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SUPREME COURT OF THE NORTHERN TERRITORY at DARWIN

FISCHER v STUART

Forster CJ

25, 26 June, 25 July 1979 — (1979) 37 FLR 46; 25 ALR 336

ANIMALS - LIABILITY FOR - FERAЕ NATURAE - DINGO - CANIS FAMILIARIS DINGO - WHETHER FERAЕ NATURAE OR MANSUETAE NATURAE - ONUS OF PROOF - DAMAGES FOR PERSONAL INJURY.

The plaintiff, then a child aged four years, was attacked and injured by a young dingo bitch kept by the defendant. The animal had escaped the collar and chain securing it and had attacked the plaintiff on open land near the defendant's premises, which were unfenced. The plaintiff (by her mother as next friend) sued the defendant for damages in respect of the injuries suffered by the dingo and the other consequences of the attack. One of the bases of the claim was that a dingo is an animal *ferae naturae* and is also a dangerous animal to which absolute liability attached. The dingo, *canis familiaris dingo*, is a sub-species of the species dog, *canis familiaris*.

HELD:

(i) The onus of proving that wild animals of a particular class are not dangerous to humans rests upon the party asserting that they are not.

(ii) The evidence established that dingo is an animal *ferae naturae*.

(iii) The plaintiff would be awarded \$5000 general damages and \$110.24 special damages.

FORSTER CJ: The plaintiff, then a child aged four years, was attacked and to some extent savaged by a young dingo bitch, towards which the defendant acted in all respects as an owner. The dog had escaped from the chain and collar which secured it under the defendant's unfenced house and the attack took place on some open land referred to as an easement near to the defendant's house where the plaintiff was playing.

The plaintiff sues by her mother as next friend for damages in respect of the injuries suffered by her in the attack by the dingo and the other consequences of the attack. The claim is put upon a number of alternate bases. First, on the basis of simple negligence. Secondly, on the basis that a dingo is an animal *ferae naturae* and is also a dangerous animal to the bringing on to land of which absolute liability attaches and thirdly, pursuant to s29 of the *Registration of Dogs Ordinance*. In view of the conclusion to which I have come on the second basis it is unnecessary to decide the questions of simple negligence and the provisions of the *Registration of Dogs Ordinance*.

Is the dingo an animal *ferae naturae* which should be regarded as inherently dangerous to man? I note that the *Oxford English Dictionary* defines "dingo" as "the wild or semi domesticated dog of Australia".

The test to be used for classifying animals for the purposes of defining the liability of the person who owns or keeps or harbours them, is whether the animal is of a class which constitutes a special danger to mankind: "The responsibility of the owners of animals for damage done by them has developed along two main lines, one a branch of the law of trespass, and the other a branch of the law which imposes upon the owner of a dangerous animal or thing a duty to take measures to prevent it from doing damage. With respect to this second branch there are two classes of animals. The first includes animals *ferae naturae*, for example a tiger or a gorilla, which are obviously of a dangerous nature, although individuals may be more or less tamed. A person who keeps an animal of this class keeps it at his peril. If he loses control of it and it does damage he is responsible" (*Buckle v Holmes* (1926) 2 KB 125 per Banks LJ at 127-8). "Wild animals are assumed to be dangerous to human beings because they have not been domesticated": (*McQuaker v Goddard* (1940) 1 KB 687 per Scott LJ at 695). Some wild animals, for instance, small marsupial mice, could hardly be said to be dangerous to man in ordinary circumstances. Nevertheless, in the case of any wild animal the presumption referred to by Scott LJ means, I think, that the onus

of proving that wild animals of a particular class are not dangerous to man lies upon him who asserts it.

What is the evidence with respect to the dingo? It is plainly regarded as being dangerous to stock. There are dog-proof fences and a bounty paid on scalps of dingoes. The evidence as to danger to man is not unanimous. I find that although dingoes are capable of being tamed and can be in many respects attractive, intelligent dogs to own, they must always be treated with extreme care and suspicion and are prone for no apparent reason to attack the humans with whom they are associated. If, as I have said, the onus is upon the defendant to satisfy me on the balance of probabilities that the dingo, which is plainly a wild animal, is not dangerous to men, she has failed to discharge that onus.

On the contrary I am satisfied that the dingo is by its nature, notwithstanding Mrs Padgham-Purich's skill and experience, inherently dangerous to man. This finding really concludes the question of liability in favour of the plaintiff: "The reason for imposing a specially stringent degree of liability upon the keeper of a savage animal is that such an animal has a propensity to attack mankind and, if left unrestrained, would be likely to do so. The keeper has, therefore, in the words of Lord MacMillan in *Read v J Lyons & Co Ltd* [1946] UKHL 2; [1947] AC 156 at 171; [1946] 2 All ER 471 an absolute duty to confine or control it so that it shall not do injury": *Behrens v Bertram Mills Circus Ltd* [1957] 1 All ER 583; [1957] 2 WLR 404; (1957) 2 QB 1, per Devlin J at 16. In the case at bar there was in the words of Devlin J "a failure of control". The dingo was secured by a chain and collar, the latter of which proved to be inadequate. In view of the absolute liability which I have found to exist the plaintiff is entitled to succeed.

It remains to assess damages. The plaintiff was seized by the leg by the dingo and dragged along the ground. "Savaged", is perhaps an over-entative word, but it may be appropriate. In any event the dingo attacked and "worried" the plaintiff. This must have been a terrifying experience for a small child and she is entitled to some compensation for this experience, including the physical harm which she suffered. There was much scarring on the plaintiff's leg immediately after the attack and the appearance of her left leg proved by photographs was most unsightly. There is no suggestion of economic loss and if Dr Lopes is correct, and I have no reason to doubt this, there should be no permanent disability except the scarring. It seems to me not to be terribly serious, but I should, I think, make allowance for the pain and discomfort of an operation on two of the scars and for the expense involved. I have found this assessment difficult but I have finally come to the conclusion taking everything into account, the appropriate sum for general damages is \$5000. Special damages have been agreed at \$110.24.