

Case Brief

1. Case Heading / Caption

2. Parties

3. Procedural History and Outcome

4. Facts

5. Issue(s)

6. Holding

7. Reasoning

8. Notes / Dissents / Public Policy

***Barrett v. Southern Pacific Co.*, 91 Cal. 296, 27 P. 666 (1891)**

- A. Defendant railroad maintained a turntable 72 feet from a public street that was not enclosed or protected by a guard. The turntable was equipped with a latch and slot, as was customary in the industry, to protect it from revolving. Families with small children lived within a quarter mile of the turntable. The children frequently played around and on the table, but were never permitted to do so when observed by the railroad's employees. On the day of the accident, plaintiff, then eight years old, got on the turntable, and while it revolved his leg got caught. It was injured so severely that it had to be amputated.
- B. Defendant moved for a nonsuit (like demurrer or dismissal). Motion was denied. Jury trial. Jury verdict for plaintiff. Defendant moved for a new trial. Motion denied. Defendant appealed from the denial of its motion for a new trial and from the judgment for the plaintiff. CA Supreme Court affirmed trial court judgment.
- C. Where a railroad maintains dangerous machinery and knows or has reason to know that children of young years and immature judgment frequently intermeddle with it, a duty of care will be imposed on the landowner and the negligent breach of that duty will result in liability for personal injuries.
- D. One must so use and enjoy his property as to interfere with the comfort and safety of others as little as possible consistently with its proper use.
- E. Whether, in any given case, there has been such negligence upon the part of the property owner in the maintenance of dangerous machinery on his property is a question of fact because the facts will determine the degree of care owed and whether it was provided.
- F. Whether when an eight year old is severely injured on a railroad turntable under circumstances in which the railroad knew of the presence of children on its premises, a landowner owes a duty of care to the child, notwithstanding the general rule that says landowners owe no duty to adult or children trespassers?
- G. The court acknowledges that no duty is generally owed by a landowner to a trespasser and cites the New Hampshire case of *Frost v. Railroad*. However, here the court refuses to apply that rule to "children of tender years" who lack the judgment to appreciate and avoid danger. Therefore, the railroad owes children a duty of care in proportion to their lack of judgment. The court says it is for a jury to decide whether a landowner's conduct, in view of all the evidence, was negligent.
- H. The court cites no California cases; it cites a general statement about negligence by Cooley on Torts, a case from New Hampshire, and a general "maxim" of the law.
- I. Plaintiff/Appellee, Barrett parent of eight year old boy; Defendant/Appellant, Southern Pacific Railroad, landowner.

***Peters v. Bowman*, 115 Cal. 345, 47 P. 113 (1896)**

- A. The general rule is that a landowner is under no duty to keep his premises safe for child or adult trespassers except if he maintains a trap or concealed danger, but not from ordinary or visible causes of danger, or in circumstances such as the “Turntable Cases,” where a landowner maintains dangerous machinery on his property the danger of which cannot be appreciated by young children. Water is natural and ordinary, and its dangers are visible and obvious even if it is dangerous. Here, the pond was open and apparent. This case is distinguished from *Barrett* because the pond was natural. The defendant/landowner did not build it and had no control over it.
- B. Plaintiff/Appellant, Peters, on behalf of his drowned 11 year old son;
Defendant/Appellee, Bowman, landowner.
- C. Whether landowners upon which there exists a naturally occurring body of water owe a duty to safeguard the land in anticipation of trespassing children?
- D. Trial court jury verdict for the defendant. Plaintiff appealed from the judgment and an order denying his motion for a new trial. CA Supreme Court affirmed the trial court in favor of the defendant/landowner.
- E. Landowners are under no duty to enclose or otherwise protect or destroy naturally occurring bodies of water on their land to safeguard them against injuring trespassers.
- F. Plaintiff’s 11 year old son drowned while playing on a raft in a pond of water located on the defendant’s land. The water in the pond accumulated during the rainy season due to an embankment created by the city of San Francisco. The landowner had moved away from the property, knew the pond existed, did not invite or give permission to anyone to be on the land, and knew that children played there, though always told them to leave when he saw them on the property. The child’s father knew his son played there, knew of the pond’s existence and never told his son not to play there.
- G. The exceptions to the general rule that landowners owe no duty to trespassers do not apply in this case because a) bodies of water are natural dangers that are open and obvious; and b) the “turntable cases” exception only applies where the defendant erected the dangerous machinery on his property, not where the landowner had no control over the situation.
- H. For the court to hold the landowner responsible for the danger of naturally occurring water on property would create an impossible burden on members of society to protect all children.

