

## Philadelphia

1. I live in a north London neighbourhood called Hampstead. At the time when people here in Philadelphia were absorbed in such matters as the Declaration of Independence, Hampstead was a village out in the Middlesex countryside, about 5 mile from Westminster, where Londoners went in coaches for entertainment and summer holidays. It was and remains popular with writers and artists; in the summer of 1819, Mr John Keats was living in the house more or less opposite where I live now, sitting under the cherry tree in the garden writing the Ode to a Nightingale and Mr John Constable was living a couple of hundred yards up the hill, setting up his easel on Hampstead Heath.

2. Today of course the great metropolis of London has swallowed up Hampstead village and indeed the whole county of Middlesex. But Hampstead Heath, remains an open space. It is an area very slightly smaller than Central Park, in New York. Dotted around the Heath are a number of ponds, fed by spring water and constructed in the 17<sup>th</sup> century by provide clean water for the City of London, 6 or 7 miles away. You may remember that the first of the Pickwick Papers, read by Mr Pickwick to the Pickwick Club in May 1827, when explorers in Africa were looking for the source of the Nile, was an account of how he had “traced to their source the mighty ponds of Hampstead”.

3. In the summer weather, like the heat wave we have been having during Wimbledon this last week, these ponds are very inviting to swimmers. There is also a hardy band who swim every day early in the morning, winter and

summer, even if they have to break the ice on the ponds to do so. As it happens, they include my colleague Lord Phillips who has just been appointed Lord Chief Justice of England.

4. Last fall the Corporation of London, who run the ponds, suddenly announced that they would have to keep them closed on winter mornings, when, in our northern latitude, it is still dark. They had been warned by the Health and Safety Executive a government agency, that they could not employ life guards in the dark. It was dangerous for the life guards. The swimmers said that they were perfectly prepared to swim without lifeguards. But the Corporation said there was still a risk that they might be sued or prosecuted for creating undue risks by allowing people to swim in the dark. That caused a lot of protest from the swimmers. But worse was to come. The ponds really hit the national headlines earlier this year, when the Corporation announced that budget cuts meant that they would have to reduce the number of life guards even in the daytime and therefore proposed to close two out of the three swimming ponds altogether. For a few days editorial and op-ed writers transferred their attention from Mr Blair's election campaign to the Hampstead Ponds. The unanimous view of the newspapers was that concerns for safety had gone too far. There were no life guards in Mr Keats's time. Why shouldn't people be entitled, at their own risk, to carry on doing what they had been doing for hundreds of years?

5. The swimmers brought judicial review proceedings against the City Corporation, asking for a declaration that they were acting irrationally in

closing the ponds because there was no possibility that they could be held liable, civilly or criminally, for allowing people to swim without supervision. On civil liability they were on firm ground, if one may use that expression in connection with swimming in ponds, because the House of Lords had said as much in a case about an actual swimming injury decided two years ago. The accident happened at a lake in Cheshire run by the local council, where people regularly went swimming or paddling off the beaches in warm weather. The council's safety officer told them they should stop people swimming because some day there was bound to be an accident. And the council did take rather ineffectual steps to keep swimmers out of the water. They put up notices and employed rangers to shout at the swimmers. But most of them took no notice. The safety officer said the only answer was dig up the beaches and strew them with nasty plants as if to repel an invasion. The council actually agreed to do this, but before room had been found in the budget, a young man plunged into the water one hot day, hit his head on the sandy bottom and broke his neck. He sued the council for negligence. His case was that their own records showed that they were aware of the possibility of an accident. They had been advised to take steps to prevent it and had not done so. And the Court of Appeal accepted this argument, although it deducted half the damages for contributory negligence by the young man in throwing himself into shallow water.

6. In the House of Lords we said that this was nonsense. There was no duty to stop people swimming. Indeed, it would be most unfair to the great majority who wanted to swim or play on the beach with their children. There was no

