

this judgment the plaintiffs appealed, and the Divisional Court has ruled that the case as against the wife should have been left to the jury, and a new trial was ordered as to her, unless she consented to a verdict being entered against her jointly with her husband, for the amount awarded against her husband. The Divisional Court was of opinion that the fact that the wife suffered the bear to remain upon her premises made her equally responsible with the owner, her husband, for its safe keeping. We believe that in this respect this case carries the law beyond any previous decision that is to be found in the books. The relationship of husband and wife would formerly have protected her from all liability, and it certainly does not now, even under the altered state of the law as to the wife's capacity to hold property, impose on the wife any greater liability than if she were a stranger to her husband. She is held liable because the law has given her the same dominion over her separate property as she would have if a *femme sole*, with all the responsibilities which that dominion entails; and one of those responsibilities the Court has determined to be the due keeping of any wild animals she suffers to be brought upon her property. This is an effect of the Married Women's Property Act which was hardly contemplated.

This liability, if it exists, is not confined to married women, but must be one that is common to all persons who permit wild animals to be brought upon their premises; e.g., an inn-keeper who takes in a strolling tramp and his dancing bear would appear, under this decision, to be responsible, not only for any injury the bear may do while on his premises, but also for any injury it may do off his premises, should it break loose in the night. This is, as we have said, an extension of the law of liability for damages occasioned by wild animals beyond any previous decision; and it is worthy of consideration whether the principle which is laid down in this case is a sound one, and a legitimate development of the previous decisions on the subject. There is a passage in the judgment of Lord Tenterden, C.J., in *McKone v. Wood*, 5 C. & P., 2, which seems to give some support to the view which has been adopted by the Divisional Court. The facts are very meagrely reported, and it is not apparent whether the biting in that case took place on the defendant's premises or off them; but assuming that it took place of them, there was evidence that the defendant kept the dog: and Lord Tenterden, C. J., said, "It is immaterial whether the defendant is the owner of the dog or not. It is enough for the maintenance of the action that he keeps the dog; and the harboring of a dog about one's premises, or allowing him to be or resort there, is a sufficient keeping of the dog to support the action; as soon as a dog is known to be mischievous, it is the duty of the person whose premises the dog frequents to send him away, or cause him to be destroyed." But it is obvious this *dictum* could not be very well applied to the case of a bear, because to "send him away" without an efficient escort would produce the same results, probably, as have arisen from his escaping without the will of his owner, or the proprietor of the premises.

It would, moreover, appear that when Lord Tenterden spoke of keeping a dog about one's premises, he can hardly be intended to imply that the liability