Present : Wood Renton J.

June 7, 1911

SALGADO *v.* RODRIGO.

335—*P. C. Panadure*, 35,806.

Penal Code s. 282—Injury by dog—Owner not liable unless he had express knowledge of its savage disposition.

A dog is a domestic animal ; a person cannot be convicted under section 282 of the Penal Code for having knowingly or negligently omitted to take such care with a dog as is sufficient to guard against any probable danger from it, unless the prosecution proves that the accused had express knowledge of the savage disposition of the dog, or that he had been guilty of negligence in regard to its custody.

THE facts are set out in the judgment.

H. A. Jayewardene, for the appellant.—The complainant has not proved that the accused was aware of the savage disposition of the dog, or that he was negligent with respect to the custody of it. The animal was securely fastened. Dogs are domestic animals. Counsel cited *Gour's Penal Code, p.* 1043 ; *Mayne's Criminal Law* (*s.* 411), *p.* 630.

Goonetileke, for the respondent.—The question whether the dog was fierce, and whether the accused was aware of the fierce nature of the dog, is a jury question. The Judge had come to the conclusion that the animal was kept tied by the accused because he knew the animal to be fierce by nature. It has been held that a single

[1] *(1895) I. L. R. 23 Cal. 335.*

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instance of ferocity was sufficient notice to the owner. *Ratanlal's Law of Crimes, p.* 368 (*s.* 289).

The accused in this case must be presumed to have acted negligently. Counsel cited 2 *Walter Pereira* 701, 706, *and* 708, ; *Mayne, p.* 632.

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The appellant was charged in the Police Court of Panadure, under section 282 of the Penal Code, with having knowingly or negligently omitted to take such order with a dog belonging to him, as was sufficient to guard against any probable danger of grievous hurt from such animal. The Police Magistrate convicted him, and sentenced him to pay a fine of Rs. 30, and further directed the police to destroy the dog. It is stated that the dog is now in police custody, pending the decision of the present appeal. I may say at once that I do not see that the Police Magistrate had any power under section 282 of the Penal Code to order the destruction of the dog. He may, of course, have independent statutory powers apart from that section, and if he has such powers nothing that I am saying in this judgment will prevent him from exercising them. I propose to say nothing further on that part of the order under appeal. Section 282 of our Penal Code presents no difficulty in construction so far as the law is concerned. The only difficulty is in applying the law to the facts. It is practically identical with section 289 of the Indian Penal Code, and I have no doubt that its meaning is correctly stated in the following passage from *Mayne's Treatise on the Criminal Law of India, s.* 411. " The principal point to be considered under this section will be the knowledge that the defendant had of the dangerous properties of the animal. Where the very nature of the animal gives him warning, his knowledge will be assumed ; as, for instance, if a person were to make a pet of a tiger, or a bear. Otherwise, express knowledge will have to be shown, in order to involve the necessity of unusual caution. Where injury is done by a horse, a pony, a bull, or a dog, and it is not shown that the animal was peculiarly vicious, or that his vice was known to his master, no indictment could be maintained, unless he had neglected the ordinary precautions employed by everyone who uses such animals. But if the animal had shown a savage disposition to the knowledge of the owner, it would not be necessary to show that he had actually injured any one."

I proceed then to the facts of this case. It must be taken that the dog is a domestic animal. There have been judicial *dicta* from time to time to the effect that so much mischief has been caused by dogs that it would be well if they were considered as *ferae naturae.* That might be very good legislation. But as things stand at present it is not law.

We are dealing, therefore, with a domestic animal. There is evidence in this case on which I should be prepared to hold

that this dog is one of a savage disposition. As the learned Police Magistrate says, the first thing that it does when it succeeds in getting loose is to attack a small boy of ten years of age, who is not shown to have given it any provocation, and to bite him severely. In addition to that, there is the boy's evidence, which was untouched in cross-examination, and which is said by the learned Police Magistrate to have been given upon this point " vehemently ", that the dog had bitten his father. If, therefore, it could be shown either that the appellant had knowledge of the disposition of this dog, or that he had been guilty of negligence in regard to its custody, all the elements that section 282 requires would be present, and the conviction would be right. It is not alleged by the complainant himself, or by any witness for the prosecution, that the appellant had any knowledge that this dog was a dangerous dog, and there have not been proved against it such repeated exhibitions of bad temper as to show that it must have had a notorious reputation. It is not stated that the complainant's father brought to the knowledge of the appellant what had happened to him, and the police vidane who was examined as a witness said that no previous complaint against the dog had been brought to his notice, and that so far as his knowledge went it had never bitten anybody. The only fact from which knowledge of the character of this dog on the part of the appellant can be deduced is the clearly proved circumstance that it was always tied up. I can quite well conceive that that circumstance might, in certain cases, have pointed to knowledge. On the other hand, the appellant gave evidence on his own behalf, and stated that the reason why the dog was constantly tied up was that it had a habit of straying and that he was afraid of its getting into contact with mad dogs. There was no cross-examination of the appellant on that point, and the learned Police Magistrate in his judgment does not allude at all to the question whether either knowledge or negligence had been brought home to the appellant, or express his distrust of the explanation given by the appellant himself of the tying up of this dog. Under these circumstances I hold that the element of knowledge has not been brought home to the appellant. Is there any proof then that he has been guilty of negligence ? When we consider that element we must remember that the dog in his custody is one of whose savage disposition he has not had any knowledge, and also that its being kept tied up is not because it is vicious, but to prevent it from straying. The evidence shows here that the appellant kept this dog constantly tied up. He was in the habit, therefore, of taking the utmost care of it. All that can be urged against him is that on this particular occasion the dog managed to get loose and abused its liberty. There is not a scrap of evidence on the record to show that he was in any way responsible for its getting loose. I do not think that that is sufficient to establish negligence against him. It is impossible to hear an appeal

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of this kind without strong sympathy with the complainant-respondent, who has been the subject of a severe and unprovoked attack by a bad dog. At the same time, one has to see, before a man is convicted, that all the legal elements necessary to constitute the offence charged have been made out against him. I need scarcely point out that the appellant will stand in a very different position if any further mischief should be caused by this dog assuming that on the present occasion it escapes destruction under some statutory provision other than section 282 of the Penal Code. I set aside the conviction and sentence and acquit the appellant.

Set aside.