HOUSE OF LORDS.

Wednesday, November 9, 1910.

(Before the Lord Chancellor (Loreburn), the Earl of Halsbury, Lords Atkinson and Shaw.)

LOWERY *v.* WALKER.

(ON APPEAL FROM THE COURT OF APPEAL IN ENGLAND.)

Reparation — Negligence — Dangerous Animal — Knowledge of Defendant — Persons "Trespassing" in Knowledge of Defendant.

A farmer had a horse which he knew to be savage and to have bitten people. He put it in a field which he knew was habitually used by the public as a short cut, although they had no express leave to do so. The plaintiff was bitten and severely injured by the horse while crossing the field.

Held that the plaintiff was lawfully in the field, and that the farmer was liable in damages.

In the circumstances outlined *supra* in rubric the County Court Judge found in fact, *inter alia*, that the field in question had been habitually used by the public as a short cut, though they had no leave so to do; that the defendant knew that the horse had bitten other people. No doubt the plaintiff was a trespasser. He afterwards added the following note to his judgment—"On the question of trespass I came to no definite conclusion. The defendant only occupied for fifteen years. I had evidence of the use of the path for thirty or forty years. The defendant put up a notice fifteen years ago but would not prosecute." He gave judgment for the plaintiff for £100 damages, which was reversed by the Court of Appeal (VAUGHAN WILLIAMS and KENNEDY, L.JJ., BUCKLEY, L.J., dissenting).

The plaintiff appealed, and at the conclusion of the arguments their Lordships gave judgment as follows:—

LORD CHANCELLOR (LOREBURN)—I think that this case should be determined upon the actual findings of the learned County Court Judge. It is true that there has been some question about what he decided, and it appears that some little time after he had delivered his judgment he made an alteration in regard to a phrase which he had used. I think that it was quite legitimate to do so, because the word which 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 that 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 that 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, I think that we ought not to refine upon the language which the learned Judge has used. Perhaps it would have been better—indeed I think that 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 that in substance it amounts to this—that the plaintiff was not in this field of right at all; that he was there as one of the public who habitually used the field to the knowledge of the defendant; and in those circumstances it cannot be right 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. I will not enter upon the further field of law—itself somewhat wide and not free from many difficulties—because I do not think that the facts of this case require that we should enter upon that field. Under those circumstances and for those reasons I think that the appeal ought to be allowed.

EARL OF HALSBURY — I entirely concur with the judgment which the Lord Chancellor has delivered and with 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 that 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 that 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—of 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 shows that he did not intend to find—that the injured man was a trespasser in the sense in which that word is used strictly and technically in law. I think that 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 admits candidly 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." I think that we are bound not only by the original finding of fact, but by what he says that he intended to convey by his words. It is not, as counsel for the respondent suggested, that the learned Judge had changed his mind afterwards, which I quite 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 that he was entitled to do that, just as anyone of us here, in looking over a judgment afterwards, may think that we have used an inappropriate word and may substitute one which is more appropriate to the occasion. As to the other question which counsel for the respondent intended to argue, and I am afraid that he is disappointed because the view which we take prevents that question from being raised, 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 from being raised. In his finding he has given upon very familiar questions 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 this 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 that they are going, and going by his acquiescence without notice or warning or any form of security to prevent the injury from happening which did happen. Under those circumstances I am of opinion that the judgment appealed from ought to be reversed.

LORD ATKINSON—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, which injured the plaintiff by the very vices of which the respondent was well aware.

LORD SHAW—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 which 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 I have no doubt that liability attaches to a defendant so acting. I specially desire 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 pronouncements by Darling, J., and Vaughan Williams, L.J., on that larger topic.

Judgment appealed from reversed.

Counsel for Appellant—Holman Gregory, K.C.—W. A. Jowitt. Agents—Blyth, Dutton, Hartley, & Blyth, Solicitors.

Counsel for Respondent—Leslie Scott, K.C.—H. Beazley. Agents—Harrison & Powell, Solicitors.

HOUSE OF LORDS.

Wednesday, November 9, 1910.

(Before the Lord Chancellor (Loreburn), the Earl of Halsbury, Lords Atkinson and Shaw.)

BARNABAS *v.* BERSHAM COLLIERY COMPANY.

(ON APPEAL FROM THE COURT OF APPEAL IN ENGLAND.)

Master and Servant—Workmen's Compensation Act 1906 (6 *Edw. VII, c.* 58), *sec.* 1—*Accident—Diseased State of Workman.*

A workman suffered from a diseased condition of the arteries, and he died of an apoplectic seizure while engaged at work. There was no evidence to show that the apoplexy resulted from a strain or any other incident of labour.

Held that there was no evidence that the death had occurred from accident arising out of the employment (*cf. Hughes* v. *Clover, Clayton, & Company,* 47 S.L.R. 885, [1910] A.C. 242).

The appellants were the dependants of a workman who died while employed in the respondents' colliery. The workman was