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Court : House of Lords

Decided On : Sep-09-1910

Judge : Lord Loreburn L.C, Lord Atkinson, Lord Shaw of Dunfermline

Appeal No. : [1910] UKHL 1

Appellant : Lowery

Respondent : Walker

Judgement :

LORD LOREBURN L.C.

My Lords, I think this case should be determined upon the actual findings of the learned county court judge. It is true there has been some question about what he decided, and it appears that some little time after he had delivered the judgment he made an alteration in regard to a phrase he had used. I think it was quite legitimate to do so, because the word he used was capable of being misunderstood, or understood in one sense rather than in another, and I see no objection to his explaining to the Court and to the parties the sense in which he used the word.

He has found certain facts. He has not found them according to the letter of legal phraseology, but he has presented to us a view of the facts; and I think what that view - by which we are bound - amounts to is this: He will not find whether there was a right of way or not; therefore the plaintiff did not establish that he was in the

field according to a right to be in the field. Again the learned judge, I think, found that there was no express leave given to the plaintiff to be in that field; but I think the effect of his finding is that the plaintiff was there with the permission of the defendant, because he finds that the field had been habitually used by the public as a short cut, and he says that the defendant was guilty of negligence in putting a horse which he knew to be dangerous into a field which he knew was habitually used by the public. That being the case, we ought not to refine upon the language which the learned judge has used. Perhaps it would have been better - indeed I think it would have been better - had he been more explicit in saying what it was that he did find and what it was that he did not find; but I think in substance it amounts to this: that the plaintiff was not proved to be in this field of right; that he was there as one of the public who habitually used the field to the knowledge of the defendant; that the defendant did not take steps to prevent that user; and in those circumstances it cannot be lawful that the defendant should with impunity allow a horse which he knew to be a savage and dangerous beast to be loose in that field without giving any warning whatever, either to the plaintiff or to the public, of the dangerous character of the animal.

My Lords, I will not enter upon the further field of law - itself somewhat wide and not free from many difficulties - because I do not think the facts of this case require it.

Under those circumstances and for those reasons I think the appeal ought to be allowed.

EARL OF HALSBURY. My Lords, I entirely concur with the judgment which the Lord Chancellor has delivered and for the reasons which he has given, and I only wish to say one additional word with regard to the question of what the learned county court judge has found.

The learned judge used an ambiguous word. I suppose nine out of ten people would distinguish between a person who was at a place as of right and a person who was a mere trespasser. The learned judge did, I think inadvertently, in the first instance use the word "trespasser," which would have carried the learned counsel for the respondent all the way he wants to get, to a somewhat difficult and intricate

question of law upon which various views may be entertained. But seeing that there was a misapprehension, or might be a misapprehension, in the sense in which he used the word "trespasser," the learned judge himself points out in terms that he does not find, and did not intend to find, - as I think indeed the whole substance of his judgment shews he did not intend to find, - that the injured man was a trespasser in the sense in which that word is strictly and technically used in law.

My Lords, I think we are bound by the finding of the learned judge, and I should hesitate very much to assent to the view which Vaughan Williams L.J. seems to have entertained, that there was something wrong in his adding that to his note. He candidly admits that it was added afterwards, but what he says in effect is this: I have used an ambiguous word, and I wish it to be understood that when I used that word I did not use it in the technical sense of the law. My Lords, I think we are bound not only by the original finding of fact, but by what he says he intended to convey by his words. It is not, as the learned counsel for the respondent suggested, that the learned judge has changed his mind afterwards, which I agree would be quite inconsistent with the Act of Parliament, but what he does say is, I have used a word which I think upon reflection is capable of being misunderstood and I now want to explain in what sense I have used the word. I think he was entitled to do that, just as any one of us here, in looking over a judgment afterwards, may think we have used an inappropriate word and may substitute one that is more appropriate to the occasion.

As to the other question which was intended to be argued by the learned counsel for the respondent, who I am afraid is disappointed because the view which we take prevents that question arising, I will only say that I myself would absolutely decline to give any judgment upon that subject, because in this case I am of opinion that what the learned judge has done has prevented that question arising. In his finding he has raised the real proposition with which we are dealing, namely, whether or not a person who knows that the public are going over his ground, and going over it habitually, is entitled without warning or notice, or any other precaution whatsoever, to put a dangerous beast where he knows it may be probable, - and almost certain if the thing continues, - that the beast will sooner or

later do some injury to persons crossing the ground, and crossing it in one sense with his permission - not that he has given direct permission, but that he has declined to interfere and so acquiesced in their crossing it. If he has acquiesced in their doing so, he is bound to take the ordinary precautions to prevent persons going into a dangerous place where he knows they are going, and going by his acquiescence without notice or warning or any form of security to prevent the injury happening which did happen.

Under those circumstances, my Lords, I am of opinion that the judgment appealed from ought to be reversed.

LORD ATKINSON.

My Lords, I concur. On the interpretation which I think is most rightly and properly put upon the findings of the learned county court judge, it is clear that the plaintiff was lawfully in the place where the injury happened to him. That being so, it is clear, I think, upon authority that the respondent owed a duty to him to take care of this dangerous animal which the respondent put there, and which injured the plaintiff by the very vices of which the respondent was well aware.

LORD SHAW OF DUNFERMLINE.

My Lords, I should think it strange if a learned county court judge should not be permitted to explain deliberately in writing what he has said in giving judgment, so as to avoid any possible misconception or misconstruction of the language he has employed. I am glad to know from your Lordships that there is no rule of procedure which forbids that by the law of England. In the present case, accordingly, looking at the findings of the learned judge, I observe that they are threefold. First, that the place where this unfortunate attack took place was habitually used by passengers on foot, and this to the knowledge of the defendant; secondly, that the horse was, and was known by the defendant to be, a dangerous animal with savage propensities; and, thirdly, that the horse, with these known vices, was put by the defendant in that place so habitually traversed. In those circumstances, my Lords, I have no doubt that liability attaches to a defendant so acting.

I specially desire, my Lords, to reserve any opinion as to the further doctrine - applicable to the case of a mere trespasser as such - and further to add that I must not be held as in any respect assenting to the pronouncement by Darling J. and Vaughan Williams L.J. on that larger topic.