

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. SALVADOR NERI, DEFENDANT AND APPELLANT.

G.R. No. 11779. February 23, 1917

Ponente: CARSON, J.

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CARSON, J.:

The defendant and appellant in this case was convicted in the Court of First Instance of the Province of Misamis, on appeal from a judgment of conviction in the court of the justice of the peace of the municipality of Tagoloan, of a violation of the provisions of ordinance No. 13, series of 1914, of that municipality, in that he unlawfully turned loose a horse upon the plaza and public streets of the municipality.

Counsel for the appellant contends that the ordinance for the violation of which the accused was convicted is invalid, at least in so far as it undertakes to penalize the turning loose of "large cattle" on the public streets of the municipality.

Subsection (i) of section 40 of Act No. 82, known as the Municipal Code, as amended by section 1 of Act No. 2250, authorizes municipal councils "to require owners of large cattle, as denined by section one of Act Numbered Eleven hundred and forty-seven, sheep, goats, and swine to keep such animals from moving, running, or being at large except when in charge of some person of sufficient discretion."

Section 39 (aa) of the Municipal Code, as amended by Act No. 1791, is as follows:

"The municipal council shall:

* * * * *

"(aa) Establish and maintain municipal pounds and fix the fees for poundage, regulate, restrict, or prohibit the running at large of domestic animals and dogs unlicensed, and provide for the distraining, impounding, and sale of the same for the penalty incurred and the cost of the proceedings; also impose penalties upon the owners of said animals for the violation of any ordinance in relation thereto: Provided, That 'large cattle' within the meaning of Act Numbered Eleven hundred and forty-seven shall be disposed of in accordance with that Act."

Counsel for appellant contends that, under the terms of the concluding proviso of this section, the municipal council of Tagoloan was without authority to enact an ordinance penalizing the turning loose of large cattle on the streets of that municipality, and providing for the impounding of such animals when found running loose. We find no merit in this contention. The proviso that "large cattle" within the meaning of Act No. 1147 shall be disposed of in accordance with that Act evidently refers to the provisions of section 25 of Act No. 1147 prescribing the measures to be taken for the care and maintenance of unclaimed estrays, with no known owners, found within the limits of the municipality; for the giving of public notice of the seizure of such animals; for their return to their owners upon proper proof of ownership; and for their sale in the event of the failure of the true owner to present and establish his claim of ownership within a prescribed period after publication of notice of their seizure. But there is nothing whatever in these provisions in conflict with the ordinance in question which penalizes the

turning loose of such animals on the public streets by their owners and provides for the impounding, care and maintenance of such animals in the manner prescribed therein. "Large cattle," which, under the definition of that term in the Act, "include carabaos, horses, mules, asses and all members of the bovine family," when found running loose and unclaimed by their owners, must be disposed of in accordance with the provisions of Act No. 1147, that is to say, must be maintained, cared for, and returned to their owners, or, if no owner appears, sold at public auction as provided in Act No. 1147; but such disposition of these animals is not necessarily in conflict with an ordinance penalizing the turning loose of such animals on the streets by their known owners and providing for the payment of the expense involved in their care and maintenance, while impounded by the municipal authorities.

We are not impressed with the arguments of counsel based on the alleged unreasonableness of the ordinance, in that it provides for the imposition of a penalty on the known owner of large cattle who permits them to run loose on the streets of the municipality, while, as he contends, no such penalty is or can be imposed on the owner of an unclaimed estray found at large in the municipality. It is of course true that where there is no known owner of an estray found at large on the streets of the municipality, criminal proceedings cannot be instituted against the owner, but if as a result of the publication of the seizure of such an animal under the provisions of Act No. 1147, the owner presents himself and establishes his right of ownership, we know of no reason why he should not be prosecuted for a violation of the ordinance, if it can be made to appear that he turned the animal loose on the streets of the municipality.

The judgment entered in the court below should be affirmed, with the costs of this instance against the appellant. So ordered.

Torres, Moreland, Trent, and Araullo, JJ., concur.

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