

LARCENY OF ANIMALS.

as if they were *feræ naturæ*. They are not penned or fed, marked by the land-owner, nor does he exercise any actual control over them, except as he may be able to catch them and reduce them to his possession. It is well known that the domestic turkey is descended from the wild turkey, first found in America, modified by breeding and the care of man, and this accounts perhaps for the tendency to revert to the wild state which is so strongly manifested in them. These turkeys, although 'wild,' are not properly speaking 'wild animals.' Where the phrase 'wild animals' is used, the word 'wild' is used as a generic term to indicate that they are of a species not usually domesticated and does not refer to their comparative docility or familiarity with men. We consider that these turkeys are not properly speaking animals *feræ naturæ*, though partaking of their habits. The land on which the defendant is alleged to have taken the turkeys in question is the land of 'Mokulua,' in Waialua, the property of the prosecuting witness, Gaspar Silva, who claims the ownership of the turkeys by virtue of their being on this land and of value to him. Now to say that these turkeys are A.'s solely because they are on A.'s land, would lead to the absurdity that they would become B.'s, when they went on to B.'s land. Suppose on a certain night A. goes into the woods on his own land and ensnares part of a flock of the so-called 'wild turkeys,' and the rest of the flock, being disturbed, cross over the boundary to the land of B., and the next night A. ensnares them on B.'s land. On the theory advanced, that the place of capture determines the ownership, the latter taking would be larceny. In the case before us, if the owner of the land where the alleged taking of the turkeys took place was able to trace them, as the undisputed descendants of birds owned by him or his grantors, he would thus show title to them. So far from this being the evidence in this case, it is more than probable that these turkeys are not the descendants of a parent stock introduced on this island by one person, but that these birds have received accessions at different times from the tame turkeys of many different individuals. In the absence, therefore, of proof of ownership of these turkeys by the prosecuting witness, aside from the fact that they were caught on his land, and it being proved that they cannot be distinguished from any other turkeys on contiguous lands, they are not the subject

of larceny." Conviction reversed, and prisoner discharged.

This is in harmony with *State v. Mary Turner*, 66 N. C. 618. Mary was indicted for stealing "one turkey of the value of five cents." Thus it seems turkeys are cheap in North Carolina. The report does not disclose the date of the offence, but we infer it was shortly before Thanksgiving. Mary having been convicted, a motion in arrest of judgment was made upon the ground "that the indictment was insufficient, for that it failed to state that the turkey stolen was a *tame* turkey. That the turkey was a native fowl of America, large numbers are found in every part of the State, wild and unreclaimed, and the indictment should have negated the presumption that the turkey in question was wild and unreclaimed." The motion was sustained, but this was reversed by the Supreme Court. The court said: His honor was mistaken in this case, in supposing that our domestic turkey is a creature *feræ naturæ*. All the authorities cited by his honor are cases of creatures *feræ naturæ*, and we take the case to be clear, that where a creature, for the stealing of which a defendant is indicted, is *feræ naturæ*, it will not be sufficient to allege that the property was the goods and chattels of one A, B., the owner; in such case, the indictment must further allege that the creature was dead, tamed, confined, or reclaimed. 2 Russ. on Crimes, 152. But surely this cannot be the case, when the defendant is indicted for stealing one of our domesticated turkeys. In 2 Bish. Crim. Law, secs. 787, 788, speaking of animals, *feræ naturæ*, and of which larceny may be committed when reclaimed, the author says, 'domestic animals and fowls, such as horses, oxen, sheep, hens, peafowls, turkeys, and the like; which being tame in their nature, are the subject of larceny on precisely the same grounds as other personal property.'

The following animals have been held "wild": Deer, rabbits, hares, conies, fish, rooks, doves, pigeons, martens, bees. Whart. Crim. L., sec. 869. In *Warren v. State*, 1 Greene (Iowa), 106, it is said: "As this principle applies, by common law, to monkeys, bears, foxes, etc., it will evidently apply to 'coons.'"

But such animals as are reclaimed and confined, and may serve for food or use, are subjects of larceny. Thus, young pheasants hatched and reared by a hen. *R. v. Shickle*, L. R., 1 C. C. 158. Marked swans, even on