# Sansom v Chief Constable of Kent

DC/219/81 (Transcript:Walsh, Cherer)

**QUEEN'S BENCH DIVISIONAL COURT**

**COMYN J**

**21 MAY 1981**

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D Million for the Appellant; J Latter for the Respondent.

Kingsley, Napley & Co; Sharpe, Pritchard & Co, agents for RA Crabb, Chief Prosecuting Solicitor, Maidstone.

**COMYN J**

This case concerns a dog, a dog of hitherto good character, which on one occasion last summer entered the next door garden and killed two tame white rabbits. For that he has been found to be a dangerous dog. There is surprisingly no case in the books decisive or nearly decisive on this point. I have come to the conclusion that, in ordinary every day language and in a familiar phrase often used about dogs and to dogs, he on this occasion was a bad dog. Dogs sometimes, indeed often, behave badly, but I also find that it would be straining language much too far to describe him as dangerous because of that one unfortunate incident.

I am all against, and strongly against, defining or trying to define ordinary English words unless it is absolutely essential to do so. Searching for synonyms can often lead one too far away from the main point, too far away from the crucial word and can lead one astray.

"Dangerous" is a word and a concept known to all of us from childhood and schooldays. it is in very common use covering very many facets of ordinary life. I consider that in every case the word "dangerous" has to be looked at in a broad, common sense way and in a court of law in a strict way.

Looking at it here in that manner, I cannot see it as an apt or appropriate word to describe this dog in respect of what he did on this occasion. In a restrictive statute and in a quasi-criminal jurisdiction I consider that the word must be given its ordinary meaning and that it must fit and sit neatly and comfortably for the restrictive provision to be brought into effect. Here I regard the word "dangerous" as not being the appropriate word or an appropriate word. I do not consider that it fits or sits either neatly or comfortably or aptly.

The matter arises in this way. It is an appeal by way of case stated by a lady named Catherine Sansom, and the Respondent is the Chief Constable of Kent. An incident occurred in August 1980 involving the Appellant's Eskimo Sled dog. In September Chief Inspector Michael O'Shea brought a complaint for and on behalf of the

Chief Constable alleging that on the 3rd August, 1980 the Appellant was the owner of a certain dog which was dangerous and not kept under proper control.

The Justices for the Folkestone and Hythe Petty Sessional Division of Kent heard the complaint on the 20th January, 1981 and, if it is not too high a word, convicted the dog and made an order requiring the Appellant to keep the dog under proper control as being a dangerous dog.

The appeal, as I have said, is by way of case stated and I would like to say immediately that the case has been stated in a most excellent, concise and clear way by the justices. I have had the advantage of argument on both sides about the matter and I have been referred to a number of cases and other so-called authorities. Surprisingly there is no direct authority on this point.

I was invited on behalf of the Respondent to say that this was a finding of fact and that there was material upon which the justices could find as they did. It may be tempting for an appellate tribunal on occasions to take refuge in such an argument as that, but I do not think that I can shrink here from grasping the nettle. The finding that this dog was dangerous of course contained elements of finding of fact, but the conclusion was one of law.

I have been referred to the civil cases about animals, including dogs, but there is no help to be found in them because the civil law in relation to animals is very different from the criminal or quasi-criminal law. It is abundantly clear here that, if the unfortunate owner of the white rabbits, Mr. Paul Arthur Barnes, sued or endeavoured to sue this Appellant, his next door neighbour, civilly he would never get his claim on its feet.

In the case stated there are the following findings. Undisputed, the Appellant was on the 3rd August, the day in question, the owner of this Eskimo Sled dog. Undisputed that she occupied premises at 3 Addy Road South, Greatstone, next door to the premises of No. 5 occupied by Mr. Paul Arthur Barnes.

It is equally undisputed that Mr. Barnes kept a number of tame rabbits in two separate cages at the bottom of his garden. It is also undisputed that on the 3rd August, 1980 the Appellant's dog entered the garden of 5 Addy Road South, opened the rabbit cages and killed two white rabbits. Then the case sets out the respective contentions.

First of all, is there any magic in the fact that these tame rabbits were white? I do not think so.

Next, is there anything particularly important in their being tame? The answer to that is that it is of course an important fact but, in my judgment, it cannot be decisive of the description which is to be put upon this dog. I accept wholly and completely the contention of the Respondent that the word "dangerous" in the Dogs Act, 1871 is not to be limited, and certainly is not to be limited to "dangerous to mankind". It is quite plain that a dog can properly be labelled as "dangerous" irrespective of any bad conduct towards mankind. It is plain that there are many circumstances in which a dog can be dangerous without actually involving mankind. It is damage to mankind that is most often the cause of a dog being dubbed "dangerous".

This matter may appear to have a passing interest for people in general and to have elements of lightness. I do not so approach it because to the lady who is the Appellant and the owner of the dog it is a matter of importance and she has been, as it were, found guilty of an offence and has her dog labelled for the future as being held by a court to be dangerous. It is, I understand, a show dog and consequently the importance of preserving a clean record is great.

The matter is equally important to the unfortunate owner, the next door neighbour, Mr. Barnes, of the two tame white rabbits. Courts sit to decide important matters, important not necessarily to the world at large but to the citizens who have a right of recourse to the courts.

The way I look at this matter is, first of all, that this is a dog of previous good character. Next that it is in the very nature of dogs to chase, wound and kill other little animals. Everybody will be familiar with the people who keep dogs as ratters. Everybody will be familiar with the fox hunt. Everybody will be familiar with the various breeds of dog all of which have in certain circumstances an antagonistic nature to other animals. It is interesting to note in passing that dogs can be made to be very obedient and to behave with considerable restraint towards their natural enemies. But it is as much in the nature of a dog to go after a rabbit as it is for a cat to go after a mouse or a rat.

The statutes in regard to dogs are very protective of situations which need special protection such as the worrying of sheep, but rabbits are not mentioned in the Act. Rebbits come, in my judgment, under the general heading of game.

I test the matter finally in this way. If this Eskimo Sled dog was wandering lawfully up and down his garden on the 3rd August, 1980 and saw two wild rabbits in the garden next door, nobody could possibly say that in running after them and trying to kill them that he was being a dangerous dog. It is not intended in any light fashion for me to say that it is a lot to ask of a dog that he should be able to distinguish a tame rabbit from a wild rabbit or that he should be able by colour to regard a white rabbit as being more likely to be tame than otherwise. I think in those circumstances the instinctive reaction of a dog towards all rabbits, hares and the like is a natural instinct and, wild or tame, their running after them, their doing things to them, is in the nature of the animal. I do not consider that opening the cages makes any difference.

Naturally somebody who lives next door to the keeper of tame rabbits should in the nature of things, if only as a neighbourly act, take particular care about her dog. So one does in one's own home. One does not put a goldfish bowl within ready reach of a cat. One does not allow a canary to have the full range of a room where there is a cat. Looking at animals in the broad, one knows tht the gentle cow, for example, can in certain circumstances, for example just after calving, become an angry cow who must be treated accordingly.

I have very great sympathy with Mr. Barnes in the loss of his tame rabbits, but I would consider it to be straining language too far to attach for that one incident the permanent label of "dangerous" to this dog. In my view, as I said at the beginning, he was on this occasion a bad dog and dogs are apt to be bad.

I would only conclude by saying this. Although there is no authority, my attention has been drawn to various cases, cases of frings interest. The nearest and one which I cite, and the only one I cite, is reported in [1971] Vol 115 of The Solicitors' Journal at page 831. It is a decision of the full Divisional Court in a case called Lamb v Gorham.The report is very short and I will read it: "Case stated by Bedford justices A Complaint was preferred against the defendant that she was the owner of a dangerous dog on a specified date. The evidence related to one incident on that date where the dog, a golden retriever, on a lead in a road leapt up, bit a man's coat and bruised his wrist. The man did not require medical treatment; the dog did not growl or make any similar type of vicious noise at the time. The justices, having been referred to MacDonald v Munro [1951] SC (J) 8, found that the dog was dangerous, and made an order under s2 of the Dogs Act 1871 that it be kept under proper control. The defendant appealed.

"Lord Widgery C.J. said that whether or not a particular dog was dangerous was essentially a question of fact." I will come back to that sentence in one moment. The report continues: "The conclusion could not be drawn that it was dangerous merely because it bit once. The question was whether it was of a dangerous disposition; and that the dog's disposition could be derived from a single act relied on appeared from the dictum of Lord Cooper L JG in MacDonald's case (at p 11): 'doubtless a single act may in some cases reveal a dangerous disposition....' Since it could not be disputed that it was open to the justices to find that the dog

was dangerous from the single and not particularly violent incident, and there was no indication that they applied a wrong principle, it was impossible to disturb their conclusion."

Just a few respectful words about that decision. The learned Lord Chief Justice began by saying that whether or not a particular dog was dangerous was essentially a question of fact. I do not take that to mean that every case of alleged danger is a question of fact because I do not regard it so in the case before me. The facts were not in dispute. It was the conclusion which led to this appeal and the conclusion involved applying the word "dangerous". But for me on appeal the question is whether the application of the word "dangerous" was in the circumstances right or not. In my view, as a matter of construction it was not.

The learned Lord Chief Justice said interestingly this: "The conclusion could not be drawn that it was dangerous because it bit once." I respectfully agree with that sentence, but I think it may need considerable qualifications. Everything depends on the nature and the circumstances of the bite. The fact that not every bite upon a person is necessarily dangerous follows from what the learned Lord Chief Justice said when he spoke of the incident there as being "the single and not particularly violent incident." That is the nearest I get to any assistance from the authorities.

In my view, I have to follow the path of my own making in the peculiar circumstances of a peculiar case. It is perfectly lawful for people to have dogs. It is perfectly lawful for people to have pets. It is perfectly lawful for people to tame otherwise wild animals or potentially wild animals, as Mr. Barnes did here. It is also, as one knows, very general and perfectly lawful for people to keep rabbits, for example, for sale on a commercial basis.

But I come back here to the word "dangerous". For the reasons which I have endeavoured to give I think that many words must be apt to describe what this Eskimo dog did and many words of criticism can be used about him for doing it. But it was in the nature of the beast and, taking as I believe a common sense view of the circumstances and a common sense view of the ordinary English word "dangerous", I feel it would be quite wrong to allow this finding to stand.

In those circumstances I answer the justices' question, which is "whether one incident of killing rabbits is sufficient evidence that a dog is dangerous within the meaning of section 2 of the Dogs Act, 1871," by saying that, admirable though their statement of case is, I think in fairness to the Respondent the question ought to be broadened into whether one incident of killing tame white rabbits is sufficient evidence, because the essence of this case is not rabbits as such. Killing of rabbits, ordinary rabbits running wild, could never amount to being dangerous. The essence of this case is that they were garden-kept, tame white rabbits, and my answer to the question is, "No, a dog should not be found dangerous in those circumstances." Costs follow the event, as I said yesterday.

*Order accordingly.*