

JOHN SCOTT, EARL OF ELDON

BORN 1751, DIED 1838

CHIEF JUSTICE OF THE COMMON PLEAS, LORD CHANCELLOR

Forty-six of whose decisions are printed in full in English Ruling Cases

No. 25. — *Butterfield v. Forrester*, 11 East, 60. — Rule.

SECTION V. — *Contributory Negligence.*

No. 25. — BUTTERFIELD *v.* FORRESTER.

(K. B. 1809.)

No. 26. — DAVIES *v.* MANN.

(EX. 1842.)

No. 27. — TUFF *v.* WARMAN.

(EX. 1857; EX. CH. 1858.)

RULE.

A PERSON is not entitled to say that he is injured by the negligence of another if he might, by the use of ordinary care, have escaped the damage. But although a plaintiff has brought himself into danger by negligence, if the defendant could by ordinary care have averted the danger, he is liable.

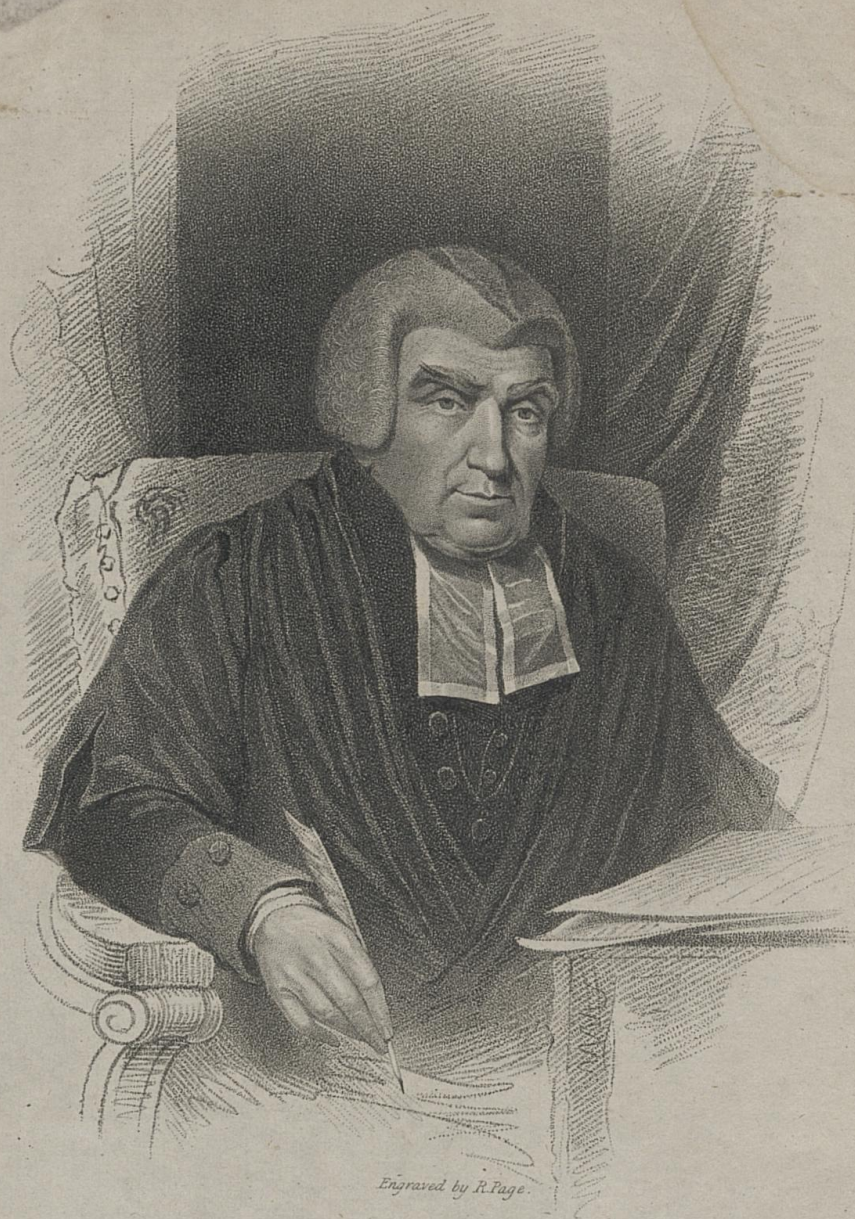
**Butterfield v. Forrester.**

11 East, 60-61 (10 R. R. 433).

*Contributory Negligence.*

One who is injured by an obstruction in a highway against which he [60] fell, cannot maintain an action, if it appear that he was riding with great violence and want of ordinary care, without which he might have seen and avoided the obstruction.

This was an action on the case for obstructing a highway, by means of which obstruction the plaintiff, who was riding along the road, was thrown down with his horse, and injured, &c. At the trial before BAYLEY, J., at Derby, it appeared that the defendant, for the purpose of making some repairs to his house, which was close by the roadside at one end of the town, had put up a pole across this part of the road, a free passage being left by another branch or street in the same direction. That the plaintiff left a public house not far distant from the place in question at 8 o'clock in the evening in August, when they were just beginning to light candles, but while there was light enough left to discern the obstruction at



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