

*Judgment of the Lords of the Judicial Committee  
of the Privy Council on the Appeal of  
James Forbes v. Alexander McDonald,  
from the Supreme Court of the Colony of  
Victoria; delivered Friday, the 17th April  
1874.*

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Present :

SIR JAMES W. COLVILLE.

SIR BARNES PEACOCK.

SIR MONTAGUE E. SMITH.

SIR ROBERT P. COLLIER.

THIS suit was brought against the Defendant for damage done to the Plaintiff by a ferocious bull. The Plaintiff charges that the Defendant had advertised a sale of cattle, horses, and other things at a farm called Sandlands; and that the Defendant, well knowing that the bull was accustomed to attack mankind, allowed him to be at large upon the said property known as Sandlands, without giving notice to persons attending the sale that the bull was accustomed to attack mankind, and without taking any proper means to prevent accidents arising from the said bull; whereby the Plaintiff, whilst attending the sale and passing along and over the said property, was attacked and injured by the said bull. A second count charged that the Defendant kept a vicious bull, knowing that it was accustomed to run at and injure mankind, and that whilst the Defendant so kept the bull, the bull attacked, ran at, and injured the Plaintiff. The third count charged that, at the time of the committing of the grievances by the Defendant, "the Plaintiff, with the consent

“ of the occupiers of a certain close at Mount  
“ Moriac, in the county of Grant, was lawfully  
“ in and lawfully going along and over the  
“ said close for the purpose of proceeding to a  
“ certain dwelling-house and garden, of all  
“ which premises the Defendant before and at  
“ the time of the committing of the said  
“ grievances had notice, yet the Defendant  
“ then negligently, wrongfully, carelessly, and  
“ injuriously kept at large in the said close  
“ a certain bull, well knowing the same to  
“ be accustomed to injure and attack mankind,  
“ and without giving any notice or warning  
“ that he was so accustomed, and by reason  
“ thereof the Plaintiff was attacked and  
“ injured by the said bull, by means of which  
“ said several grievances the Plaintiff has been  
“ permanently injured.” The Defendant pleaded  
not guilty, and also a plea to the first count  
of the declaration, “that the Plaintiff was not  
“ at the time of the injury attending the  
“ said sale in a lawful manner as stated in the  
“ said count, but was trespassing on the land  
“ where the said bull then was, without the  
“ Defendant’s leave; and though the Plaintiff  
“ had had full notice and warning of the matters  
“ in the said count mentioned, he nevertheless  
“ carelessly, wilfully, negligently, and improperly  
“ went near to the said bull, and the said injury  
“ to the Plaintiff was caused by his own negli-  
“ gence, wilfulness, and want of due and proper  
“ care, and not otherwise.” The substance of  
that plea is that the Plaintiff was a trespasser  
in the close where the bull was, and that he went  
near to the bull with full notice that he was  
accustomed to attack and injure mankind, and  
that the accident was occasioned solely by his  
negligence. Probably under that plea, though  
it charges that the accident was caused solely  
by the negligence of the Plaintiff, the Defendant

might have shown that the accident was caused by contributory negligence on the part of the Plaintiff. Then he says, for a further plea to the second count, "that the Plaintiff had full notice and warning of the matters in the said count mentioned, and that he nevertheless carelessly, wilfully, negligently, and improperly went near to the said bull, and that the said injury to the Plaintiff was caused by his own negligence, wilfulness, and want of due and proper care, and not otherwise." And then for a fourth plea he says "that the Plaintiff was not at the time when, &c., with the consent of the said occupiers of the said close, lawfully in or lawfully going along and over the said close for the purpose in the said count alleged."

The case was tried before Mr. Justice Williams, who, we must assume, properly directed the jury, for there was no motion to set aside the verdict upon the ground of misdirection or of a want of proper direction on the part of the judge. We must therefore assume that the learned judge asked the jury whether they believed that the accident was caused solely by the negligence of the Plaintiff, or by the negligence of the Defendant; and if the Defendant was guilty of negligence, whether the accident was caused by contributory negligence on the part of the Plaintiff, or whether, at the time when the Plaintiff was injured by the bull, the Plaintiff was trespassing in the close where the bull was, or was there by the license and consent of the Defendant.

There was no evidence of the advertisement of the sale, but there is no doubt that a sale was going on at the premises at the time when the accident took place. Evidence was given that the cattle, of which the bull was one, were driven into the saleyard for the purpose of being sold. Now if the bull was a dangerous

bull, accustomed to run at mankind, one would scarcely suppose that the Defendant would have allowed him to be driven into the public saleyard, where persons attending the sale were present, without having him under any sort of control or confinement. If the bull was a dangerous animal, one would suppose that he would have been either fastened or tied up at the time of the sale, or that he would have been restrained, as dangerous bulls sometimes are, with a ring through his nose, or something of that kind: But evidence was given to the effect that he was brought loose into the saleyard for the purpose of being sold; that the persons who were attending the sale were apparently in a state of confusion upon seeing the bull coming into the yard, and that the Defendant told them to be quiet, and said, "If you are quiet the bull will be quiet; he will not injure you; he is a very quiet bull;" and that the Defendant patted him, and told the persons then present not to be alarmed, that the bull was not dangerous. After the bull was sold, he, like the other cattle, was driven into the paddock. It appears upon the evidence that the cattle were sold first; that as they were sold they were driven from the saleyard into the paddock where the horses which were about to be sold were, and in which there were a number of persons attending the sale, to the amount perhaps of fifty. The Plaintiff says about fifty persons were present in this paddock where the horses which were about to be sold were, and into which the cattle which had been sold were driven. Now if the bull was really a dangerous bull, he ought not, after he had been sold, to have been driven into and left at large in that paddock, in which there were many persons. The Defendant's own conduct, as well as his statement, if the witnesses were believed, were such as

to lead the persons present to believe that the bull was not a dangerous one; and there was also evidence from which the jury might reasonably infer that the Plaintiff and the other persons present in the paddock were there with the Defendant's license and consent.

The jury found a verdict for the Plaintiff with damages, and upon that a motion was made and a rule nisi granted to set aside the verdict, and to enter a nonsuit upon the ground that there was no evidence of negligence on the part of the Defendant, or, in the alternative that there should be a new trial granted between the parties upon the ground that the verdict was against the evidence. Now with regard to the nonsuit, it is clear that the Court was wrong in entering a nonsuit if there was any evidence whatever to go to the jury; and it appears to their Lordships that there was ample evidence to go to the jury in support of the Plaintiff's case.

Then another question would arise, viz., whether, if there was any evidence to go to the jury, the verdict was against evidence. As to the question of new trial, there ought not to be a new trial unless the verdict was so contrary to the weight of evidence that the Court must say that the jury were wrong in giving such a verdict. It is not because their Lordships might not have found that verdict themselves that a new trial ought to be granted; but before a new trial is granted upon the ground that the verdict was against the weight of evidence, they must be satisfied that the jury ought not to have found the verdict upon the evidence which was before them.

Now the only evidence to show that the Plaintiff went near to the bull, and that the accident was caused by his own negligence, was that of Thomas Bartrop, a witness called on

the part of the Defendant, who said that he was present at the sale when the cattle were being sold. He says, "I saw the Plaintiff sitting on the fence with twenty others." The Plaintiff himself denied it, and said he did not recollect ever being on the fence. "I heard the Plaintiff say he was not afraid to face any bull. Some one made a remark, he would like to see the man who would face that bull. The bull at this time was in the little paddock. Plaintiff got off the fence, and went towards the bull. No one was near when the bull rushed at him. According to this witness there was no doubt that the Plaintiff, if he had knowledge that the bull was a dangerous one, was guilty of great negligence in going so near him. But it does not appear that the jury believed the witness Bartrop. There is nothing to lead their Lordships to suppose that the jury necessarily believed the evidence of Bartrop, and discredited the evidence of the other witnesses who proved that the bull was driven into the paddock after the public declarations made by the Defendant that the bull was not dangerous. The learned Chief Justice, in delivering the judgment of the Court upon the rule, says, "The Plaintiff, fully aware of the habits of the bull, without any sufficient reason, separated himself from all the other persons and went in dangerous proximity to this beast." The learned judges founded their judgment upon the ground that the Plaintiff, without any sufficient reason, caused the accident by going near to the bull. But that was putting themselves in the place of the jury. It was taking the case from the jury into their own hands. It is no ground for a nonsuit to say that they believed the witnesses who proved the Defendant's plea. It was wrong to enter a non-suit if there was any evidence to go to the jury in support of the Plaintiff's case.

It is true the learned judges said, "The Defendant, no doubt, kept the bull at his own risk, and if he had injured any intending purchaser in the sale yards, the case might have been very different, but the sale was over. The Plaintiff need not have gone into this field for any purposes connected with that sale, and ought, under no circumstances, to have gone to the part he did. Though a dangerous animal, a tiger, for example, is kept at the risk of the owner, it does not follow that a bystander who, aware of its disposition, thrusts its hand into the cage and is bitten, can successfully sue the owner for damages. There was really nothing to justify the Plaintiff in doing what he did. He wilfully incurred an unnecessary risk, and thus brought on himself the serious injuries which were inflicted on him, and we cannot compel the Defendant to compensate him for such injuries."

It appears to their Lordships that the learned judges were not correct in ordering a nonsuit to be entered. And with regard to the other question, it appears to their Lordships that the evidence which was given to the jury was sufficient to justify them in finding a verdict for the Plaintiff,—whether their Lordships would have come to the same conclusion or not, it is not necessary to say,—but they cannot say that the jury came to an erroneous finding on the evidence before them, or that their verdict was so far against the weight of the evidence as to justify sending the case for a new trial.

Under all the circumstances it appears to their Lordships that the rule nisi ought to have been discharged, and that the judgment ought to have been entered for the Plaintiff according to the verdict of the jury; and they will humbly recommend Her Majesty that the judgment of

the Court be reversed, that the rule absolute for a non-suit be set aside, that the rule nisi be discharged with costs, and that the judgment of the Court be entered according to the finding of the jury, with the costs of this Appeal and the costs in the Court below.