

tion, notwithstanding that such is the language of Farwell, L.J. (ib. at p. 833), it is erroneous. No one has doubted that damage is the gist of the action; until there is damage there is no wrong to any one, and the breach of duty is not in keeping a tiger, a python, a monkey, a biting dog, or as the case may be, but in failing to keep it safely. Besides, common sense forbids us to accept premisses leading to the conclusion that the highly respectable and useful Zoological Society is an open and continual wrongdoer. "The law does not forbid a man to keep a menagerie": Holmes, *The Common Law*, 155. So far we can go with Mr. Beven; but we cannot go with him in trying to find some other distinction between dogs and wild beasts than the need of a "scienter." The well-known passage in Hale's *Pleas of the Crown* really seems plain enough. A lion, a wolf, or a poison snake is presumed dangerous because "you must think this, look you, that the worm will do his kind." We do not presume this of dogs generically, but vice in the individual, "if the owner be acquainted with his quality," puts it in the dangerous category. We cannot find any other distinction in Hale; the minute verbal variations in consecutive sentences on which Mr. Beven relies appears to us merely accidental. Besides, we cannot discover exactly what Mr. Beven's alternative is, for it is veiled by the cryptic formula "*prima facie*," for which the only English we can find is "subject to undefined exceptions." It would take us too far to follow back the rule to its medieval or earlier origin. Enough that Hale's *Pleas of the Crown* is a book of authority, and these dicta have, we believe, been uniformly accepted in the same sense for more than two centuries. No question arises here on the ingenious—and, we are disposed to think rational—difference between exotic and indigenous animals more fully propounded by Mr. Beven in his book. The owner's knowledge of the dog's character was also not in dispute. The dog, then, was at the owner's peril; whatever that, when we come to consider possible exceptions, may mean.

Secondly, what of the potman? The fact of the dog being loose at all was a failure in the defendant's duty to keep him safe, unless he were set free by some excepted agency for which