

1914.

Present : De Sampayo A.J.

MADAWELA *v.* RAWTHER

185—*P. C. Puttalam, 6,919.*

*Cruelty to animals—Keeping a dugong alive for sale without feeding it—
Starvation—Animal.*

A dugong is an "animal" within the meaning of the Prevention of Cruelty to Animals Ordinance, 1907.

A fishmonger who kept a dugong alive till sale without feeding it was held not to have been guilty of cruelty under section 4 (c) of the Ordinance.

THE facts are set out in the Ordinance.

A. St. V. Jayewardene, for accused, appellant.

W. S. de Saram, C.C., for complainant, respondent.

Cur. adv. vult.

March 6, 1914. DE SAMPAYO A.J.—

This is a prosecution under the Prevention of Cruelty to Animals Ordinance, 1907, wherein the accused was charged (1) under section 4 (c) with having exposed and had in his possession for sale a live dugong, which was suffering pain by reason of mutilation and starvation; and (2) under section 5 with having killed the dugong in an unnecessarily cruel manner. The cruel manner of killing referred to is by driving pegs into the nostrils and cutting the neck. It appears, however, that this was the usual and the only known method of killing a dugong, and the application of it in this instance was not accompanied by the infliction of any unnecessary pain, and I think the Magistrate is right in acquitting the accused on the charge under section 5. The accused was, however, convicted on

the charge under section 4 (c), and he has appealed. For the purposes of the Ordinance "animal" means "any domestic or captured animal," and it was suggested for the appellant that a dugong was not an animal in this sense. The main English statute on the subject of cruelty to animals, viz., 12 and 13 Vict., c. 92, applied to "domestic animals," which were enumerated, and the amending statute, 17 and 18 Vict., c. 60, extended the expression to any domestic animal of whatever kind or species and whether a quadruped or not, and the later statute, 63 and 64 Vict., c. 33, made provision in respect of wild animals in captivity. I think that when our Ordinance of 1907 defined animals as "domestic or captured animals" it meant to include animals of all descriptions, and I hold that the Ordinance applies to a dugong. Now, a dugong is an aquatic sirenian mammal, commonly called the sea cow, but the natives of Ceylon, with a more accurate eye to nature, call it the sea hog. Its flesh, for those who know how to prepare it, is a delicacy, and is likewise considered a specific for certain ailments. It appears that when a dugong is brought to the market sufficient time is allowed to elapse before it is killed, so that the news may spread and as many people as possible may take advantage of the rare chance. In this way the accused, who is a fishmonger at Puttalam, bought the animal one day and kept it till the next day before killing it. In the meantime the Mudaliyar of Puttalam noticed the thing and reported the matter to the Police Magistrate, and hence this prosecution. The question is whether the animal was, during the intervening day, suffering pain by reason of mutilation and starvation as alleged. It goes without saying that it, like all animals captured and kept under physical restraint, suffered pain, but the question is whether the specific causes of pain mentioned are proved in this case. I may say at once that there is no evidence whatever of mutilation. I have already alluded to the fact of the accused having been acquitted in respect of the manner of killing the animal. The accused is not shown to have done anything to the animal previous to killing it. It was vaguely said that the animal was bleeding, but from where and how it was bleeding is not explained. Certainly no injuries are spoken to at all. For aught that appears, the animal may have bled from the effect of the process of capture itself, as fishes often do, but that is not mutilation. As regards starvation, it seems to me that the accused cannot be said to have starved the animal, unless it was within his power to feed it. How was he to feed a dugong? The dugong is no doubt herbivorous, but even if the accused were able to procure from the sea the particular succulent, would the dugong eat it on land? And was this dugong, as a matter of fact, starving for want of food? That depends on how soon a dugong get hungry, of which, as a matter of natural history, however, there is no evidence. It was suggested at the argument that the accused should have

1914.

DE SAMPAYO
A.J.*Madanula*
v. Rawther

1914.
 DE SAMPAYO
 A.J.
 Madawela
 v. Rawther

killed the animal as soon as he bought it. I do not know that the accused ought to be expected to change the ordinary methods of business. If the dugong should be killed without reference to the time of sale, it would be a hard matter both for the seller and the purchaser. The merit in all animal food is its freshness. In certain cases, such as the oyster and the crab, the animal is, and surely ought to be, kept alive within a measureable period of time before service at table, except at the risk of disastrous results. Is it cruelty to keep it alive in such circumstances for a day or two without food? The truth appears to me to be that these things should be looked at with a certain degree of practical common sense; and judged in this way the conviction in this case cannot, in my opinion, be sustained. I set aside the conviction and acquit the accused.

I wish to draw the attention of the Police Magistrate to the fact that in the formal conviction he does not, as he should, state the Ordinance and the section of it under which he purports to convict the accused.

Set aside.