CA on appeal from Birmingham Assizes (Mr. Justice Faulks) before Lord Denning M.R. : Edmund-Davies LJ; Lawton LJ, 22nd June 1972.

THE MASTER OF THE ROLLS:

1. Spartan Steel have a factory in Birmingham where they manufacture stainless steel. The factory obtains its electricity by a direct cable from a power station of the Midlands Electricity Board.

2. In June 1969 contractors called Martins were doing work on a road about a quarter-of-a-mile away. They were going to dig up the road with a big power-driven excavating shovel. They made inquiries about the place of the cables, mains, and so forth, under the road. They were given plans showing them. But unfortunately their men did not take reasonable care. The shovel damaged the cable which supplied electricity to the Spartan works. The Electricity Board shut down the power whilst they mended the cable.

3. The factory was at that time working continuously for twenty-four hours all round the clock. The electric power was shut off at 7.40 p.m. on 12th June, 1969, and was off for 14½ hours until it was restored at 10.00 a.m. on 13th June, 1969. This was all through the night and a couple of hours more. But, as this factory was doing night work, it suffered loss.

4. At the time when the power was shut off, there was an arc furnace in which metal was being melted in order to be converted into ingots. Electric power was needed throughout in order to maintain the temperature and melt the metal. When the power failed, there was a danger that the metal might solidify in the furnace and do damage to the linking of the furnace. So the plaintiffs used oxygen to melt the material and poured it from a tap out of the furnace. But this meant that the melted material was of much less value. The physical damage was assessed at £368.

5. In addition, if that particular melt had been properly completed, the plaintiffs would have made a profit on it of £400.

6. Furthermore, during those 14½ hours, when the power was cut off, the plaintiffs would have been able to put four more melts through the furnace: and, by being unable to do so, they lost a profit of £1,767.

7. The plaintiffs claim all those sums as damages against the contractors for negligence. No evidence was given at the trial: because the defendants admitted that they had been negligent. The contest was solely on the amount of damages. The defendants take their stand on the recent decision in this Court of ***S.C.M. (United Kingdom) Ltd. v W.J. Whittall & Son Ltd.***(1971) 1 Q.B. 337. They admit that they are liable for the £368 physical damages. They did not greatly dispute that they are also liable for the £400 loss of profit on the first melt, because that was truly consequential on the physical damages and thus covered by ***S.C.M. Ltd. v. Whittall***. But they deny that they are liable for the £1,767 for the other four melts. They say that was economic loss for which they are not liable. The Judge rejected their contention and held them liable for all the loss. The defendants appeal to this Court.

8. Mr. Christopher Bathurst, for the plaintiff, raised a point which was not discussed in ***S.C.M. v. Whittall***. He contended that there was a principle of English law relating to *"parasitic damages"*. By this he meant that there are some heads of damage which; if they stood alone, would not be recoverable: but, nevertheless, if they can be annexed to some other legitimate claim for damages, may yet be recoverable. They are said to be "parasitic" because, like a parasite, in biology, they cannot exist on their own, but depend on others for their life and nourishment. Applying this principle he contended that, even if the economic loss (£1,767) on these four melts, standing alone, would not be recoverable, nevertheless by being attached to the other claim it can be added to it, and recovered as a *"parasite"* to it.

9. Mr. Bathurst sought to establish this principle by reference to the books. Re cited a case where the owner of an old house was entitled to ancient lights for some small old windows. He pulled down the old house and put up a new house with big new windows. The defendants afterwards put up a building which obstructed the big new windows. The plaintiff was held entitled to be compensated for the loss of light through the whole space of the big new windows and not merely through the little space of the small old windows - see ***the Tilbury Case*** 24 Q.B.D. 326. That decision was considered in ***Horton v. Colwyn Bay*** (1908) 1 K.B. 327, and Lord Justice Buckley drew from it a general proposition which he stated to be this (at page 341): *".....if an actionable wrong has been done to the claimant, he is entitled to recover all the damages resulting from that wrong, and none the less because he would have had no right of action for some part of that damage if the wrong had not also created a damage which was also actionable"*.

10. In a similar case relating to ancient lights, a similar result was reached, see ***Griffith v. Richard Clay*** (1912) 2 Ch. 291. Mr. Bathurst drew our attention to a number of other cases in which, he said, the same principle was applied, although it was not expressly stated in them.

11. I do not like this doctrine of *"parasitic damages"*. I do not like the very word *"parasite"*. A "*parasite"* is one who is a useless hanger-on sucking the substance out of others. *"Parasitic"* is the adjective derived from it. It is a term of abuse. It is an opprobrious epithet. The phrase "parasitic damages" conveys to my mind the idea of damages which ought not in justice to be awarded, but which somehow or other have been allowed to get through by hanging on to others. If such be the concept underlying the doctrine, then the sooner it is got rid of the better. It has never been used in any case up till now. It has only appeared hitherto in the textbooks. I hope it will disappear from them after this case.

12. I do not believe there is any such doctrine. The cases on ancient lights stand in a category by themselves and are to be explained in this way: If a house has ancient lights which are threatened by a new building, the owner, if he

moves promptly, may obtain an injunction to restrain the erection of the new building. The Court, however, may refuse an inunction and award him damages in lieu of an injunction - See ***Leeds Industrial Co-op. Soc. Ltd. v. Slack*** (1924) A.C. 851. These damages would be, in effect, buying a right to put up the new building. If the owner, however, delays and allows the new building to go up without making any objection - so that he cannot seek an injunction - I do not think he should recover damages for his big new windows (for which he has no right). He ought only to recover damages for the small old windows (for which he has a right).

13. None of the other cases gives any difficulty. In all of them there was some good reason for adding on the extra damages - not because they were improper, but because they flowed naturally and directly from the wrong done and could reasonably have been foreseen as a consequence of it.

14. I reject, therefore, Mr. Bathurst's argument based on *"parasitic damages*".

15. Mr. Bathurst submitted in the alternative that the views expressed by Lord Justice Winn and me in ***S.C.M. v. Whittall*** (1971) 1 Q.B. 337 were wrong. He said that if there was any limitation on the recovery of economic loss, it was to be found by restricting the sphere of duty, and not by limiting the type of damages recoverable. In this present case, he said, the defendants admittedly were under a duty to the plaintiffs and had broken it. The damages by way of economic loss were foreseeable, and, therefore, they should be recoverable. He cited several statements from the books in support of his submissions, including some by myself.

16. 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 defendants.

17. 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 - see ***Best v. Fox*** (1952) A.C. at page 731: nor to the master of the injured man - ***Inland Revenue Commissioners v. Hambrook*** (1956) 2 Q.B. 656 at page 660; nor to anyone else who suffers loss because he had a contract with the injured man - see ***Simpson v. Thomson*** (1877) 3 A.C. at page 289: nor indeed to anyone who only suffers economic loss on account of the accident – see ***Kirkham v. Boughey*** (1958) 2 Q.B. at page 341. 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 - see ***Elliott Steam Tug Company v. Shipping Controller*** (1922) 1 K.B. at page 139: ***Margarine Union G.m.b.H. v. Cambay Prince Steamship Co. Ltd.*** (1969) 1 Q.B. 219 at page 251/2.

18. 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 Mr. Justice Blackburn in ***Catton v. Stockton*** (1875) L.R. 10 Q.B. at page 457, when water escapes from a reservoir and floods a coalmine where many men are working. Those who had their tools or clothes destroyed could recovers 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 ***Remorquage a Helice v. Bennetts*** (1911) 1 Q.B. at page 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 Q.B. at pages 439-440.

19. 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 S.S.Co. v. Greystoke Castle (Cargo-Owners)*** (1947) A.C. 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. v. Heller & Partners*** (1964) A.C. 465.

20. 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 matter of policy, economic loss should be recoverable, or not. Thus in ***Weller's case*** (1966) 1 Q.B. 569 it was plain that the loss suffered by the auctioneers was not recoverable, no matter whether it is put on the ground that there was no duty or that the damage was too remote. Again in ***Electrochrome Ltd. v. Welsh Plastics Ltd.*** (1968) 2 All. E.R. 205, it is plain that the economic loss suffered by the plaintiffs' factory (due to the damage to the fire hydrant) was not recoverable, whether because there was no duty or that it was too remote.

21. 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?

22. The first consideration is the position of the statutory up undertakers. If the Board do not keep/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 arc 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, starting with a Water Board - ***Atkinson v. Newcastle & Gateshead Waterworks*** (1877) 2 Ex. D. 441 going on to a Gas Board - Clegg ***Parkinson & Co. v. Earby Gas Co.*** 1 Q.B. 592; and then to an Electricity Company - ***Stevens v. Aldershot Gas, Water And District Lighting Co.*** best reported in (1932) 31 L.G.R. 48; also in 102 L.J. K.B. 12. In those cases the Courts, looking at the legislative enactments, held that Parliament did not intend to expose the Board to liability for damages to the inhabitants en masse -sec what Lord Cairns, Lord Chancellor, said in 2 Ex. D. at page 445; and Mr. Justice Wills in 1896 1 Q.B. at page 595. No distinction was made between economic loss and physical damage: and taken at their face value the reasoning would mean that the Board was not liable for physical damage either. But there is another group of cases which go to show that, if the Board, by their negligence in the conduct of their supply, cause direct physical damage to person or property, the cases seem to show that they are liable - see ***Milnes v. Huddersfield Corporation*** (l886) 11 A.C. 511 at page 530 by Lord Blackburn: ***Midwood & Co. v. Manchester Corporation*** (1905) 2 K.B. 597; ***Heard v. Brymbo Steel Co.*** (1947) 1 K.B. 693; ***Hartley v. Mayoh & Co.*** (1954) 1 Q.B. 385. But one thing is clear; the Board 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 of the supply, nor should a contractor be liable.

23. 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 standby 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.

24. The third consideration is this: If claims for economic loss wore 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 applicant 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.

25. 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.

26. 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 - see ***Baker v. Crow Carrying Co. Ltd.*** (unreported) Feb. 1st., 1960 C.A., referred to by Lord Justice Buckley in 1971, 1 Q.B. at page 356; and also any economic loss truly consequential on the material damage -see ***British Celanese v. Hunt*** (1969) 1 W.L.R. 959; ***S.C.M. (United Kingdom) Ltd. v. Whittall & Son Ltd.*** (1971) 1 Q.B. 337. Such cases will be comparatively few. They will be readily capable of proof and will be easily checked. They should be and are admitted.

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

LORD JUSTICE EDMUND DAVIES:

28. The facts giving rise to this appeal have already been sot out by my Lord, the Master of the Rolls. Their very simplicity serves to highlight a problem regarding which differing judicial and academic views have been expressed and which it is high time should be finally solved. 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?

29. In expressing in this way the question which now arises for determination, I have sought to strip away those accretions which would otherwise obscure the basic issue involved. Let me explain. We are not here concerned to enquire whether the defendants owed a duty of care to the plaintiffs or whether they breached it, for these matters are admitted. Nor need we delay to consider whether as a direct and reasonably foreseeable result of the defendant's negligence any harm was sustained by the plaintiffs, for a *"melt"* valued at £368 was admittedly ruined and the defendants concede their liability to make that loss good. But what is in issue is whether the defendants must make good (a) the £400 loss of profit resulting from that material being spoilt and (b) the £1,767 further loss of profit caused by the inability to put four more "melts" through the furnace before power was restored. As to (a), the defendants, while making no unqualified admission, virtually accept their liability, on the ground that the £400 loss was a direct consequence of the physical damage caused to the material in the furnace. But they reject liability in respect of (b), not because it was any the less a direct and reasonably foreseeable consequence of the defendant's negligence than was the £400, but on the ground that it was unrelated to any physical damage and that economic loss not anchored to and resulting from physical harm to person or property is not recoverable under our law as damages for negligence.

30. In my respectful judgment, however it may formerly have been regarded, the law is today otherwise. 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 L.Q.R. 248), where all the relevant cases are cited. I recognise 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. Nevertheless, when this occurs it was accepted in ***S.C.M. Ltd. v. W.J. Whittall Ltd.*** (1971 1 Q.B. 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 my Lord, the Master of the Rolls. In particular, I have to say that I derive no assistance by considering the position of statutory undertakers. To take the very first case cited by the Master of the Rolls - ***Atkinson v. Newcastle Waterworks Co.*** (1877 Ex. D. 441) - Lord Cairns there stressed (at page 448) that liability *"must, to a great extent, depend on the purview of the legislature in the particular Statute, and the language which they have there employed"*. As the Waterworks Clauses Act, 1847, provided for the imposition of a monetary penalty for neglect of the undertakers' duty (inter alia) to keep their pipes charged with water at a sufficient pressure and to allow all persons to use it for extinguishing fires, the Court hold that the inference was that no right of action was conferred. Mr. Justice Wright adopted the same approach in ***Clegg, Parkinson and Co. v. Earby Gas Co.*** (1896 1 Q.B. 592), though Mr Justice Wills based his decision on the wider ground that, *"Where there is an obligation created by statute to do something for the benefit of the public generally or of such a large body of persons that they can only be dealt with practically en masse, as it were, and where the failure to comply with the statutory obligation is liable to affect all such persons in the like manner, though not necessarily in the same degree, there is no separate right of action to every person injured, by breach of the obligation, in no other manner than the rest of the public"*.

31. In ***Stevens v. Aldershot Gas, Water and District Lighting Co.*** (1932) 31 L.G.R. 48, Mr. Justice Macnaghten simply held (page 51) that: *"Where a statutory duty is imposed and where, in consequence, an individual has suffered loss and a question arises whether he can claim damages at common law or must proceed under the statute, the decision must be that his remedy lies under the statute"*.

32. He accordingly held that the recovery of the penalty provided by the relevant statute was the only remedy. But the refusal of compensation in these cases in no way turned on the nature of the injury sustained by the complaining party. Atkinson's house was destroyed by fire, so there was physical damage in plenty; Clegg "sustained damage to the amount of £50 by reason of the supply of gas having been insufficient and impure", the nature of the damage being unstated, but the action was one brought not in tort but for alleged breach of contract to supply gas continuously as required by the plaintiffs and in accordance with a local Gas Order; while in Steven's case the plaintiff hairdresser alleged that, as a result of an electric transformer not working properly, the apparatus in her saloon was thrown out of action, her assistants were unable to work, her business takings were reduced, and she claimed damages both under statute and in negligence for loss of earnings. The observations of Lord Cairns in Atkinson's case (at page 445) to which the Master of the Rolls has drawn special attention., had reference to the non-performance of a statutory duty by a water undertaking as a consequence of which *"any number of householders might happen to have their houses burnt down"*. But there is ample authority for the proposition that negligence in the performance of statutory duties can create a cause of action (***Geddis v. Proprietors of Bann Reservoir***, 1875 3 A.C. 430, per Lord Blackburn at 455) and as in the remaining cases referred to by my Lord only physical damage to person or property was sustained, the legal position had the damage been economic only simply did not arise for consideration.

33. For my part, I cannot see why the £400 loss of profit here sustained should be recoverable and not the £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, and I would seek no

stronger support for my answer than the following passage from the judgment of the Master of the Rolls himself in ***S.C.M. Ltd. v. W.J. Whittall Ltd.*** (ante, at 342): *"Damage was done to many factories by the cutting off of the electricity supply. Those who had a stand-by system would not suffer loss. But all others would suffer loss of production and loss of profit. This could be reasonably foreseen. Some of the factories may have suffered material damage as well. But that should not give them a special claim. Either all who suffered loss of profit should get damages for it, or none of them should. It should not depend on the chance whether material damage was done as well".*

34. Nevertheless, the Master of the Rolls went on to point out (344-B) that: *"In actions of negligence, when the plaintiff has suffered no damage to his person or property, but has only sustained economic loss, the law does not usually permit him to recover that loss. The reason lies in public policy".*

35. It should, however, be stressed that, as in that case physical damage was sustained, observations regarding the position where the damage is economic only, while clearly commanding the greatest respect, are to be regarded as strictly obiter.

36. Professor H.V. Houston has observed (Salmond on Torts, 15th edition 262) that: *"The reluctance to grant a remedy for the careless invasion of financial or pecuniary interest is longstanding, deep-rooted and not unreasonable",* an observation cited with approval by Chief Justice Barrowclough in ***Furniss v. Filchett*** (1958 N.Z.L.R. 396, 401.) The starting point usually taken is the judgment of Mr. Justice Blackburn in ***Cattle v. Stockton Waterworks Co.*** (1875 L.R. 10 Q.B. 453) where the defendants had laid a defective water pipe under a turnpike road. The resulting leakage of water hampered the contractor's work of tunnelling under the road and greatly reduced his profit on a contract with the road owners. Holding that this loss gave him no cause of action, Mr. Justice Blackburn said (457) that: *"....the objection is technical and against the merits, and we should be glad to avoid giving it effect. But if we did so, we should establish an authority for saying that, in such a case as that of* ***Fletcher v. Rylands*** *(L.R. 3 H.L. 330) the defendant would be liable, not only to an action by the owner of the drowned mine, and by such of his workmen as had their tools or clothes destroyed, but also to an action by every workman and person employed in the mine, who in consequence of its stoppage made less wages than he would otherwise have done. And many similar cases to which this would apply might be suggested. It may be said that it is just that all such persons should have compensation for such a loss, and that, if the law does not give them redress, it is imperfect. Perhaps it may be so".*

37. Was Mr. Justice Blackburn there saying that damages could not be recovered if only pecuniary loss flowed from a negligent act? Or was he saying that the pecuniary loss sustained by the plaintiff in that case, and such pecuniary loss as would arise in the hypothetical cases he gave, was not recoverable because it was too remote? I believe that Mr. Justice Blackburn was saying no more than the latter, and that this is demonstrated by the fact that he continued his judgment in this way: *"But, as was pointed out by Mr. Justice Coleridge, in* ***Lumley v Gye*** *(1853 2 E. and B. at 252) Courts of Justice should not* ***'allow themselves, in the pursuit of perfectly complete remedies for all wrongful acts, to transgress the bounds, which our law, in a wise consciousness as I conceive of its limited powers, has imposed on itself, of redressing only.....the proximate and direct consequences of wrongful acts.'*** *In this we quite agree."*

38. Despite the frequency with which ***Cattle v. Stockton Water-Works*** is cited as authority for the proposition that pecuniary loss, without more, can never sustain an action for negligence, I respectfully venture to think that Mr. Justice Blackburn was there when, laying down no such rule. Had he intended to do so when two years later as Lord Blackburn, he was a party to the decision in ***Simpson v. Thompson*** (1877 3 A.C. 279), this fact would surely have emerged when he concurred (page 292 et seq.) in the dismissal of underwriters' claim for recoupment of the sum they had paid for a total loss. To revert to the S.C.M. case, Lord Denning said (at 345-H): *"I must not be taken, however, as saying that economic loss is always too remote. There are some exceptional cases when it is the immediate consequence of the negligence and is recoverable accordingly".*

39. The Master of the Rolls went on to give examples of such *"exceptional cases".* But before turning to them, reference should be made to ***Societe Anonyme v. Bennetts*** (1911 1 K.B. 243). There a steam tug belonging to the plaintiffs was engaged under a towage contract in towing a ship. That ship was struck by a steamship belonging to the defendant owing to the negligence of his servants, but no damage was caused to the tug. The plaintiffs sued to recover as damages the towage remuneration they would have earned if they had completed the towage contract. Founding himself upon ***Cattle v. Stockton Waterworks;*** Mr. Justice Hamilton held that the plaintiffs had failed to show that they had sustained *"damage recognised by law".* That case needs to be contrasted with ***Morrison Steamship Co. Ltd. v. Greystoke Cattle*** (1947 A.C. 265), where cargo-owners sustained purely financial loss as the result of a collision between the vessel carrying their cargo and another, and were held entitled to recover from the owners of the colliding ship the general average contribution which they had become liable to pay. Lord Roche there said (at 279): *"There remains for consideration the contention on behalf of the appellants that the respondents had no direct right of suit because it was said that: (a) their cargo sustained no material or physical damage and an expense occasioned to them after the collision in connection with a contract was not actionable..... As to the first branch of this contention, I would observe that in my judgment if the expense is occasioned by the collision and if it is the expense in whole or in part of the cargo-owners.. ..then no authority was cited to support the proposition that whether by land or by sea physical or material damage is necessary to support a cause of action in a case like this. I do not regard the case of* ***Societe Anonyme v. Bennetts*** *which was cited as any such authority. If it was correctly decided, on which I express no opinion, I think it must depend on a view that one vessel (A) does not owe to the tug which is towing vessel (B) any duty not negligently to collide with (B)".*

40. Lord Roche's observation that *"no authority was cited",* etc. is significant as indicating that he did not regard ***Cattle v. Stockton Waterworks*** as supporting, the proposition he was rejecting; there is no question of that great

commercial Judge having momentarily overlooked that decision, for it was the foundation of Mr. Justice Hamilton's judgment in ***Societe Anonyme*** (supra) and had clearly been cited to their Lordships (see Lord Simonds at 306). He went on (page 280) to give an illustration which is worthy of being recalled: *".... if two lorries A and B are meeting one another on the road, I cannot bring myself to doubt that the driver of lorry A owes a duty to both the owner of lorry B and to the owner of goods then carried in lorry B. Those owners are engaged in a common adventure with or by means of lorry B and if lorry A is negligently driven and damages lorry B so severely that whilst no damage is done to the goods in it the goods have to be unloaded for the repair of the lorry and then reloaded or carried forward in some other way and the consequent expense is by reason of his contract or otherwise the expense of the goods owner, then in my judgment the goods owner has a direct cause of action to recover such expense".*

41. In ***S.C.M. v. Whittall*** (at 346-B) Lord Denning said of this illustration that the goods owner's economic loss *"is analogous to physical damage because the goods themselves had to be unloaded",* but I have to say that in my respectful judgment this will not do, that the suggested analogy is misleading, and that Lord Roche was illustrating the proposition he favoured that purely economic loss can be per se sufficient in negligence.

42. In ***Hedley Byrne & Co Ltd. v. Heller & Partners Ltd*** (1964 A.C. 465), one of the those "*exceptional cases"* referred to by the Master of the Rolls in **S.C.M. v. Whittall Ltd.** and a landmark in the branch of the law with which we are here concerned; Lord Devlin referring to ***Morrison Steamship Co. Ltd. v. Greystoke Castle*** said (at page 518) : *"Their Lordships did not in that case lay down any general principle about liability for financial loss in the absence of physical damage; but the case itself makes it impossible to argue that there is any general rule showing that such loss is of its nature irrecoverable".*

43. This is increasingly recognised as being the legal position, and ample illustrations of this are available. Thus in ***Ministry of Housing v. Sharp*** (1970 2 Q.B. 238), Lord Justice Salmon said (at 278): *"So far....as the law of negligence relating to civil actions is concerned, the existence of a duty to take reasonable care no, longer depends upon whether it is physical injury or financial loss which can reasonably be foreseen as a result of a failure to take such care".*

44. And in ***Dutton v. Bognor Regis U.D.C.***(1972 W.L.R., 299, at 319) Lord Justice Sachs said that *"....to pose the question; **'Is it physical damage or economic damage?'** is to adopt a fallacious approach".*

45. Having considered the intrinsic nature of the problem presented in this appeal, and having consulted the relevant authorities, my conclusion, as already indicated, is that an action lies in negligence for damages in respect of purely economic loss, provided that it was a reasonably foreseeable and direct consequence of failure in a duty of care. The application of such a rule can undoubtedly give rise to difficulties in certain sets of circumstances, but so can the suggested rule that economic loss may be recovered provided it is directly consequential upon physical damage. Many alarming situations were conjured up in the course of counsel's arguments before us. In their way, they were reminiscent of those formerly advanced against awarding damages for nervous shock; for example, the risk of fictitious claims and expensive litigation, the difficulty of disproving the alleged cause and effect, and the impossibility of expressing such a claim in financial terms. But I suspect that they (like the illustrations furnished by Lord Penzance in ***Simpson v Thomson***, ante, at page 289 et seq.) would for the most part be resolved either on the ground that no duty of care was owed to the injured party or that the damages sued for were irrecoverable not because they were simply financial but because they were too remote.

46. The much misunderstood decision in ***Electrochrome Ltd. v. Welsh Plastics Ltd.*** (1968 2 All. E.R. 205) affords a modern illustration of this point. B's servant negligently damaged a fire-hydrant belonging to C. A. alleged that, as a result, the water-supply to his factory was thereby interrupted, thereby causing him to suspend work and, in consequence to suffer considerable financial loss. But, after being exhaustively scrutinised, the alleged loss of productivity was simply never established. The Court had no difficulty in detecting the element of considerable exaggeration. At the end of the day, the claim was reduced to a mere £29.10.0. representing the value of the diminished water supply to A's factory (which C. had contracted to provide) until the damage was repaired (see 207-G). This the learned Judge dismissed on the ground that B's duty of care was owed only to C, the owner of the hydrant, and not to A. However unconsciously, he was thereby echoing Lord Justice Denning who, in ***Candler v. Crane, Christmas & Co*** (1951 2 K.B. 164), blazing the trail which was to lead to ***Hedley Byrne and Co Ltd. v. Heller and Partners Ltd.*** (ante) said (at page 179): *"I can understand that in some cases of financial loss there may not be a sufficiently proximate relationship to give rise to a duty of care; but, once the duty exists, I cannot think that liability depends on the nature of the damage".*

47. That approach to the clear facts of the present case has, if I may say so, the virtues of good sense and of fairness. Here, too the line has to be drawn where "*in the particular case the good sense of the Judge decides".* In this connection I respectfully adopt the observations of Professor Goodhart (1971 87 L.Q.R. 10) that: *"...the fact that the Judge has good sense does not explain the grounds on which he has based his decision. It is submitted that the first of these grounds is that the Court must decide whether a reasonable person in the position of the defendant ought to have foreseen that an accident could arise if he failed to take care. The second is, could a reasonable person foresee that damage of the nature which the plaintiff suffered might arise from his act? The third is, would a reasonable person in these circumstances have taken reasonable care to avoid the harmful consequences? In **Liesbosch Dredger v. Edison S.S.** (1933 A.C. 449) ought the defendant to have foreseen that if the dredger was sunk this might lead to the plaintiff's failure to perform his contract as he did not have sufficient resources to hire another dredger? Both these consequences were foreseeable, but it would not have been reasonable to expect the defendants to guard against the loss caused by the impecunious condition of the plaintiffs by insuring against such a consequence".*

48. 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.

49. I should perhaps again stress that we are here dealing with economic loss which was both reasonably foreseeable and a direct consequence of the defendants' negligent act. What the position should or would be were the latter feature lacking (as in ***Weller v. Foot & Mouth Disease Research Institute*** (1966 1 Q.B. 569) is not our present concern. By stressing this point one is not reviving the distinction between direct and indirect consequences which is generally thought to have been laid at rest by the ***Waggon Mound (no. I)*** (1961 A.C. 388), for, in the words of Professor Atiyah (ante, at page 263), that case "*was solely concerned with the question whether the directness of the damage is a sufficient test of liability. In other words, **The Waggon Mound** merely decides that a plaintiff cannot recover for unforeseeable consequences even if they are direct; it does not decide that a plaintiff can always recover for foreseeable consequences even if they are indirect*". Both directness and foreseeability being here established, it follows that I regard the learned trial Judge as having rightly awarded the sum of £2,535.

50. Having regard to the route which has led me to this conclusion, it is not necessary for me to express any concluded view regarding the topic of "parasitic damages". I content myself with saying that, whatever be the scope of such a concept in other and wholly different branches of the law, I am at present not satisfied i-hat it can be invoked in cases of the type now under consideration.

51. I would be for dismissing the appeal.

LORD JUSTICE LAWTON:

52. This appeal raises neatly a question which has been asked from time to time since Mr. Justice Blackburn delivered his well-known judgment in ***Cattle v. Stockton Waterworks Co.*** (1875) L.R. 10 Q.B. 453 and more frequently since the decision in ***Hedley Byrne & Co. Ltd. v. Heller and Partners Ltd.*** (1964) A.C. 465, namely, whether a plaintiff can recover from a defendant, proved or admitted to have been negligent, foreseeable financial damage which is not nonsequential upon foreseeable physical injury or damage to -property. Any doubts there may have been about the recovery of such consequential financial damage were settled by this Court in ***S.C.N. (United Kingdom) Ltd. v. W.J. Whittall & Son Ltd., (***1971) 1 Q.B. 357. In my judgment the answer to this question is that such financial damage cannot be recovered save when it is the immediate consequence of a breach of duty to safeguard the plaintiff from that kind of loss.

53. This is not the first time a negligent workman has cut an electric supply cable nor the first claim for damages arising out of such an incident. When in practice at the Bar I myself advised in a number of such cases. Host practitioners acting for insurers under the so-called *"public liability"* types of policy will have had similar professional experiences; if not with electrical supply, with gas and water mains. Negligent interference with such services is one of the facts of life and can cause a lot of damage, both physical and financial. Water conduits have been with us for centuries; gas mains for nearly a century and a half; electricity supply cables for about three-quarters of a century; but there is not a single case in the English law reports which is an authority for the proposition that mere financial loss resulting from negligent interruption of such services is recoverable. Why?

54. Many lawyers would be likely to answer that ever since ***Cattle v. Stockton Waterworks Co.*** (supra) such damages have been irrecoverable. My Lord, Lord Justice Edmund Davies has just stated that he doubts whether Mr. Justice Blackburn laid down any such rule. Knowing that he had these doubts, I have re-read Cattle v. Stockton Waterworks Co. The claim was in negligence. The declaration was as follows: *"that the defendants, being a water company, so negligently laid down under a certain turnpike road their pipes for supplying water to a district and so negligently kept and maintained the pipes in such insufficient repair, and in such imperfect and leaky condition that, while the plaintiff was lawfully constructing for reward to the plaintiff a tunnel across the turnpike road and was lawfully using the road for such purpose, the pipes leaked and large quantities of water flowed into the road and upon the plaintiff's workings and flooded them and the plaintiff was hindered and delayed in the work and suffered great loss*". The declaration raised precisely the problem which has to be solved in this case; Mr. Justice Blackburn's answer was in these words: *"In the present case there is no pretence for saying that the defendants were malicious or had any intention to injure anyone. They were, at most, guilty of a neglect of duty, which occasioned injury to the property of Knight, but which did not injure any property of the plaintiff. The plaintiff's claim is to recover the damage which he has sustained by his contract with Knight becoming less profitable, or, it may be, a losing contract, in consequence of this injury to Knight's property. We think this does not give him any right of action".*

55. Earlier in his judgment he had said: *"No authority in favour of the plaintiff's right to sue was cited, and, as far as our knowledge goes, there was none that could have been cited"*. There is still no authority directly in point today. Mr. Justice Blackburn's judgment has been cited with approval and followed many times: the judgment of Mr. Justice Hamilton in ***La Societe Anonyme de Remorguage a Helice v Bennetts***. (191I) 1 K.B. 243 at page 248 and of Mr. Justice Widgery in ***Weller & Co v. Foot and Mouth Disease Research Institute*** (1966) 1 Q.B. 569 at page 588 are instances. For nearly a hundred years now contractors and insurers have negotiated policies and premiums have been calculated on the assumption that Mr. Justice Blackburn's judgment is a correct statement of the law; and those affected financially by the acts of negligent contractors have been advised time and time again that mere financial loss is irrecoverable.

56. It was argued that the law has developed since 1875? albeit the development was unnoticed by Mr. Justice Hamilton and Mr. Justice Widgery... Has it?

57. Mr. Bathurst based his argument about the law developing beyond the limits delineated by Mr. Justice Blackburn upon three planks: first, what Lord Esher, Master of the Rolls had said in **London, Tilbury and Southend Railway Co. v. The Trustees of the Gower Walk Schools** (1889) 24 Q.B.D. 326; secondly, what Lord Justice Buckley had said in **Horton v. Colwyn Bay and Colwyn Urban District Council** (1908) 1 K.B. at page 341 and, thirdly, what the house of Lords had decided in ***Morrison Steamship Co. Ltd. v. Greystoke Castle*** (1947) A.C. 265. Both Lord Esher and Lord Justice Buckley made general statements about what kinds of damage can be recovered; and if those statements are to be followed without any qualification, mere financial loss is recoverable in an action for negligence. It is pertinent to note, however, that both cases were concerned with the assessment of compensation under statute and in each case the Court had to decide how to construe and apply the statute. Clearly both statements were obiter and, in my judgment, over simplifications. If in the ***Greystoke Castle case***, the House of Lords overruled ***Cattle v. Stockton Waterworks***, it did so by an unobserved flanking movement, not by a direct assault. The two leading counsel, Sir William McNair and Sir Robert Aske, do not seem to have appreciated that a bastion of the common law was in danger of falling, as neither seems to have cited ***Cattle v. Stockton Waterworks***. The only one of the Law Lords who did was Lord Simmonds, who clearly did so with respect and approvals his speech, however, was a dissenting one. Lord Roche commented upon Mr. Justice Hamilton's judgment in ***Societe Anonyme de Remorquage Helice v. Bennetts.*** He sought to explain it on the ground that the unsuccessful plaintiff had not proved a breach of duty. Had he intended to disapprove a long-standing judgment of such an eminent common lawyer as Mr. Justice Blackburn, I would have expected him to have done so in terms. The House did, however, by a majority, adjudge that the cargo owners had a direct claim against the owners of the colliding ship for a proportion of the general average contribution. The case was argued and speeches delivered on the basis that the House was considering a problem of maritime law. I would not have the temerity to express any opinion as to the extent to which maritime law and the common law differ as to the kinds of damage which are recoverable; but having regard to their differing historical developments, it would not surprise me if there were divergences. The policy governing their developments may well have been different. What I am satisfied about is that the House of Lords in the ***Greystoke Castle*** case cannot be said to have overruled ***Cattle v. Stockton Waterworks Co***.

58. The differences which undoubtedly exist between what damage can be recovered in one type of case and what in another cannot be reconciled on any logical basis. I agree with the Master of the Rolls that such differences have arisen because of the policy of the law. Maybe there should be one policy for all cases; the enunciation of such a policy is not, in my judgment, a task for this Court.

59. Mr. Bathurst appreciated that his broad submission about recovering financial loss might fall at the hurdle presented by ***Cattle v. Stockton Waterworks Co.*** (supra) As an alternative submission he sought to rely upon the so-called concept of parasitic damages. Those who support this concept argue that once physical injury or damage to property has been proved all foreseeable financial loss consequent upon the wrong doing is recoverable: in some way it becomes hitched on to, or attached, to the physical injury or damage to property. The cases he cited in support were, with two exceptions, far removed from actions for negligence. The two exceptions were ***Lampert and Another v. Eastern National Omnibus Co.*** (1954) 1 W.L.R. 1047 and ***Seaway Hotel Ltd. v. Gragg (Canada) Ltd. and Consumer Gas Co.*** (1960) 21 D.L.R. (2d) 264. In the first, Mr. Justice Hilbery adjudged that the facts relied upon as the basis of the claim for financial loss had not been proved so that the case cannot be an authority for this concept. In the second, doubts were expressed in ***S.C.N. (United Kingdom) Ltd. v. W.J. Whittall & Son Ltd.*** (supra) by both the Master of the Rolls and Lord Justice Buckley as to whether the mere financial loss would have been recoverable under an English judgment. ***Thurston v. Chester*** (1905) 21 T.L.R. 659 was a claim for damages for the detention and conversion of a letter. In ***Jackson v. Watson & Sons*** (1909) 2 K.B. 193 the successful claim was for damages for a breach of warranty on the sale of a tin of salmon which had poisoned the purchaser's wife whereby he had lost the benefit of her services through her death. In ***Griffith v. Richard Clay & Sons Ltd.*** (1912) Ch. 291, the plaintiff claimed an injunction and damages for the obstruction by the defendants of his ancient lights. He was awarded damages but refused an injunction, a fact which may explain why the basis for the award of damages was as broad as it was. I do not find it necessary to make a detailed examination of these cases because, in my judgment, the comment which was made by the editor of the 12th edition of ***Mayne and MacGregor on Damages*** at page 111 correctly and neatly sums up the position. After referring to Lord Justice Buckley's dictum in Horton's case upon which I have already commented, he wrote: "*This is an oversimplification and there is no necessity in principle to adopt such a sweeping statement. Each tort is different and, since the matter is one of policy, each can be decided in a different way from the next one*". In my judgment the rule enunciated in 1875 by Mr. Justice Blackburn is the correct one to apply in negligence cases.

60. When this principle is applied to the facts of this case it produces the result referred to by the Master of the Rolls in his judgment. I too would allow the appeal and reduce the damages to £768.

61. Appeal allowed with costs in Court of Appeal.

62. Damages reduced to £768 with interest at 6% to today.

Mr. Richard Tucker, Q.C., and Mr. A. Aashworth instructed by Messrs. William F. Hatton & Co. appeared on behalf of the Appellant Defendants.

The Honourable Christopher Bathurst instructed by Messrs. Herbert Oppenheimer, Nathan and Vandyk appeared on behalf of the Respondent Plaintiffs