The ordinance in question applied to the "loop," a downtown business district about nine blocks in length by eight blocks in width, between the hours of 7 and 6 on any regular business day, Saturday afternoons and holidays being excepted. The enactment did not apply to ambulances, emergency vehicles of the United States, City of Chicago, or Cook County, or to public utility vehicles while the operator thereof was engaged in emergency duties.

The argument in the opinion is devoid of support for the conclusion reached. In holding the ordinance to be void the court concedes a number of propositions which could well have formed the basis of the opposite ruling. The court recognizes that a municipality has the power to regulate the use of its streets and the traffic upon them, and points out that modern conditions call for drastic restrictions. The court concedes quite properly and reasonably, that the ordinance notwithstanding its literal terms, did not prohibit the stops permitted or directed by other ordinances such as those for loading and unloading merchandise, stops in traffic, and other necessary stops.

Citation of authorities is rather unnecessary to demonstrate that this decision is undoubtedly out of line with the modern viewpoint, but a few recent cases may be helpful. Ordinances prohibiting parking in certain restricted localities between certain hours, or at all times, or limiting the parking privilege to one hour, thirty minutes, or even a shorter period are common and have been sustained. *Pugh v. City of Des Moines* (1916) 176 Iowa 593, 156 N. W. 892; *Welsh v. Town of Morristown* (N. J. 1923) 121 Atl. 697, affirmed in *Welsh v. Potts* (1924) 99 N. J. L. 528, 124 Atl. 926; *Cavanaugh v. Gerk* (1926) 313 Mo. 375, 280 S. W. 51. Prohibition of taxicab stands in certain areas and on certain streets has been uniformly upheld. *City of New Orleans v. Calamari* (1922) 150 La. 737, 91 So. 172; *Sanders v. Atlanta* (1918) 147 Ga. 819, 95 S. E. 695. In the same way other vehicles have been prohibited from the use of portions of streets designated as taxicab stands. *Commonwealth v. Rice* (1927) 261 Mass. 340, 158 N. E. 797. Certain types of vehicles have been prohibited from using streets in certain areas at any time. *Smallwood v. District of Columbia* (Dist. Col. 1927) 17 F. (2) 210. To relieve congestion cities have been permitted to designate streets for one-way traffic only. *Commonwealth v. Nolan* (1920) 189 Ky. 34, 224 S. W. 506. It has been held within the police power of a city to regulate traffic on particular streets, even to complete exclusion of busses therefrom. *Peoples' Rapid Transit Co. v. Atlantic City* (N. J. 1929) 144 Atl. 630. While the enactment in the principal case is perhaps wider in its scope than those in certain of the above cases, to declare it unreasonable and invalid seems as lacking in legal justification as it is unmindful of practical metropolitan traffic conditions. C. V. E., '31.

TORTS—APPLICATION OF FLETCHER V. RYLANDS PRINCIPLE TO PIPE LINE COMPANIES.—In the case of *Behle v. Shell Pipe Line Co.* (Mo. 1929) 17 S. W. (2d) 1056, the question involved was the defendant's liability for damage to plaintiff's land caused by the escape of oil through a leak or break in defendant's pipe line. The case went to the jury on a presumption of negli-

gence, and damages were awarded to the plaintiff. It is interesting to note, however, the following statement of the court: "It is by no means certain that a pipe line company which transports a deleterious foreign substance such as crude oil in large quantities, through agricultural lands, and allows it to pour out over and devastate the lands adjacent to its lands ought not to be held liable regardless of negligence, under the rule announced in *Fletcher v. Rylands* (1868) L. R. 3 H. L. 330."

Fletcher v. Rylands, supra, is a classic case on the subject; and it laid down the rule imposing absolute liability upon one who brings a foreign substance on his land, which, if it escapes, may cause damage to another. Exceptions to the rule are made where the damage is caused by an act of God, *vis major,* or through the fault of the injured person. But *Fletcher v. Rylands* has been repudiated in the United States in the case of *Losee v. Buchanan* (1873) 51 N. Y. 476, and the court there predicates liability upon negligence. The latter theory is the generally accepted one. *Marshall v. Wellwood* (1876) 38 N. J. L. 341; *Livingston v. Adams* (N. Y. 1828) 8 Cowen 175; *Brown v. Collins* (1873) 53 N. H. 446.

Though the principal case expresses some doubt as to the Missouri attitude on the question, it appears that Missouri courts favor strongly the view stated in *Losee v. Buchanan.* The most frequently cited Missouri case is *Murphy v. Gillum* (1897) 73 Mo. A. 487. In accord is *Schindler v. Standard Oil Co. of Indiana* (1921) 207 Mo. A. 190, 232 S. W. 735, which flatly repudiates *Fletcher v. Rylands* and cites in support thereof *Murphy v. Gillum,* above; *Griffith v. Lewis* (1885) 17 Mo. A. 605, and *McCord Rubber Co. v. St. Joseph Water Co.* (1904) 181 Mo. 678, 81 S. W. 189. It was declared in *Chapman et al. v. American Creosoting Co.* (Mo. 1926) 286 S. W. 837, that "the doctrine of *Fletcher v. Rylands* has not been followed in this state. It is necessary to prove negligence on the part of the one maintaining a dam for the ponding of water on his premises." The *Fletcher v. Rylands* doctrine was also denied in *Farrar v. Shuss* et al. (1926) 221 Mo. A. 472, 282 S. W. 512, and *Rosen v. Kroger Grocery & Baking Co.* (Mo. 1928) 5 S. W. (2d) 649.

However Missouri has applied the doctrine of absolute liability in cases involving nuisance *per se;* as where the damage resulted from the storing of nitroglycerine on the premises. *French v. Manufacturing Co.* (1913) 173 Mo. A. 220, 158 S. W. 723. Also, in the case of blasting, *Hoffman v. Walsh* (1906) 117 Mo. A. 278, 93 S. W. 853; *Faust v. Pope* (1908) 132 Mo. A. 287, 111 S. W. 878. But, in the case of a blasting which is not a nuisance, negligence must be proved. *Thurmond v. White Line Ass'n.* (1907) 125 Mo. A. 73, 102 S. W. 617.

Even in a jurisdiction which accepts the principle of *Fletcher v. Rylands* there remains a still further problem, namely, are the circumstances of the particular case such as will justify a proper application of that view. At any event it is not imposed indiscriminately. *McCord Rubber Co. v. St. Joseph Water Co.,* above. For an elaborate note on the entire subject see 15 L. R. A. (N. S.) 541; also Pollock, TORTS (12th ed. 1923) 495.

H. J. A., '31.