ROWLANDS *v.* WATT.

1896.

September 28 and October 5.

C. R., Kandy, 4,874.

Brute animal—Injury by it on its owner's premises to animal trespassing thereon—Liability of owner.

To have a savage dog not under proper control on one's own premises is not in itself a culpable act. It becomes so if the dog attacks a person or animal being lawfully on the premises. Where, therefore, a fowl was found not lawfully on the premises of the owner of a dog, but trespassing thereon, and was killed by the dog, not being encouraged thereto by its owner or his servant, its owner was not liable in damages to the owner of the fowl, although the dog was not at the time under proper control.

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THE facts of the case appear in the judgment.

Dornhorst, for appellant.

Van Langenberg, for respondent.

5th October, 1896. WITHERS, J.—

The simple facts of this case are these. The first defendant's dog killed the plaintiff's fowl. It had killed a fowl before, and in this respect was a dog of savage disposition. On the day when this happened the fowl was in the church premises, where the pastor, who is the owner of the dog, resides. The premises are in the pastor's control. The dog was lawfully on the premises occupied by its master. The dog was being led on a chain by a young boy, who was not strong enough to keep the animal in check. The dog broke away and killed the fowl on the church premises.

The plaintiff's fowl was out of bounds, and was not lawfully on the church premises at the time it was killed by the dog.

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In this case the dog was not under proper control, but the fowl which it killed was trespassing.

Neither the owner nor the boy encouraged the dog to attack the fowl. Indeed, the latter tried very hard to hold the dog in check. Neither of the defendants invited the fowl to the premises. It was the fault (*culpa*) of the owner of the fowl that the fowl had escaped from its bounds and found its way into the church premises.

In these circumstances the Commissioner has adjudged the first defendant to pay the plaintiff Rs. 5 as compensation for the fowl. His reasons for this judgment appear to be that the premises are not the first defendant's private premises; that letting his fowl run loose cannot be regarded as negligence on the part of the plaintiff, and that sufficient care was not taken to prevent the dog doing harm. But I differ from the Commissioner in that I think the plaintiff was to blame for letting his fowl run loose, as he expresses it, on the church premises.

From my point of view the plaintiff was culpable, and the first defendant and the boy were not culpable.

Hence the plaintiff had no cause of action against either of the defendants.

Pomponius says it was a legal rule *quod quis ex culpa sua damnum sentit non intelligitur damnum sentire* (*Dig. L. 4, T. XVII., r. 203*), and this rule seems to me to fit this case.

I therefore set aside the judgment and dismiss the plaintiff's action with costs.