agreement is dissolved and he is at liberty to sell them to any other person." The same doctrine seems to be maintained by the cases of *Bloxam* vs. *Sanders*,[1] *Bloxam* vs. *Nash*,[2] *McLean* vs. *Dunn*.[3] In this latter case, Best, Ch. J. says: "It is admitted that perishable articles may be re-sold. But if articles are not perishable, prices may alter in a few days or a few hours. It is most convenient that when a party refuses to take the goods he has purchased, they should be re-sold, and that he should be liable to the loss, if any, upon the re-sale."[4]

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INJURIES BY ANIMALS.[5]

It is now a firmly established doctrine of our law, that the liability of the owner of an animal, for injury which it has committed on another man's person or animals, depends on such owner's knowledge of its having a propensity to cause such mischief. Thus, where a declaration stated that the defendant kept a fierce mongrel mastiff, which he improperly allowed to be loose, and which had bitten the plaintiff, Holt, C. J., and Turton, J., held that the declaration was bad for not averring that the plaintiff had notice of its mischievous qualities; Gould, J., thinking, however, that the averment of ferocity was enough, as the plaintiff had not kept the dog safe. (*Mason* vs. *Keeling*, Ld. Raym. 606; 12 Mod. 332.) And, again, it was held, that if a dog chases sheep, &c., without setting on, or notice before to the master, an action did not lie. (Lutw. 119; Dy. 25 b, 29 a; 1 Vin. Ab. 234; *Card* vs. *Case*, 5 C. B. 622; *Thomas* vs. *Morgan*, 2 C., M. & R. 496.) And where

[1] 4 B. & C. 941. [2] 9 B. & C. 145.

[3] 4 Eing. 722; 1 M. & P. 761.

[4] So also decided in Newhall *vs.* Vargas, 15 Maine, 314. In Sands *vs.* Taylor, 5 Jo. R. 410, Kent, Ch. J. says: "It would be unreasonable to oblige him (vendor) to let the article perish on his hands, and run the risk of the solvency of the buyer."

[5] From the "London Jurist."

the declaration in an action stated that a man so negligently kept his horse that it broke out and bit the defendant's mares, (*Sutchett* vs. *Eltham*, Freem. 534,) and where the declaration was for keeping a bull which was accustomed to run at people, and had injured the defendant, (*Buxendin* vs. *Sharp*, 2 Salk. 662; *Bayntine* vs. *Sharp*, 1 Lutw. 90,) judgment was arrested for want of a scienter. If, however, the owner knows the mischievous character of his animal, he will be liable. Thus, where a man had kept dogs which he knew were accustomed to bite sheep, he has been held liable for such sheep-biting; (R. Cr. Cas. 487; Dy. 25 b; 2 Sid. 254; *Hartley* vs. *Halliwell*, 1 B. & Al. 620; 2 Stark. 620; *Gething* vs. *Morgan*, 29 Law T. 106;) and where a man had kept a boar which he knew was accustomed to bite animals, and it bit the plaintiff's mare, (*Jenkins* vs. *Turner*, 1 Ld. Raym. 109; 2 Salk. 662;) or a dog, knowing that it was accustomed to bite mankind, and it bit the plaintiff, (*Cropper* vs. *Mathews*, 2 Sid. 127; *Smith* vs. *Pelah*, 2 Str. 1264; *Charlwood* vs. *Greig*, 3 Car. & Kirwin, 46; *Jackson* vs. *Smithson*, 15 M. & W. 563; *Judge* vs. *Cox*, 1 Stark. 285;) or a dog, knowing it was accustomed to bite pigs, and it bit the plaintiff's pigs, (1 Vin. Ab. 234;) or a bull, knowing it would attack men, and it attacked the plaintiff, (*Blackman* vs. *Simmons*, 3 Car. & P. 138; *Hudson* vs. *Roberts*, 6 Exch. 697;) or a dog which he knew would worry cattle, and it worried the plaintiff's cattle, (*Thomas* vs. *Morgan*, 2 C., M. & R. 496;) or a monkey which he knew would bite men, and it bit the plaintiff, (*May* vs. *Burdett*, 9 Q. B. 101; 10 Jur., part 1, p. 692,) he has been held liable. It is, therefore, clear, that if a man keeps an animal which he knows will attack a particular class of animals, and it attacks one of that class, or which he knows will attack mankind, and it attacks a human being, such owner will be liable. But suppose the owner only knows of its having attacked one class of animals, will he be liable for its attacking another class? or if he only knows of its attacking animals, and it attacks a man, or vice versâ, will he be liable for the latter attack? In the case of *Jenkins* vs. *Turner*, (supra,) where the declaration charged the defendant with keeping a boar which he knew bit animals, and which bit the plain-

tiff's mare, it was moved, in arrest of judgment, first, that "animals" was too general a term, and might include frogs, &c., in which case it would be no offence to keep the boar; secondly, that even if "animals" meant such animals as sheep, yet the declaration ought to have averred mares; and that if a man kept a dog which he knew would bite mares, and it afterwards bit a man, the owner would not be liable. Powell, J., however, after the case had been argued several times, held, that if a man keeps a dog accustomed to bite sheep, &c., and he knows it, and notwithstanding still keeps the dog, and afterwards it bites a horse, this is actionable, notwithstanding that the precedents are all of the same species, because the owner, after notice of the first mischief, ought to have destroyed him, or hindred him from doing any more hurt; that though the declaration perhaps might have been bad on demurrer, yet it was good after verdict; that the defendant knew that no evidence could be given of any mischief done by the boar but that of which he had notice; that it must be intended, after verdict, that evidence was given of its biting such animals as sheep, and not dogs; at the same time he thought there might be a difference between a boar and a dog, because it is the nature of a dog to kill animals feræ naturæ, as hares, cats, &c., but it is not natural to boars to kill anything. In *Hartley* vs. *Harriman*, (1 B. & Al. 620,) the declaration alleged that the defendant kept dogs which he knew would worry sheep, and which worried those of the plaintiff; but the only evidence given of previous worrying was, that the dogs had attacked men. Lord Ellenborough said, that the plaintiff had tied up his complaint by the allegation of the particular habits of the dogs, and the defendant's knowledge of those habits; for unless it be inferred that a dog, accustomed to attack men, is ipso facto accustomed also to attack sheep, there was no evidence to support the declaration; that he might, perhaps, have stated his ground of action more generally, by alleging that these dogs were of a ferocious nature, and unsafe to be left at large; and that there was evidence sufficient to shew that the knowledge which the defendant had of these dogs ought to have imposed on him the duty of tying them up; but that the plaintiff had stated a particular habit, and it

did not appear clearly either that the dogs had that habit, or that, if they had, the defendant knew it. Bayley, J., said that the declaration might have been framed more generally, and might have stated that these were dogs of a ferocious and mischievous description; but it was stated they were accustomed to bite sheep, and there was no evidence of that. Abbott and Holroyd, JJ., were of the same opinion, and a new trial was granted.

In *Gething* vs. *Morgan*, (29 Law T. 106; reported as *Gettring* vs. *Morgan*, 5 Weekly Rep. 536,) which was a county court appeal, the case stated that the action was for the defendant's dog worrying the plaintiff's sheep, and that it was proved at the trial that the defendant knew that four years before, the dog had bitten a child. Lord Campbell, C. J., said, "I am of opinion that our judgment should be given for the plaintiff, even according to the law of England. According to the law of Scotland there is no occasion to show the previous habits of the animal or the scienter;" (see *Fleming* vs. *Orr*, 2 Macq. 14;) "and where an injury has been done to an innocent person, it certainly seems more reasonable that the loss should fall on the owner of the animal which has done the mischief than upon the person injured; but I confine myself now to the law of England. Now, in the county court there is no declaration, but, according to *Hartley* vs. *Harriman*, it would be enough to allege that the dogs were of a ferocious disposition, to the knowledge of the owner. Assuming the declaration to have been in that form, ... there was enough to justify the judge in concluding that the dogs were of a ferocious nature." Wightman, J., said, "The biting of the child rendered it incumbent on the defendant to take care of the dogs." Erle, J., said, "This was not a case for a nonsuit, as the biting of the child may have taken place under such circumstances as to give ample notice to the defendant of the savage disposition of the dogs." And Crompton, J., said, "There was evidence for a jury. Generally, one act of ferocity is enough to put the owner on his guard; if he afterwards lets his animals run about, he must be responsible." It appears, therefore, that it matters not what class of creatures his animal has attacked; if the owner knows that the animal has acted in a way which the

jury think should have given him warning that it was not to be trusted, then such owner will be liable for any future injury to man or beast which is occasioned by such animal, if the complaint be properly laid in the declaration. The question is not whether, having attacked one class, the owner is to be taken to have notice that it will attack the particular class in respect of which the action is brought; but whether the attack the owner knew of was one of such a character, and under such circumstances, as, in the opinion of the jury, would give the owner notice that his animal was not entirely trustworthy. It will be found, on examination, that in very many of the cases evidence of instances in which the animal had made one attack unknown to the plaintiff was admitted without any question; the course adopted having apparently been to prove the animal's disposition by any instances, and then fix the owner with knowledge by evidence of an instance within his own cognizance. It is apprehended, however, that this course is erroneous, and that the reception of such evidence might be successfully resisted; for, as has been shown, the gist of the action is, not whether the animal was dangerous, but whether the defendant knew it; and in deciding that question the jury ought to be limited to evidence of what the defendant knew, and not to be prejudiced in drawing their conclusion by evidence which ought not to affect the defendant at all.

In most cases the evidence of the owner's knowledge has been made out, by showing that the owner had seen or been informed of a previous attack made by his animal. In one case, (*Jones* vs. *Perry*, 2 Esp. 482,) however, where the question was, whether the defendant's dog (which had bitten the plaintiff's child, who afterwards died of hydrophobia,) was mad, and whether the defendant knew it, Lord Kenyon went so far as to allow a witness to be asked whether she had heard a report in the neighborhood that the dog in question had been bitten by a mad dog, and held the defendant liable, though there was no other evidence of his knowledge even of the report, beyond the fact of the dog being tied up by a chain long enough to let him get into the street. But this case, it is apprehended, cannot be supported on any good grounds, and may be con-

sidered of no authority. The admissions of the defendant, of course, are evidence of his knowledge.

In *Beck* vs. *Dyson*, (4 Camp. 198,) where the evidence was, that the defendant's dog was fierce and tied up, and that the defendant, on hearing that it had bitten the plaintiff, promised to compensate him, Lord Ellenborough nonsuited the plaintiff. This case, however, must be considered as overruled by the case of *Thomas* vs. *Morgan*, (2 C., M. & R. 496,) where the court held, that though the fact of the defendant's dogs having previously worried cattle was no evidence to go to the jury, it was evidence to go to the jury that the plaintiff, on being told of what his dogs had done, said he would settle it; but at the same time they said that the evidence was so slight, and ought, on being left to the jury, to have been accompanied with such strong observations of the judge, that they refused to grant a new trial.

In *Judge* vs. *Cox*, (1 Stark, 285,) where it appeared that the defendant knew his dog was savage, had tied it up, and warned a person to take care he was not bitten, Abbott, J., ruled that there was evidence for the jury of his knowing that it had bitten mankind before.

And in *Hudson* vs. *Roberts*, (6 East, 697,) where the declaration alleged that the defendant knew his bull was accustomed to attack mankind, and was dangerous to drive in a public highway, but that he did so drive it, and it injured the plaintiff; and it appeared that the plaintiff wore a red neckerchief, which irritated the animal, and that the defendant had, after the accident, said to one person, "he knew *the* bull would run at anything red," and to another, "that he knew *a* bull would run at anything red;" the court held, that there was evidence of the scienter for the jury, and said, that, even if he had only made use of the latter expression, they thought there would have been evidence.