Alberta Court of Queen's Bench
Lewis v. Oeming
Date: 1983-02-04

M. Berlins, for plaintiff.

G. A. Verville, for defendants.

(Edmonton No. 112381)

February 4, 1983.

[1] MILLER J.:— It is not very often that a member of the Court of Queen's Bench of Alberta gets an opportunity to hear a civil trial where a Siberian tiger mauls a man. Needless to say, especially as our court has not established a complete record of precedents in this area, I am indebted to both counsel for the able and complete manner in which this trial was presented and for their assistance.

[2] The issues in this case are whether the defendants are subject to strict liability or, in the alternative, were they in any way negligent in the operation of a game farm and if so, whether such negligence was the cause of the injuries suffered by the plaintiff when he was severely mauled by a tiger owned by the defendants and exhibited at the Alberta Game Farm.

[3] As the sequence of events may be critical to the determination of the issues, I propose to set them out at some length.

[4] In the summer of 1977 the plaintiff was 20 years of age and looking for employment. He had completed Grade XII in 1974, then spent half a year at university in engineering before dropping out and had then worked as a pump repairman before becoming unemployed. He had always been interested in working with animals but had no prior work experience with them. The defendant, Al Oeming Investments Ltd., owned and operated a well-known business under the firm name and style of the Alberta Game Farm located approximately 20 miles southeast of the city of Edmonton. The defendant, Al Oeming, was the major shareholder of Al Oeming Investments Ltd. and the director of the Alberta Game Farm. I think it is fair to state that the defendant Oeming enjoys a world-wide reputation as a zoologist, particularly interested in the preservation of wildlife species whose existence on this earth is being threatened by the encroachments of mankind.

[5] Prior to and during 1977 the Alberta Game Farm was operated as a business charging admission to the public to come and see animal species collected from all over

the world. In general, the bigger animals were kept in large enclosed cages or paddocks in order to enable the public to observe them freely.

[6] As part of its summer operation, the game farm was in the habit of hiring 15 or 16 young people to carry out generally unskilled jobs on the site. These involved such things as cleaning up the grounds and the animal enclosures, operating rides on some of the animals, ticket-taking, etc. In addition, the game farm had a full-time manager in the person of James Poole and a foreman named Evans. According to Mr. Oeming, the animals on the game farm were divided into four or five different classifications and several employees were specially trained to look after each classification. These employees were in addition to the general crew of summer staff hired. One such grouping of animals were the “carnivores”, which included the Siberian tiger involved in mauling the plaintiff. In the summer of 1977 one Gregory Picard was employed by the game farm to specifically look after the large carnivorous animals and he testified that he received special instructions as to how to handle these animals from his predecessor, as well as from Mr. Oeming and Mr. Poole before he was allowed to work closely with these animals.

[7] The general crew, to which the plaintiff belonged, were classed under the Labour Act, R.S.A. 1980, c. L-1, as casual farm labour and as such were not covered by the usual minimum standards under the Labour Act, nor were they required to be covered under the Workers’ Compensation Act, 1981 (Alta.), c. W-16. All parties agreed that the general crew were asked to work every day from 7:00 a.m. until the required chores were completed, which sometimes extended to late in the evening.

[8] The plaintiff responded to an advertisement placed by the game farm for summer labour and, after being interviewed by Mr. Poole, was hired. He was to receive $400 per month, plus room and board at the farm. He was told that he would work on one of the clean-up crews charged with the responsibility of cleaning up the animal pens, which included removing animal droppings and any foreign objects thrown or blown into the enclosures. After a few weeks on the job, the plaintiff testified that he was also asked to help out other employees in the feeding of some of the animals and in the afternoons he was trained to work with the elephant that gave rides to some farm visitors.

[9] The first day on the job the plaintiff says he was taken around by Mr. Poole and shown the cleaning routine. He was mostly involved in cleaning the enclosures of the grazing animals. Both Oeming and Poole had given the plaintiff some general instructions and advice about working with animals. The plaintiff admitted that Oeming always stressed

using common sense around the animals and the plaintiff also admitted he soon realized that some of them, although appearing quite tame, were also very powerful and could be harmful.

[10] Oeming testified that he told all casual employees that they were to follow only prescribed tasks that were assigned to them and that they were all specifically told to stay away from the enclosures containing the carnivorous animals. In addition, Oeming testified that he told all employees never to enter enclosures at night occupied by the larger active animals, as they could react quite differently in the dark as compared to daylight hours. He further said that he specifically remembers telling the plaintiff, sometime prior to the accident, to stay on his clean-up route and that his clean-up chores had nothing to do with the carnivores as these were the sole responsibility of Mr. Picard.

[11] After some period of employment, the plaintiff was asked to supervise the general clean-up crew and to do this he was given a set of keys which opened the padlocks on various enclosure gates. At the time in question, the game farm used a keying system where three keys opened approximately 95 per cent of the dozens of padlocks in use. This was done both for convenience and to be able to access an enclosure rapidly if an emergency of some sort arose. One of the keys given to the plaintiff could be used to open the enclosure occupied by the tiger involved, as well as several other enclosures.

[12] The particular tiger who mauled the plaintiff had an interesting history. It was a male Siberian tiger given the name of Hector which, I suppose, is as good a name as any for a tiger in captivity, and I will hereinafter refer to him by his given name. Hector was acquired by the game farm two years earlier while still a kitten and only weighed about 15 pounds. As he had no mother available, he was hand-fed by bottle and, while he was still small, was allowed to roam quite freely. He was used to having people around and was very friendly with a black Labrador dog called Satan. The two were constant companions and shared the same enclosure. Oeming, having handled Hector virtually all of the tiger's life, was able to be alone with him safely, although even he realized that by August 1977 Hector had grown to a 400 pound animal and could accidentally hurt someone badly while just playing. It is admitted by Oeming that, under typical game farm conditions, Hector was not an aggressive animal and that prior to the incident involving the plaintiff he had never attacked any person. However, Oeming also observed that Siberian tigers seem calmer in cold weather and can be "crotchety" in summer and that they are also night hunters so are more active after dark.

[13] The plaintiff testified that he could recall a few occasions prior to 23rd August when he was asked to help clean out Hector's enclosure and did so, but that Picard was always in the enclosure at the same time. The enclosure where Hector was kept had a smaller section at one end with a gate arrangement that could be operated from outside of the enclosure sealing off the smaller area from the larger part. Thus it was possible to let Hector into this smaller area, shut the gate, and keep him from accessing the larger area. The plaintiff testified that the few times he was in Hector's enclosure with Picard, the tiger was roaming free in the larger area. He testified that he was not even aware of the gate arrangement to seal off the smaller area.

[14] The plaintiff also testified that at various times he also saw some of the other casual staff in Hector's enclosure and they seemed to be playing with the tiger without incident. Mr. Picard testified that he occasionally got help from the clean-up crew to clean Hector's enclosure, but never remembers the plaintiff as one who helped him. He stated he was very comfortable with Hector but would never have gone in his enclosure after dark.

[15] The plaintiff further testified that it was common practice for the summer help to pet Hector through the wire fence and during the time he was employed at the game farm, up to the date of the accident, he had never heard anyone say that Hector was ill-tempered.

[16] On the day of the accident 23rd August 1977 the plaintiff testified that he went about his normal clean-up duties which started at 7:00 a.m. After lunch he worked with the elephant until suppertime. After supper he went back to his clean-up duties, which included driving the truck full of garbage to the local dump. Upon his return he was assigned, with several others, to do a special job. They were to clean out the brush from a deer pen, take the debris to a nearby swamp area and burn it. The plaintiff stated that he worked with the crew on this task and then left them to do a late check on the elephant. He says that no one person was actually on the job supervising the work crew. When the plaintiff returned to the work area, he noticed several of the staff standing around Hector's enclosure laughing and "fooling around". He also noticed a cloth baseball type cap belonging to another staff member, Eva McKay, who was apparently the plaintiff's girlfriend at the time, lying inside Hector's enclosure. The cap had previously been thrown inside the enclosure by one of the staff in the course of "fooling around". After the incident happened, the plaintiff testified he had learned that some of the summer staff had been teasing Hector by poking branches through the wire fencing, but on the evening in

question, the plaintiff was unaware of this and no one present warned him of the possibility that Hector might be upset as a result of the teasing. At this point in time it had reached 10:30 to 11:00 p.m. and was pitch dark outside. The staff had already quit work on cleaning out the pen and were off duty when the whole incident occurred.

[17] The plaintiff testified at the trial that he thought it would be dangerous to Hector's health to leave the cap in his enclosure all night as he might chew on it but, at discoveries, he admitted that this thought had not really crossed his mind. In any event, the plaintiff said he saw nothing unusual about Hector's behaviour and decided, then and there, to open the gate of the enclosure. He intended to reach in and retrieve the cap which was lying on the ground about three feet inside the gate. When he unlocked the padlock, from the keys which he carried, he says Hector was pacing around at the other end of the cage. It is the plaintiff's recollection that as soon as he reached into the enclosure Hector bounded over, grabbed his left arm, threw him down and started mauling his head. He called for help and was quickly pulled out of the enclosure.

[18] Eva McKay testified at the trial that she was by Hector's pen late that evening. She noticed some of the other employees poking sticks through the wire fence of Hector's cage and teasing him. She asked them what they were doing there and told them to get back to their jobs. They then started fooling around, took her baseball cap from her head and threw it in the enclosure. Shortly thereafter the plaintiff came along and offered to retrieve the cap. He opened the gate and when Hector came close he tried to grab his collar. At that point she observed Hector starting to maul the plaintiff. She said that without thinking about the danger she ran into the enclosure and started kicking Hector, at which point he backed away into the smaller enclosure and Miss McKay, assisted by others, pulled the plaintiff from the cage and locked the gate.

[19] Miss McKay testified that she was also part of the clean-up crew and had only started working at the game farm on 1st August 1977. She said that on occasion Mr. Picard would get her to help him clean out Hector's enclosure, but on each occasion she would be instructed to attract Hector by standing outside of the smaller enclosure with a piece of meat and that when the tiger came towards her, Picard would close the gate between the larger and smaller enclosures. She would then go inside and clean out the larger enclosure. She also testified that she recollected seeing the plaintiff in Hector's enclosure on at least one occasion and that he was playing with the tiger like one would play with a pet dog. Under cross-examination, Miss McKay stated that in fact there were two hats thrown into the enclosure that night and the one the plaintiff was attempting to

retrieve was not hers as it was farther inside the enclosure. Miss McKay admitted that, although she knew that Hector had been teased a few minutes earlier, she said nothing to warn the plaintiff or even advise him of her knowledge before he attempted to enter the enclosure.

[20] The plaintiff was immediately taken to the University Hospital in Edmonton where it was found that he had suffered a broken left arm, lacerations and abrasions on the left arm and back, a skull fracture, temple fractures, a broken nose, lacerations on the forehead and face. He was in intensive care for one week and on a neurosurgical ward for one week. He convalesced at home for an extended period of time. His left forearm was in a cast for four months. According to Dr. Lobay, a plastic surgeon, the plaintiff has made a remarkable recovery from his injuries which were life threatening in their initial stages. His present disabilities are mostly cosmetic in nature and are not too serious in terms of daily functioning. He still has a muscle hernia of the left arm which produces a marked bulge when the arm muscles are flexed. Some of the scar sites remain itchy and the plaintiff now has a decreased sense of smell. The left arm is probably weaker than before. The major visible signs are a misalignment of his left eye with the right eye, noticeable depressions in the temple areas and a scar on the forehead. All of these except the eye misalignment could, according to Dr. Lobay, be considerably improved by further plastic surgery which the plaintiff has not yet elected to pursue.

[21] The plaintiff and his mother testified that since the accident he has not been the same person. For a long time he shunned people and was embarrassed by his cosmetic disfigurement. He has not worked too steadily since the accident but, curiously, he did return to work at the game farm for a short while in the winter of 1977 doing light chores. The plaintiff is still undecided as to what he wants to do with his future.

[22] Both Mr. Oeming and Mr. Poole testified that the plaintiff came to the game farm to see them shortly after his release from hospital. They discussed the accident with the plaintiff and both recollected that the plaintiff admitted to them that he had made a serious error in judgment and done something very foolish in going into Hector’s enclosure when he did, for he knew it was dangerous to go in there at night. Mr. Oeming observed that even he would have been very leery about going into Hector’s enclosure after dark. He also stated that the worst movement one could make with the tiger was to grab for its collar, as this would be interpreted by the animal as a hostile movement even in daylight, let alone in the dark.

[23] Mr. Berzins, counsel for the plaintiff, argued that the defendants were liable to compensate the plaintiff on several grounds, including negligence. There were three specific grounds leading to liability urged by Mr. Berzins. Firstly, he contended that if the crew working on the evening of 23rd August had been properly supervised, the teasing of Hector would have been stopped immediately, thereby making it unlikely that the usually mild-mannered animal would have attacked the plaintiff. Secondly, he argues that the plaintiff had received conflicting instructions from the management of the game farm, which caused him to be confused as to which course of action he should pursue at the critical time. In this regard, he referred to the instructions not to go into the animal enclosures at night, which conflicted with the instructions to keep, at all times, the animal pens clean and free of foreign objects which could harm the animals. The third alleged ground for liability is that the plaintiff was on duty at the time of the accident and was only carrying out his duty to keep foreign objects out of the animal enclosures.

[24] In response, Mr. Verville, counsel for the defendants, argued that the tiger, Hector, was an inherently dangerous animal, even if raised from birth by man, and an owner would be fixed with strict liability if Hector had escaped and injured the plaintiff. However, he contended that, in the case at bar, Hector had not escaped and was, at all material times, housed in an adequately designed and protected enclosure with a facility to segregate the tiger should there be a need to enter the larger enclosure. He pointed out that there were persons specially trained to handle the carnivores and that the plaintiff was not one of these, so that he knew or ought to have known that he had no permission, express or implied, from his employer to enter Hector's enclosure alone at any time.

[25] In addition, Mr. Verville argued that the plaintiff knew, when he accepted the job of working at the game farm, that there were certain risks entailed in working at close quarters with the animals and he willingly assumed those risks. The defendant's counsel took the position that if it were that the plaintiff was not acting within the scope of his employment at the time of the accident, then he must bear the sole responsibility for his injuries. Alternatively, the defendant's counsel argued that if he was acting in the scope of his employment he was, at the time of the accident, acting contrary to specific instructions and, again, would be solely responsible for his injuries.

[26] In approaching the question of liability, one must first examine the legal obligations imposed upon the owner of an animal who normally spends its life living in a natural state.

[27] One of the earliest cases on this point is *Filburn v. People's Palace & Aquarium Co. Ltd.* (1890), 25 Q.B. 258 (C.A.). In that action the defendant company owned an elephant which they exhibited as part of a show open to the public. The elephant had been trained to perform and had no previous history of being dangerous to anyone. However, it attacked the plaintiff and injured him.

[28] Lord Esher M.R. said at p. 259-60:

> The only difficulty I feel in the decision of this case is whether it is possible to enunciate any formula under which this and similar cases may be classified. The law of England recognises two distinct classes of animals; and as to one of those classes, it cannot be doubted that a person who keeps an animal belonging to that class must prevent it from doing injury, and it is immaterial whether he knows it to be dangerous or not. As to another class, the law assumes that animals belonging to it are not of a dangerous nature, and anyone who keeps an animal of this kind is not liable for the damage it may do, unless he knew that it was dangerous. What, then, is the best way of dealing generally with these different cases? I suppose there can be no dispute that there are some animals that every one must recognise as not being dangerous on account of their nature… There is another set of animals that the law has recognised in England as not being of a dangerous nature, such as sheep, horses, oxen, dogs, and others that I will not attempt to enumerate. I take it this recognition has come about from the fact that years ago, and continuously to the present time, the progeny of these classes has been found by experience to be harmless, and so the law assumes the result of this experience to be correct without further proof. Unless an animal is brought within one of these two descriptions — that is, unless it is shewn to be either harmless by its very nature, or to belong to a class that has become so by what may be called cultivation — it falls within the class of animals as to which the rule is, that a man who keeps one must take the responsibility of keeping it safe. It cannot possibly be said that an elephant comes within the class of animals known to be harmless by nature, or within that shewn by experience to be harmless in this country, and consequently it falls within the class of animals that a man keeps at his peril, and which he must prevent from doing injury under any circumstances, unless the person to whom the injury is done brings it on himself.

[29] The area was again canvassed by the English Court of Appeal in *Behrens v. Bertram Mills Circus Ltd.,* [1957] 2 Q.B. 1, [1957] 1 All E.R. 583. Again this was a case involving trained elephants used in a circus act. The plaintiffs worked in the same area as the circus but were independent of it. Someone brought a dog on the premises which was against the defendant's rules. As the elephants were moving past the plaintiffs' booth, the dog suddenly frightened the elephants and they stampeded, running over the plaintiffs' booth and severely injuring one of them.

[30] The court, with some reluctance, followed the principle expressed in the *Filburn* decision, supra. Devlin J. said at p. 17-18:

> But it does not seem to me that the logic of the matter necessarily requires that an animal that is savage by disposition should be put on exactly the same footing as one that is savage by nature. Certainly practical considerations would seem to demand that they should be treated differently. It may be unreasonable to hold the owner of a biting dog responsible thereafter for everything it does; but it may also be unreasonable to limit the liability for a tiger. If a person wakes up in the middle of the night and finds an escaping tiger on top of his bed and suffers a heart attack, it would be nothing to the point that the intentions of the tiger were quite amiable. If a tiger is let loose in a funfair, it seems to me to be irrelevant whether a person is injured as the result of a direct attack or because on seeing it he runs away and falls over. The feature of this present case which is constantly arising to blur the reasoning is the fact that this particular elephant Bullu was tame. But that, as I have said, is a fact which must be ignored. She is to be treated as if she were a wild elephant; and if a wild elephant were let loose in the funfair and stampeding around, I do not think there would be much difficulty in holding that a person who was injured by falling timber had a right of redress. It is not, in my judgment, practicable to introduce conceptions of mens rea and malevolence in the case of animals.

[31] Following these decisions, it would seem that tigers are of a class of animal that are thought to be inherently dangerous, no matter how they are raised and trained. If an owner allows a tiger to escape and it harms someone, liability would inevitably follow. However, the *Behrens* decision falls short of absolute strict liability and requires that a court examine all the surrounding circumstances. All of the decided cases brought to my attention deal with instances where the animal or animals have escaped custody or were out of control at the time the injuries occurred. In the case at bar, I find that the tiger was properly housed in a safe enclosure and never did escape from the custody and control of the owner. In addition, there is evidence that a method of segregating the tiger into a part of the enclosure closed off from the main area where the cap, or caps, were lying was available to be used which would have prevented the accident. For these reasons, it is my view that the concept of strict liability does not apply to the facts of this case.

[32] I accept the fact that Hector was an unusual animal in the sense that he was raised from a kitten by humans and had lived all of his life in captivity. There is no doubt that he was certainly used to being in close contact with humans. Mr. Oeming and those specially trained to work with him were apparently able to be in the tiger's presence without him being restrained or segregated from them. However, even those used to working with Hector realized that he was a large and powerful animal who could severely injure them, even while playing.

[33] They also appeared to realize that one can never be entirely sure with a "tame" tiger that it will not revert to its more natural instincts and, in an instant, become dangerous to man.

[34] I find, as a fact, that Mr. Oeming and other management or supervisory staff at the game farm had, prior to 23rd August 1977, adequately informed the plaintiff of the inherent danger of working near many of the larger animals kept at the game farm and, in particular, had stressed the danger of being in the close proximity to the large carnivores, which included all of the tigers. Any suggestion that the defendants were negligent for failing to inform the plaintiff of the danger is simply not supported by the evidence.

[35] At the time of the accident what was the employment status of the plaintiff at the game farm? He was certainly entitled to be on the property as it was a term of his employment that he receive room and board on the site. However, one of the real questions to examine is whether he was, at the time, acting in the scope of his employment. The plaintiff admits that he was hired as part of the general clean-up crew. He was told that he would not be involved with the tigers on a day-to-day basis. He knew, at the time, that Picard was the only person on staff who was trained and detailed to look after the large carnivores. Even if the plaintiff did, on occasion, help to clean out Hector's enclosure it was only under the instructions and direct supervision of Picard, who was personally present on those few occasions. While it is true that one of the keys given to the plaintiff could be used to open the gate to Hector's enclosure, there is no evidence that he had ever used it for this purpose before the night of the accident. As I earlier mentioned, the enclosure used to confine Hector was adequate for the purpose and there is no evidence that Hector had ever escaped or caused any problems due to the construction of the enclosure. At the time of the incident itself, the plaintiff had finished his work for the day and I find he was at his own leisure. From all of these factors I have concluded that the decision of the plaintiff to open the gate and enter Hector's enclosure on the night of 23rd August 1977 to remove the cap was not part of his employment contract with the game farm and, therefore, his actions were beyond the scope of his employment. It follows from this finding that the plaintiff's negligent actions, coupled with his knowledge of the inherent danger of the situation, were the sole cause of his injuries.

[36] Even if I am wrong in the conclusion that the plaintiff was not acting within the scope of his employment at the time he was injured, it might be useful to examine the plaintiff's position if he was within the scope of his duties. This would have to be based upon the assumption that the plaintiff was instructed to enter any enclosure at the game farm at any time of the day or night for the purpose of removing foreign objects that may harm the animal involved. I am not yet prepared to make a finding that these were the

instructions the plaintiff received from his supervisors at the game farm, but, if they were, what results should follow?

[37] When the plaintiff was hired to work on the general clean-up crew he knew that he would be working at close quarters to some of the animals who could cause injuries. He had also been specifically warned about some of them. At all times he was urged to use good old-fashioned common sense in his activities with and around the animals. The game farm had enjoyed a good safety record up to the incident on 23rd August 1977 which says something about the training methods used and the type of facilities and equipment employed. While it does make good sense to keep the animal enclosures clear of foreign objects that may be harmful to the animals, surely this desire must be carried out within reason and the application of good common sense. The plaintiff knew there were special risks involved with the large carnivores, both from the instructions he had received from Oeming and Poole, and from the general knowledge I would think any Canadian 20-year-old would have about tigers. Confirmation of this knowledge on the part of the plaintiff was his statement to Oeming and Poole shortly after the incident that he had indeed done a very foolish or stupid act in entering Hector's cage when he did.

[38] The onus of proving liability rests with the plaintiff in this case. Mr. Berzins suggested that the whole incident was caused by the actions of other employees teasing Hector just prior to the plaintiff entering the cage. At best, I can view this only as a possibility for there is no way of knowing what was going on in the tiger's mind at the time. Mr. Oeming suggests that the incident was almost inevitable and would have happened to anyone who attempted to go into the enclosure at night and grabbed at Hector's collar.

[39] I think it is clear from the evidence that all employees were instructed to respect the animals at the game farm. If some of the employees were teasing Hector this would clearly be acting outside of the scope of their employment. The observations of Proudfoot J. in the British Columbia Supreme Court case of *Rheaume v. Gowland* (1978), 8 B.C.L.R. 93, 91 D.L.R. (3d) 223 at 228, are instructive:

> Nevertheless, even if I am wrong in this and that it could be established that Gowland was, in fact, an employee of the Club, the liability of the Club is not automatic. An employer is liable in tort only for those acts committed by the employee within the scope of the employment. I do not see how it can possibly be argued that it was within the scope of Gowland's employment to act the way he did.

[40] Can the plaintiff's actions be justified on the grounds that he thought he was facing an emergency and had to act quickly to protect Hector?

[41] In my view the evidence falls far short of establishing an emergency situation. There is no evidence that Hector would have been harmed even if he had chewed on the baseball cap that night. There is little evidence that the matter could not have waited until morning when Picard would have been available and daylight conditions would have prevailed. Even if it was a dire emergency, there were other people at the game farm that night, such as the foreman Evans, who had more knowledge and experience and who could have been called in to assess the situation. There was a safe way to enter the enclosure which, even if unknown to the plaintiff at the time, might certainly have been known to other persons at the game farm who could have been contacted. According to Miss McKay's evidence, there were two caps thrown into the enclosure, one near the gate and the other at the far end, so that the plaintiff's plan to just reach in and retrieve the closest one would not have cured any perceived emergency.

[42] There is another rule of law which must also be canvassed in this case. Did the plaintiff, when he took the job at the game farm, accept the risks inherent in working with the animals kept there?

[43] One of the earliest decisions exploring liability in this type of situation is *Marlor v. Ball* (1900), 16 T.L.R. 239 (C.A.). In that case the defendant owned a "pleasure ground" where he kept an exhibition of wild animals. Admission was charged to the public. The plaintiff visited the grounds with his family. He noticed the door to a stable standing open, went in and petted a zebra in a stall. The zebra kicked out and injured the plaintiff. Lord Justice A.L. Smith said at p. 240:

> … it was conceded that a zebra was a dangerous animal, and that by law a man who kept a dangerous animal must do so at his peril, and that if any damage resulted, then, apart from any question of negligence, he was liable for damage. But that was subject to this — that the person who complained of damage must not have brought injury on himself. Where the plaintiff did something which he had no business to do — *e.g.,* by meddling, as the plaintiff in this case had done — then the defendant was not liable.

[44] The general area was examined again by the English Court of Appeal in *Rands v. McNeil,* [1955] 1 Q.B. 253, [1954] 3 All E.R. 593. It was a case involving a farmer who owned a bull known to have a mean disposition. At p. 257-58 Denning L.J. said:

> This is the first case, so far as I know, where the court has had to consider the liability of a farmer towards the men whom he employs to look after a bull or to help in looking after it. We were urged to say that his liability to his men was the same as to the public at large: and that, inasmuch as the farmer knew the bull was dangerous, it was his strict duty to keep it under control so that it should do no damage. The

> farmer keeps the bull, it was said, at his peril, even so far as his own men are concerned.
>
> I do not think that is the law. The duty of the farmer to his men is not a strict duty. It is the same as the duty of any other employer. He must take reasonable care not to subject his men to unnecessary risk. The only difference is that when he has a dangerous bull he must take very great precautions. It is trite knowledge that the greater the danger the greater the precautions that should be taken.
>
> Apart from these general considerations, there is a narrower ground on which it can be seen that the farmer here is not under a strict liability. In order to impose strict liability even to the public it is essential to prove not only knowledge of the dangerous propensity of the animal, but also to prove that it escaped and did harm. Sir Matthew Hale put it very accurately in his Pleas of the Crown, vol. 1, p. 430. He said: "The owner must at his peril keep him safe from doing hurt, for though he uses his diligence to keep him up, if he escapes and do harm, the owner is liable to answer damages." Lord Wright in *Knott v. London County Council,* [1934] 1 K.B. 126 (C.A.), said: "it is not unlawful or wrongful to keep such an animal; the wrong is in allowing it to escape from the keeper's control with the result that it does damage." This is in full accord with the principle of *Rylands v. Fletcher* (1868), L.R. 3 H.L. 330, where "escape" is an essential condition of liability: see *Read v. J. Lyons & Co.,* [1947] A.C. 156, [1946] 2 All E.R. 471 (H.L.), per Viscount Simon. Applying this principle, it is plain that the plaintiff cannot succeed on the ground of strict liability, for the simple reason that the bull never escaped at all. So far from the bull escaping, the man actually went into the loose box where it was kept and thus brought the danger on himself.

[45] Morris L.J. said at p. 271:

Under these circumstances it does not seem to me that this is a case where the "strict liability" resulting from keeping a dangerous animal is made operative. The bull was in a shed from which it could not and did not escape. No harm would have come to the plaintiff had he not gone into the shed and so "brought the harm upon himself."

And at p. 272:

> For the reasons I have set out I do not consider that there was any failure on the part of the defendant in regard to his strict obligation to prevent the bull from escaping. It may well be that if someone is employed as the custodian of a bull with dangerous propensities he voluntarily accepts such risks as are involved in such employment.

[46] Relating some of these general principles to the case at bar, it seems to me that the plaintiff agreed to assume certain risks when he accepted employment at the game farm. His job as part of the clean-up crew entailed working at close quarters with some of the animals. If he had been injured by one of them, barring negligence on the part of the employer, I think he would have difficulty succeeding in any claim against the employer. If he was disobeying instructions in going into the tiger's enclosure he should not be able to succeed against his employer. If he was following instructions from his employer to go into the tiger's enclosure at any time to remove a foreign object then he voluntarily agreed to

assume the risk when he entered the enclosure. Any way one looks at it, in the absence of negligence on the part of the employer, the plaintiff has difficulty in succeeding.

[47] In summary I cannot find any proof of negligence on the part of the defendants. The plaintiff must fail in his action as he brought his injuries upon himself.

[48] In the event my conclusions are reversed on appeal I would fix the plaintiff's claim for general damages in the sum of $20,000 plus the agreed specials of $4,046.45.

[49] The plaintiff's action is dismissed. If the defendants wish to ask for costs I will be prepared to meet with counsel to discuss the same.

Action dismissed.