Neutral Citation Number: [2001] EWCA Civ 1749

Case No: B3/2001/0172

IN THE SUPREME COURT OF JUDICATURE
COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM EXETER COUNTY COURT
(HIS HONOUR JUDGE O'MALLEY)

Royal Courts of Justice
Strand,
London, WC2A 2LL
Wednesday 21st November 2001

B e f o r e :

THE PRESIDENT OF THE FAMILY DIVISION
LADY JUSTICE HALE
and
LORD JUSTICE KEENE

HOSSEIN MIRVAHEDY — **Appellant**

- and -

ADRIAN JOHN HENLEY and SUSAN HENLEY — **Respondents**

C Sharp QC and R Stead (instructed by Anstey, Sargent & Probert) appeared for the appellant
R Lissack QC and D Westcott (instructed by P Jane M.D Phillips) appeared for the respondents

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LADY JUSTICE HALE:

1. The claimant appeals from the order made by His Honour Judge O'Malley in the Exeter County Court on 17 August 2000. The judge dismissed his claim for personal injuries suffered when the car he was driving was in collision with a horse belonging to the defendants which had escaped from its field. The judge found that the defendants were not negligent, and there is no appeal against that finding. He also found that there was no liability under section 2(2) of the Animals Act 1971. The precise scope of that liability has caused considerable difficulty and differing views have been expressed in this court about it. We have had the benefit of careful argument by leading counsel on each side, who have cited to us every known authority on that section in this and the High Court, together with the preceding report of the Law Commission and the relevant Parliamentary debates (which we have considered for the reasons explained in paragraph 24).

The facts and the decision

2. The defendants kept one horse and two ponies in a six acre field near their home. Charlie Brown was a New Forest pony of 14.1 hands, 26 years old at the date of the accident. Holmdown Majestic, known as Jester, was a horse of 15.2 hands, then five years old. Tango was a Dartmoor pony of 11.2 hands, also five years old. Some time during the night of 28 to 29 August 1996 they escaped from the field, breaking through an electric fence, a barbed wire fence and some undergrowth, and made their way up a track to a minor road and then onto the main A380 Torquay to Exeter road. This is a dual carriageway with trees and bushes in the central reservation.

3. At about half past midnight, the claimant was driving home along that road from his work as manager of a hotel in Torquay towards Exeter. He saw a loose horse in the road ahead of him and slowed down from 60 mph to about 30 to 40 mph. A second horse, which he had not seen, crashed into him. The horse was killed, his car was severely damaged and he suffered serious personal injuries. Shortly before this, another of the horses had collided with a car driving south towards Torquay, injuring the passenger Mr Teo, and was also killed. Tango survived and was found next morning in a field where someone had placed him, still very distressed and frightened of passing cars.

4. The judge considered the evidence about the state of the fencing before the escape, the views of the parties' experts about its adequacy, and the various theories put forward as to why the horses had escaped. By the end of the evidence, neither human nor canine intervention was thought likely. They had escaped because of

   'some event which occurred while the horses were in the corner of the field which prompted considerable movement on their part. This is evidenced by the unusual and extensive area of trampling right into the apex of the corner . . . the breaking of the corner post indicates that there was . . . a high energy impact which took place as the horses were close together so that they exited the field together trampling the vegetation between the corner and the lane. It is not possible to determine what precisely caused the horses to behave in this way.'

   The judge preferred the evidence of Mr Lane, the defendant's expert, to that of Mr Roberts, the claimant's expert, about the state of the fencing. He concluded that the 'these normally docile horses were adequately contained by the fence in question.' In effect they had been panicked by some unknown event into behaving in a way which was unusual for them. There was therefore no liability in negligence.

5. Section 2(2) of the Animals Act 1971 however imposes a strict liability. It reads as follows:

   "Where damage is caused by an animal which does not belong to a dangerous species, a keeper of the animal is liable for the damage, except as otherwise provided by this Act, if –

   (a) the damage is of a kind which the animal, unless restrained, was likely to cause or which, if caused by the animal was likely to be severe; and

   (b) the likelihood of the damage or of its being severe was due to characteristics of the animal which are not normally found in animals of the same species or are not normally so found except at particular times or in particular circumstances; and

   (c) those characteristics were known to that keeper . . ."

6. The judge considered that (a) was satisfied: even if the likelihood of these horses causing personal injury unless restrained was remote, there was a likelihood that such injury, if caused, would be severe. The first limb of (b) was not satisfied, because the horses were displaying characteristics which were normal for horses. However, although normal they were manifested at particular times and in particular circumstances, that is when the horses were panicked. Following the decisions of this court in *Cummings v Granger* [1977] 1 QB 397 and *Curtis v Betts* [1990] 1 WLR 459 he therefore concluded, with obvious reluctance, that the second limb of (b) was satisfied. The second defendant had readily agreed that, as an experienced horsewoman, she was well aware that horses will run away if frightened, may be oblivious to obstructions, and once out of their field may wander considerable distances. Hence (c) was also satisfied.

7. Nevertheless, he found for the defendants on the ground that it was not those characteristics which had caused the damage. There was not the same degree of immediacy in the interaction between the characteristics relied upon and the doing of the damage as was present in the reported cases where liability had been found. He relied upon *Jaundrill v Gillett*, Court of Appeal, unreported 16 January 1996, where the damage was found due to the presence of the horses on the road rather than to any abnormal or unusual characteristics they displayed.

8. The claimant appeals against that finding. This is the 'causation issue'. The defendants cross appeal against the finding that the condition in section 2(2)(b) of the 1971 Act is made out when animals behave in a way which is normal for their species but only in particular times or particular circumstances. This is the 'characteristics issue'.

   The causation issue

9. It is common ground that there must be a causal connection between the characteristics concerned and the damage suffered. Indeed, the Parliamentary history makes this plain. Clause 2(2) of the draft Bill appended to the Law Commission's Report, Civil Liability for Animals (Law Com No 13, 1967) provided thus:

   "Where damage of any kind is caused by an animal which does not belong to a dangerous species, and –

   (a) the animal has such characteristics that it is likely, unless restrained, to cause damage of that kind or that any damage of that kind that it may cause is likely to be severe; and

   (b) those characteristics are known or treated as known to a person who is a keeper of the animal;

   that person is liable for the damage, except as otherwise provided by this Act."

10. The Bill was first introduced in 1969 by the then Lord Chancellor, Lord Gardiner. At the Committee stage in the House of Lords, Lord Foot expressed concern that the clause might be read in such a way as to impose liability for damage of any kind, even though it was unrelated to any abnormal characteristics of the animal. The Lord Chancellor explained that the damage had to be 'such as is likely to result from these characteristics' or be 'likely to be severe if it does nevertheless result from them' (see *Hansard (HL)*, 27 November 1969, cols 1389 and 1390). The Bill was not passed before Parliament was dissolved for the 1970 general election, but it was reintroduced by the next Lord Chancellor, Lord Hailsham. Clause 2(2) now took the form eventually enacted. The Attorney General, Sir Peter Rawlinson, explained at the second reading committee in the House of Commons that this was to meet the point raised by Lord Foot: 'Clause 2 provides that where an

animal has mischievous propensities, the keeper is liable only for such damage as is due to such propensities. This was a change . . . ' (see *Official Report*, Second Reading Committee, 27 January 1971, col 738).

11. Mr Sharp QC, for the appellant claimant, argues that the damage caused here was indeed due to the very characteristics identified in the pleadings of both parties. These were most plainly put on behalf of the claimant in his Further Information:

"(a) the characteristics which will be relied upon are those of a horse . . . to bolt/run into obstacles when in flight/break or knock down obstacles/break out of its field run or wander away from its field having broken out and travel with/follow other horses whilst so doing. Horses in their natural state run together in herds over open and unlimited areas. When frightened or terrified domesticated horses will run together or singly regardless of obstacles in their path and will continue to flee from the perceived peril until after the peril has disappeared. Thereafter they will wander freely unless restrained."

12. The defendants, in their Further Information, said much the same thing when asked to state 'the precise behaviour which it is alleged is normal for animals of the equine species and which resulted in the accident':

"The behaviour referred to was as follows:

a. being vigilant of danger;

b. keeping a safe distance from perceived danger until the point full flight is required;

c. becoming frightened when chased or cornered in circumstances perceived as dangerous;

d. milling about, turning rapidly, when the usual means of escape (ie running away across open country) was unavailable;

e. ignoring, in circumstances of immediate threat, the obstacle presented by the fence to flight;

f. continuing once free of immediate constraint, to flee from pursuit in circumstances perceived as dangerous."

13. All of this was confirmed by the evidence, in particular of the defendant's expert in equine behaviour, Mr Mills. His report stated, for example:

"2.03.3. . . . in situations generating intense fear or involving an element of pursuit, it is most adaptive for the horse to continue to flee for a considerable distance. This may extend to a point beyond which the perceived threat is detectable by the horse"

"2.03.8 . . . if an animal is fearful, then unpleasant stimuli, whatever their origin, will reinforce and exacerbate that fear. Thus if a horse bolts from a given situation because it is scared and then coincidentally finds itself in another aversive situation then the fear will not only continue but is likely to be heightened."

14. This, argues Mr Sharp, is exactly what happened. Having been so terrified by some unknown stimulus that they escaped from the field, the horses then found themselves in another aversive

situation, namely the main road with traffic on it, and this heightened their fear and hence their unusual behaviour. He points to the evidence of the defendant's father that Tango was very distressed and frightened by cars as they walked her back home the next day.

15. Mr Lissack, QC, for the defendant relied, as had the judge, on the extempore judgments of this court in *Jaundrill v Gillett*, unreported, 16 January 1996. Horses had been let out of their field by a malicious intruder. The plaintiff collided with two of them galloping along the road towards him. It would appear that the characteristic relied upon was galloping. The evidence was that this was a normal characteristic of any horse whether or not in a panic. Russell LJ doubted whether this was a characteristic for the purpose of section 2(2)(b) even in a panic, but did not find it necessary to express a concluded view. His conclusion was that the galloping and/or panicking of the horses was not causative of the accident in any real sense. The real and effective cause of the accident was the release of the animals on to the highway and their remaining there. There was no evidence that the galloping of the horses aggravated the situation.

16. In this case, however, it is indeed difficult to conclude that it was anything other than the particular characteristics of these horses once they had been terrified which led to their escape and to this accident taking place. They were still not behaving in the ordinary way in which they would behave when taken on the road. One witness referred to them bolting; another to them trotting across the road in front of the vehicles; they crashed into the vehicles rather than the other way about. It is precisely because they were behaving in the unusual way caused by their panic that the accident took place.

17. I would therefore allow the appeal on this point. The real issue is whether animals which are displaying characteristics which are normal for their species when placed in unusual situations can fall within section 2(2).

The characteristics issue

18. The Court of Appeal has more than once confessed to finding section 2(2) difficult to interpret: it has been called 'very cumbrously worded' (by Lord Denning MR in *Cummings v Granger* [1977] 1 QB 397 at p 404F), 'remarkably opaque' (by Ormrod LJ, *ibid*, at p 407A), 'somewhat tortuous' (by Slade LJ in *Curtis v Betts* [1990] 1 WLR 459, at p 462F), 'inept' (by Nourse LJ, *ibid*, at p 468G), 'the subject of adverse comment in this court and elsewhere' (by Russell LJ in *Jaundrill v Gillett*, unreported, 16 January 1996, at p 2A), its meaning 'elusive' (by Lloyd LJ in *Breeden v Lampard*, unreported, 21 March 1985, at p 7H) and the source of 'puzzlement' (by Oliver LJ, *ibid*, at p 12C). It is only slight consolation that the wording which has caused so much difficulty is different from that which was originally recommended in the Law Commission's draft. The particular point of difficulty is in paragraph (b):

"The likelihood of the damage or of its being severe was due to characteristics of the animal which are not normally found in animals of the same species or are not normally so found except at particular times or in particular circumstances."

This contemplates two different types of abnormal characteristics: the first are those which are normal for the animal concerned but abnormal for the species; and the second are those which are abnormal for the animal concerned except at particular times or in particular circumstances. The question is whether those characteristics which are abnormal for the animal must also be abnormal for the species.

19. Differing views have been expressed. In *Cummings v Granger* [1977] 1 QB 397, the plaintiff was attacked and injured by an untrained Alsatian guard dog (we never learn his name) loose in the defendant's scrap yard. She failed because she was a trespasser and a volunteer. But otherwise she would have succeeded under the second limb of section 2(2)(b). This was not a ferocious dog possessed of characteristics not normally possessed by Alsatians. This was, as Lord Denning pointed out at p 404A, 'just a typical guard dog.' But there was evidence, as Bridge LJ put it at p 409C, that 'this Alsatian had, as any would have, a propensity to bite human beings in particular circumstances, namely being an untrained guard dog, left to roam at large at night in the defendant's scrap yard if confronted with an intruder . . . it was to be expected that this Alsatian or any other Alsatian in like circumstances would attack.' This was enough to establish the second limb. Ormrod LJ at p 407B gave two examples of particular times or particular circumstances: 'a bitch with pups or an Alsatian dog running loose in a yard which it regards as its territory when a stranger enters into it.'

20. That might be thought to be the end of the matter. But the next relevant case in point of time was *Breeden v Lampard*, Court of Appeal, unreported, 21 March 1985. The plaintiff and defendant were out hunting with the Atherstone Hunt, the plaintiff was riding close behind the defendant when the defendant's horse, Raffles, shuffled left and kicked out, breaking the plaintiff's leg. Raffles was a young and exuberant horse but not a kicker. Any horse may kick out, and a young one is more likely to do so than an older one, but Raffles was a natural and normal five year old. The defendant did not know of any tendency to kick out even when followed too closely from behind. (This might be thought a surprising finding, given that the defendant had attached a red patch to his tail so that people would keep away, but it was one with which this court would not interfere.)The question of characteristics arising at a particular time, or in particular circumstances, did not arise. The decision turned on the defendant's lack of knowledge, but Lloyd LJ, as he then was, made these observations at pp 9E to 10A:

    "The essential condition for liability now is that the characteristic which is known to the owner must be a characteristic which is abnormal for the species. . . . If liability is based on the possession of some abnormal characteristic known to the owner, then I cannot see any sense in imposing liability when the animal is behaving in a perfectly normal way for all animals of that species in those circumstances, even though it would not be normal for those animals to behave in that way in other circumstances . . . "

    He regarded the closing words of paragraph (b), not as containing a second type of case, but as further explaining the first: that is, they were designed to meet an argument that a horse which was liable to kick out all the time did not fall within it because all horses are liable to kick out some of the time. At p 12C, Oliver LJ, as he then was, shared Lloyd LJ's "puzzlement at to what is the meaning of the section because, like him, I cannot believe that Parliament intended to impose liability for what is essentially normal behaviour in all animals of that species."

21. There is no reference to *Cummings v Granger* in the judgments in *Breeden v Lampard*. The next relevant case is *Curtis v Betts* [1990] 1 WLR 459. This follows *Cummings v Granger* and does not refer to *Breeden v Lampard*. A bull mastiff called Max attacked a child in the street while being transferred from the defendants' house to a Land Rover to be taken to the local park for exercise. The judge found that bull mastiffs have a tendency to react fiercely at particular times and in particular circumstances, namely when defending the boundaries of what they regard as their own territory. Slade LJ referred to the 'second limb' of requirement (b) as an exception, and explained it in this way at p 464C:

"The mere fact that a particular animal shared its potentially dangerous characteristics with other animals of the same species will not preclude the satisfaction of requirement (b) if on the particular facts the likelihood of damage was attributable to characteristics normally found in animals of the same species at times or in circumstances corresponding with those in which the damage actually occurred."

Stuart Smith LJ also referred to the 'two limbs to the subsection' and explained them in this way at pp 469H to 470A:

"The first deals with what may for convenience be called permanent characteristics, the second temporary characteristics. Dogs are not normally fierce or prone to attack humans; a dog which has a propensity to do this at all times and in all places and without discrimination as to persons would clearly fall within the first limb. One that is only aggressive in particular circumstances, for example, when guarding its territory or, if a bitch, when it has a litter of pups, will come within the second limb."

The only real question was whether the damage, or likelihood of damage, in that case was attributable to Max defending his territory. The Court upheld the judge's finding that it was.

22. Again, one would expect that to be the end of the matter. But all three cases were considered by Pill LJ in *Gloster v Chief Constable of Greater Manchester Police* [2000] PIQR P114. A police dog had slipped his collar and, being unable to distinguish between friend and foe, bit another policeman who was giving chase to the target. After quoting the relevant passage from Lloyd LJ's judgment in *Breeden v Lampard*, Pill LJ commented at p P118 that

"I respectfully agree with Lloyd LJ that the section is not concerned with animals behaving in a perfectly normal way for animals of the species or subspecies."

That case, however, did not turn on this point but upon the meaning of the word "characteristics". Pill LJ took the view that the characteristic in question was not the police dog's inculcated propensity to bite but the capacity of all Alsatians to respond to training. I did not share his view on either point. However, we both found that the case failed on causation.

23. We have looked at all the other authorities on section 2(2) but none of them gives any further assistance with this issue. The first instance case of *Wallace v Newton* [1982] 1 WLR 375 is a classic example of an animal with characteristics not shared by others of the breed: a horse called Lord Justice which was known to be generally temperamental and nervous injured a groom who was trying to lead him into a trailer. The Court of Appeal case of *Smith v Ainger*, unreported, 16 May 1990, concerned a dog which was known to attack other dogs but injured the other dog's owner in the process. This was damage of a kind he was likely to cause unless restrained. The first instance case of *Hunt v Wallis* [1994] PIQR P128 held that where there was an established breed, normality should be judged by reference to others of that breed. The Court of Appeal case of *Flack v Hudson* [2001] 2 WLR 982 held that one keeper, the owner, could be liable to another keeper, the rider, when a horse with a tendency, known to the owner but not to the rider, to be frightened of agricultural machinery bolted at an approaching tractor. This might be thought a classic example of an animal with a peculiar characteristic, not shared with others of the breed, which only manifested itself in particular circumstances. But that does not answer the present question.

24. We have, therefore, two reported Court of Appeal cases which answer the present question in a way favourable to the claimant. These are binding upon us. However, we also have two Court of Appeal

cases in which powerful views were expressed, albeit obiter, to the opposite effect. Many people may find it surprising that there can be strict liability for behaviour of domesticated animals which is entirely normal for those animals when placed in the particular circumstances in which they find themselves. Mr Lissack went so far as to call it absurd. Certainly the consequences for equine liability insurers are severe. In those circumstances we considered that the test laid down by Lord Browne-Wilkinson in *Pepper v Hart* [1993] AC 593 at p 640C was sufficiently met to justify our looking at the relevant Parliamentary material. Indeed, Mr Sharp was eventually content that we should do so, while reminding us of the requirements emphasised by Lord Browne-Wilkinson in *Melluish v BMI (No 3) Ltd* [1996] 6 AC 454 at p 481F that 'the only materials which can properly be introduced are clear statements made by a minister or other promoter of the Bill directed to the very point in question in the litigation'.

25. Before turning to those statements, however, it is necessary to look to the law reform proposals which led to the Bill. As Dr Peter North pointed out, in *The Modern Law of Animals*, 1972, at pp 4 to 5, reform of the old common law of strict liability for dangerous animals seemed inevitable, but posed a fundamental choice: between sweeping away the old rules altogether and relying on the modern law of negligence or retaining a modified form of strict liability. The other law reform bodies which had reported on the subject preferred the former, more radical course: see the Report of the Committee on the Law of Civil Liability for Damage done by Animals (Chairman: Lord Goddard CJ), 1953, Cmnd 8746; the Twelfth Report of the Law Reform Committee for Scotland, 1963, Cmnd 2185; and the Report of the New South Wales Law Reform Commission on Civil Liability for Animals, 1970, LRC 8. In their Report on Civil Liability for Animals, 1967, Law Com No 13, at para 14, however, the Law Commission for England and Wales took a different view:

    "It does not seem unreasonable that the keeper of a dangerous animal should bear the special risk which is created by keeping it; moreover it is a risk against which he can more conveniently insure than can the potential victim. We agree with the Goddard Committee that the present law relating to dangerous animals is 'intricate and complicated', but in our view this argues for its simplification rather than for the abandonment of its underlying principle.'

26. One of the modifications they proposed dealt specifically with the question at issue. When summarising the common law, at para 6, they pointed out that:

    "Further, it may now be that the propensity of the animal must be contrary to the nature of the species to which it belongs; if it is in the nature, for example, of fillies to prance around strangers, then 'timorous persons, unused to horses' cannot on this view rely on the strict liability of their keeper if they suffer injury."

    The Commission wished to change this, as they explained at para 18(ii):

    "We have stated above that to be strictly liable under the *scienter* doctrine the keeper of an animal may under the present law have to be aware of a propensity of the animal contrary to the nature of its species. . . If, however, the animal does not belong to a dangerous species, it is of course essential to consider whether the keeper knew of any dangerous characteristics in his animal. In our view the fact that a particular animal belonging to a non-dangerous species shares these characteristics with other animals within the species, either at a particular age, at certain times of the year or in special conditions, should not preclude liability where the keeper knows of the presence of those characteristics in his animal at the time of the injury. If the keeper of a bitch with a litter knows that it is prone to bite strangers, then even if this is a common characteristic of bitches at such a time, we think that the keeper should be strictly liable . . . "

27. When the Bill was first introduced, the then Lord Chancellor, Lord Gardiner, explained (see *Hansard (HL)*, 27 November 1969, cols 1390 to 1391) that it was intended to change or clarify the law in this respect:

"Some actions of animals, which although they are characteristic of their species in certain circumstances are probably excluded from this form of liability under the present law, will in future be covered. Young horses are generally frolicsome, and bitches with litters are prone to bite strangers; but the fact that these are normal characteristics of otherwise harmless animals at present probably exempts their keeper from liability. In future he will not necessarily be exempt from liability for their harmful acts, where he knew about the propensity at the time of the injury."

When the Bill was reintroduced, the next Lord Chancellor, Lord Hailsham, (see *Hansard (HL)*, 12 November 1970, col 852) said exactly the same thing:

"If however a bull is known to have vicious characteristics, or if it be that there are particular times and conditions in which abnormally vicious characteristics appear in all bulls, the keeper of the bull would be liable."

28. These statements are directly relevant to the point at issue in this case and must carry more weight than the general statements relied on by the respondent, for example by the solicitor general, Sir Arthur Irvine, at the second reading of the first Bill in the House of Commons (see *Hansard (HC)*, 4 February 1970, col 513):

"Fairly broadly, applying the new code has the result that anyone who keeps an animal of a dangerous species or one which although of a harmless species he knows to have dangerous propensities, will be liable for any damage or injury done by it. . . "

In the same category is the explanation given by the Attorney General, Sir Peter Rawlinson, for the change introduced in response to Lord Foot's concern: see para 10 above. He was concerned to explain the change, not to discuss what was meant by 'particular times and particular circumstances'.

29. Dr North undoubtedly shared the view of both Lord Chancellors as to what the Act meant, at p 52:

"If a species which is normally docile reveals vicious characteristics in certain particular circumstances, then those characteristics, though normal to the species in those circumstances, may be classed as abnormal."

He then quotes from the decision of Darling J in *Barnes v Lucille, Ltd* (1906) 96 LT 680:

"I do not think . . . that in order to make the owner of a dog liable that the dog must be always and invariably ferocious. If the owner knows that at certain periods the dog is ferocious, then he has knowledge that at those times the dog is of such a character that he ought to take care of it. If a man knows that a bitch which is ordinarily amiable is ferocious when she has pups, and people go near her, I think he has knowledge that at such times she is of a ferocious character."

Dr North continues

"This is the underlying rationale of the provision in s 2(2)(b) with the added rider that, for the purposes of the Animals Act 1971, it does not matter that such unusual characteristics are to be expected in those unusual circumstances."

30. The Parliamentary history demonstrates two things. The first is that the change from the Law Commission's draft was designed to address a different issue from the one with which we are here concerned - whether the damage or likelihood of damage must be attributable to the characteristic in question. The second is that when Parliament directly addressed the issue in question here - whether the second limb of section 2(2)(b) covered temporary characteristics which were nonetheless normal to the breed in those circumstances or at that time - the view expressed was that such cases were covered. Had Oliver LJ had the benefit of the materials before us, he could not have said that 'Parliament could not have intended' such a result.

31. I have, however, wondered just what the animal's keeper must know in order for strict liability to apply. A person keeps an animal of a dangerous species at his peril. But if he keeps an animal of a species which is not normally dangerous he is liable only if he knows of the particular animal's particular characteristics. The whole point, as I said in *Gloster v Chief Constable of Greater Manchester Police* [200] PIQR P114 at P 121, was 'to impose a stricter liability upon those who knew that the animal they had possessed characteristics which other such animals did not have.' In the case of an animal with a general but abnormal tendency to do harm, the first limb of section 2(2)(b), the keeper must know of that tendency. But in the case of an animal who only has such a tendency in particular circumstances or at particular times, it might be thought that the keeper must know, not only of the tendency but also that the particular time or particular circumstances currently exist: for example that his bitch has just had pups or his dog was guarding his territory. Applied to this case, the keeper would have to know, not only that horses can behave in this way if frightened or panicked, but also that these horses had been frightened or panicked. Some of the above quotations from the Law Commission's Report and from Hansard might be thought to support that view. However, the Act does not. Section 2(2)(c) merely requires knowledge of the 'characteristics', and not both characteristics and circumstances. In any event, if the rationale for the strict liability is the greater vigilance needed and the greater opportunity to insure brought by that knowledge then those can be employed whether or not the particular circumstances are known to exist at the time.

32. In the end, we have to decide what the words mean. Mr Lissack acknowledged that they mean what they say. There is nothing in the material preceding their enactment to suggest that anything different was intended. Hence I would dismiss the cross appeal.

LORD JUSTICE KEENE:

33. I agree.

THE PRESIDENT:

34. I also agree.