstone v. Boustead* must, I think, be taken to have introduced the principle of English law which is applicable to such cases.” Moreover, the chief justice Wood Renton in the leading case, *Korossa Rubber Company v. Silva* (1917) expressed that, “I desire to associate myself with the opinion expressed by Chief Justice Lascelles and Justice De Sampayo in *Silva v. Silva*, “that the rule in *Fletcher v. Rylands* must be taken to be in force in Ceylon.”

Nevertheless, it can be identified that, there is an inconsistency between the aforementioned judicial viewpoints of reception of the rule and the Supreme Court decision of the Chief Justice Bertram, in *Samad v. Segutamby* (1924) as a consequential outcome of the Renaissance of Roman Dutch law in the 20th century; “With the very greatest deference to the high authority of these Judges, I hesitate to apply such propositions to fundamental principles

of the common law enunciated by authorities recognized as binding wherever the Roman-Dutch Law prevails. Such principles may, no doubt, in the course of time, become modified in their local application by judicial decisions, but it would be only by a series of unbroken and express decisions that such a development could take place.” By supporting this view point, Cooray (1972) shows that, “the courts in more recent times, will not extend the judicial incorporation of English law.”

Therefore, after considering the judicial approach in Samed case, some scholars such as, Amarasinghe (1962) has emphasized that, “despite case law spanning a century, it is still not clear whether the rule in *Rylands v Fletcher* is part of the law of Sri Lanka.

CONCLUSION

As noticed above, the non-consensual judicial attitude on “adopting this tort principle; *Rylands v. Fletcher* in Sri Lanka has created an academic debate on the possibility and legitimacy by introducing principles of English law through the judicial interpretation. As an example, Tambiah (1952) demonstrates that, “the position of the rule in *Rylands v. Fletcher* is doubtful.” Despite prior view point, a contradict finding has been stated by Cooray (1972) that, “the rule in *Rylands v. Fletcher* may be regarded as part of the law of Sri Lanka, though there are contrary views and judicial dicta.”

Finally, when analyzing the modern development of reception of this rule, Fleming (1983) says, “yet, despite this modern rationalization and the general trend towards stricter liability, the rule of *Rylands v Fletcher* has not evoked enthusiastic judicial response. Therefore, further investigation into judicial approach on *Rylands v. Fletcher* rule is strongly recommended because of the lack of legal applicability of this principle in the contemporary era. Therefore, these findings provide that, the application of this tort rule in the post-colonial Sri Lanka by addressing new developments in tort law in the sense of balancing the economic development and the security of the mankind has opened a new legal platform in the legal system of Sri Lanka, while promoting its pluralistic nature and legitimizing the role of the judiciary in the law-making process.

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