

if I have a singing bird, although he renders me no profit, yet he refreshes my spirits, which are the cause of the good health of my body, which is a greater treasure than all riches; and then if any one takes this bird from me, he has done me a great damage, and I will have my action. So in the present case: the hound is profitable for many things, for he can go with me and no one will like to make an assault upon me, or he may pursue a robber; so he may be profitable for a shepherd, and if one takes the dog from his possession he does him a damage. It is reasonable in all of these cases that there should be an action, but the damages will be assessed by the court according to the profit of the hound, and never by the estimate of the party claiming him.

POLLARD, J.:

It has been said in argument that a dog is against the common weal. I agree that in speaking of common profit, there would be more profit if there were no parks in all England, and then the great lords would lose their pleasure; but although it be against my profit to keep a hound, it is not lawful on that account to take it out of my possession, for harps and lutes and fiddle bows are not profitable on account of the cost of strings; yet it is not lawful for any one to take them from me against my will, for you should do to another what you would like to have done to yourself. "*Hoc facias alteri, quod tibi vis fieri,*" and although this act in question cannot be felony, yet it may be trespass. So if I give my cloth to a tailor to make up into a coat, and he does not wish to return it, or my plate to my butler to guard, and he goes off with it—this cannot be called felony, and yet I shall have a remedy. To hold otherwise would be against reason. So in this case: my hound is my treasure, for he takes game for my pleasure. So my hawk is *feræ naturæ*; still by my labor and diligence I have changed his nature, and though he was once common to all, now I have a property in him. Accordingly, if I suffer my hawk to fly at a bird, and another takes him, I have an action, because he was still in my possession. So here: when this hound was in the possession of my servant, that was my pos-

session, for my servant had wages to take charge of him, as the keeper of a park has wages to guard my deer, and they are adjudged in my possession because I found a man to guard them at my own cost; then here this possession of my servant is my possession, and if one takes this from me he does me great damage, for a hound is profitable to recover a deer that has been injured, and he is ready to kill beasts for my profit, as otter, foxes, and other vermin, and it is reasonable to have action for this taking, for otherwise no one will be accountable for taking wrongfully a thing of pleasure which I would not part with for a great sum; so the action will well lie.

ELIOT to the contrary: It seems to me that one ought to have no action for a dog, for a dog is classed as "vermin," and savage by nature, for in Latin he is called "*fera*," and never "*jumentum*" nor "*averium*," for "*averia*" are properly such beasts as are, though wild by nature and savage, now docile, and are fit for the sustenance of man, as sheep, oxen, etc., and for them one will have an action, for by the conversion of them the owner has damage; but if one takes my dog I have no great damage thereby. Now, if my horse or ox escapes to another country, and a stranger takes him there, I will have no action for him, for when he is out of my possession I have no property in him. And one can have possession and not property, since deer in my park are in my possession, but I have no property in them, for if they escape then they become common. Again, dogs and cats are not tithable; for the spiritual law does not desire that vermin should be tithable, for apes and monkeys are also only "vermin." So, if I grant to a man all my goods and chattels, dogs do not pass, (citing Year Book 18, E. IV. 15). So though a man has great pleasure in such beasts, still there is no reason that he shall have his action for his pleasure, as that is a thing of no value; for a lady who has a little dog is unwilling to sell this for a great sum of money, and if I take it, there is no reason why she shall have an action for the pleasure she had in it; and so in this case, although the owner had pleasure in this animal, still it is not lawful that he