Court of Appeal[397]
Spartan Steel & Alloys Ltd. v. *Martin & Co Ltd.*

ECONOMIC LOSS

Power cable

The plaintiff can recover in negligence for damage to his or her property and other loss directly consequential thereupon, including economic loss ("parasitic" economic loss). "Pure" economic loss, not consequential on property damage, cannot be recovered because the defendant does not owe the plaintiff a duty of care with respect to such loss.

Facts: The defendants' employees were digging up a road when they negligently damaged a power cable, which the defendants knew was the direct power supply from the electricity board's power station to the plaintiff's factory. The plaintiff was without electricity until the board was able to repair the cable. Because of this power failure, it had to pour molten metal out of its furnace to prevent damage to the furnace. The plaintiff claimed compensation for: (i) the physical damage to the melt in the furnace at the time of the power cut (GBP 368); (ii) the loss of profit on that melt (GBP 400), and (iii) the loss of profit on four other melts which normally could have been carried out during the period of the power cut (GBP 1,767).

Held: The Court of Appeal held that the plaintiff was entitled to recover for the physical damage and the loss of profit on the melt in the furnace at the time of the power cut (items (i) and (ii) above), but not for the loss of profit on the four hypothetical melts (item (iii) above).

Judgment: LORD DENNING MR: "At bottom I think the question of recovering economic loss is one of policy. Whenever the courts draw a line to mark out the bounds of *duty*, they do it as matter of policy so as to limit the responsibility of the defendant. Whenever the courts set bounds to the *damages* recoverable—saying that they are, or are not, too remote— they do it as matter of policy so as to limit the liability of the defendant.

In many of the cases where economic loss has been held not to be recoverable, it has been put on the ground that the defendant was under no *duty* to the plaintiff. Thus where a person is injured in a road accident by the negligence of another, the negligent driver owes a duty to the injured man himself, but he owes no duty to the servant of the injured man [references omitted]; nor to the master of the injured man [references omitted]; nor to anyone else who suffers loss because he had a contract with the injured man [references omitted] nor indeed to anyone who only suffers economic loss on account of the accident: [references omitted]. Likewise, when property is damaged by the negligence of another, the negligent tortfeasor owes a duty to the owner or possessor of the chattel, but not to one who suffers loss only because he had a contract entitling him to use the chattel or giving him a right to receive it at some later date [references omitted].

In other cases, however, the defendant seems clearly to have been under a duty to the plaintiff, but the economic loss has not been recovered because it is *too remote*. Take the illustration given by Blackburn J. in *Cattle* v. *Stockton Waterworks Co.* (1875) LR 10 QB 453 at 457, when water escapes

from a reservoir and floods a coal mine where many men are working. Those who had their tools or clothes destroyed could recover: but those who only lost their wages could not. Similarly, when the defendants' ship negligently sank a ship which was being towed by a tug, the owner of the tug lost his remuneration, but he could not recover it from the negligent ship: though the same duty (of navigation with reasonable care) was owed to both tug and tow: see *Société Anonyme de Remorquage à Hélice* v. *Bennetts* [1911] 1 KB 243 at 248. In such cases if the plaintiff or his property had been physically injured, he would have recovered: but, as he only suffered economic loss, he is held not entitled to recover. This is, I should think, because the loss is regarded by the law as too remote: see *King* v. *Phillips* [1953] 1 QB 429 at 439-440.

On the other hand, in the cases where economic loss by itself has been held to be recoverable, it is plain that there was a duty to the plaintiff and the loss was not too remote. Such as when one ship negligently runs down another ship, and damages it, with the result that the cargo has to be discharged and reloaded. The negligent ship was already under a duty to the cargo owners: and they can recover the cost of discharging and reloading it, as it is not too remote: see *Morrison Steamship Co.* v. *Greystoke Castle (Cargo Owners)* [1947] AC 265. Likewise, when a banker negligently gives a reference to one who acts on it, the duty is plain and the damage is not too remote: see *Hedley Byrne & Co. Ltd.* v. *Heller & Partners Ltd.* [1964] AC 465, [1963] 2 All ER 575 (HL).

The more I think about these cases, the more difficult I find it to put each into its proper pigeon-hole. Sometimes I say: 'There was no duty'. In others I say: 'The damage was too remote'. So much so that I think the time has come to discard those tests which have proved so elusive. It seems to me better to consider the particular relationship in hand, and see whether or not, as a matter of policy, economic loss should be recoverable, or not [emphasis added] . . .

So I turn to the relationship in the present case. It is of common occurrence. The parties concerned are: the electricity board who are under a statutory duty to maintain supplies of electricity in their district; the inhabitants of the district, including this factory, who are entitled by statute to a continuous supply of electricity for their use; and the contractors who dig up the road. Similar relationships occur with other statutory bodies, such as gas and water undertakings. The cable may be damaged by the negligence of the statutory undertaker, or by the negligence of the contractor, or by accident without any negligence by anyone: and the power may have to be cut off whilst the cable is repaired. Or the power may be cut off owing to a short-circuit in the power house: and so forth. If the cutting off of the supply causes economic loss to the consumers, should it as matter of policy be recoverable? And against whom?

The first consideration is the position of the statutory undertakers. If the board do not keep up the voltage or pressure of electricity, gas or water—or, likewise, if they shut it off for repairs—and thereby cause economic loss to their consumers, they are not liable in damages, not even if the cause of it is due to their own negligence. The only remedy (which is hardly ever pursued) is to prosecute the board before the magistrates. Such is the result of many cases . . . But one thing is clear: the statutory undertakers have never been held liable for economic loss only. If such be the policy of the legislature in regard to electricity boards, it would seem right for the common law to adopt a similar policy in regard to contractors. If the electricity boards are not liable for economic loss due to negligence which results in the cutting off the supply, nor should a contractor be liable.

The second consideration is the nature of the hazard, namely, the cutting of the supply of electricity. This is a hazard which we all run. It may be due to a short circuit, to a flash of lightning, to a tree falling on the wires, to an accidental cutting of the cable, or even to the negligence of someone or other. And when it does happen, it affects a multitude of persons: not as a rule by way of physical damage to them or their property, but by putting them to inconvenience, and sometimes to economic loss. The supply is usually restored in a few hours, so the economic loss is not very large. Such a hazard is regarded by most people as a thing they must put up with -without seeking compensation from anyone. Some there are who install a stand-by system. Others seek refuge by

taking out an insurance policy against breakdown in the supply. But most people are content to take the risk on themselves. When the supply is cut off, they do not go running round to their solicitor. They do not try to find out whether it was anyone's fault. They just put up with it. They try to make up the economic loss by doing more work next day. This is a healthy attitude which the law should encourage.

The third consideration is this: if claims for economic loss were permitted for this particular hazard, there would be no end of claims. Some might be genuine, but many might be inflated, or even false. A machine might not have been in use anyway, but it would be easy to put it down to the cut in supply. It would be well-nigh impossible to check the claims. If there was economic loss on one day, did the claimant do his best to mitigate it by working harder next day? And so forth. Rather than expose claimants to such temptation and defendants to such hard labour—on comparatively small claims—it is better to disallow economic loss altogether, at any rate when it stands alone, independent of any physical damage.

The fourth consideration is that, in such a hazard as this, the risk of economic loss should be suffered by the whole community who suffer the losses—usually many but comparatively small losses—rather than on the one pair of shoulders, that is on the contractor on whom the total of them, all added together, might be very heavy.

The fifth consideration is that the law provides for deserving cases. If the defendant is guilty of negligence which cuts off the electricity supply and causes actual physical damage to person or property, that physical damage can be recovered [references omitted]. Such cases will be comparatively few. They will be readily capable of proof and will be easily checked. They should be and are admitted.

These considerations lead me to the conclusion that the plaintiffs should recover for the physical damage to the one melt (GBP 368), and the loss of profit on that melt consequent thereon (GBP 400): but not for the loss of profit on the four melts (GBP 1,767), because that was economic loss independent of the physical damage. I would, therefore, allow the appeal and reduce the damages to GBP 768."

EDMUND DAVIES LJ (dissenting): "The facts giving rise to this appeal have already been set out by Lord Denning MR . . . The problem may be thus stated: Where a defendant who owes a duty of care to the plaintiff breaches that duty and, as both a direct and a reasonably foreseeable result of that injury, the plaintiff suffers only economic loss, is he entitled to recover damages for that loss?

. . .

In my respectful judgment, however it may formerly have been regarded, the law is today [in favour of the recovery of such damages]. I am conscious of the boldness involved in expressing this view, particularly after studying such learned dissertations as that of Professor Atiyah on "Negligence and Economic Loss" (1967) 83 LQR 248, where the relevant cases are cited. I recognize that proof of the necessary linkage between negligent acts and purely economic consequences may be hard to forge. *I accept, too, that if economic loss of itself confers a right of action this may spell disaster for the negligent party. But this may equally be the outcome where physical damage alone is sustained, or where physical damage leads directly to economic loss* [emphasis added]. Nevertheless, when this occurs it was accepted in *S.C.M. (United Kingdom) Ltd.* v. *W.J. Whittall & Son Ltd.* [1971] 1 QB 337 that compensation is recoverable for both types of damage. It follows that this must be regardless of whether the injury (physical or economic, or a mixture of both) is immense or puny, diffused over a wide area or narrowly localised, provided only that the requirements as to foreseeability and directness are fulfilled. I therefore find myself unable to accept as factors determinant of legal principle those considerations of policy canvassed in the concluding passages of the judgment just delivered by Lord Denning MR . . .

For my part, I cannot see why the GBP 400 loss of profit here sustained should be recoverable and not the GBP 1,767. It is common ground that both types of loss were equally foreseeable and equally

direct consequences of the defendants' admitted negligence, and the only distinction drawn is that the former figure represents the profit lost as a result of the physical damage done to the material in the furnace at the time when power was cut off. But what has that purely fortuitous fact to do with legal principle? In my judgment, nothing . . .

Such good sense as I possess guides me to the conclusion that it would be wrong to draw in the present case any distinction between the first, spoilt 'melt' and the four 'melts' which, but for the defendants' negligence, would admittedly have followed it. That is simply another way of saying that I consider the plaintiffs are entitled to recover the entirety of the financial loss they sustained [emphasis added] . . ."