

Case No. 15,672. UNITED STATES v. MCDUELL.
[5 Cranch, C. C. 391.]¹

Circuit Court, District of Columbia.

March Term, 1838.

KEEPING DANGEROUS DOG—INDICTMENT—SCIENTER.

1. Quære, whether, in an indictment for keeping a large dog of a fierce and furious nature, and suffering him to go at large in and about the public streets. &c, to the terror of the people and common nuisance, it is necessary to allege a scienter?
2. It is an indictable offence at common law, to incite, provoke, and encourage a fierce and dangerous dog to bite and tear a cow.

Indictment [against Henry McDuell] containing two counts: First, for keeping a “certain large dog of a very fierce and furious nature,” and suffering the same “to go unmuzzled and at large in and about the public streets and highways in the county,” “by reason whereof the good citizens of the United States,” “were in great danger and hazard of being bit, maimed, and torn by the said dog, and of losing their lives, to the great damage, terror, and common nuisance of the good people of the United States, at the county aforesaid, passing and repassing; to the evil example of all others, and against the peace and government of the United States.” The second count charged that the defendant, “at the county aforesaid, in the public streets of the said county, did unlawfully incite, provoke, and encourage a certain fierce and dangerous dog to bite a certain cow belonging to one Thomas Stanley, and the said cow seriously and severely to maim and tear, whereby the said cow was much injured, to the great damage of the said cow, and to the great damage of the said Thomas Stanley, and against the peace and government of the United States.”

Mr. Hoban, for the defendant, moved to quash this indictment for want of a scienter; and cited Starkie, Cr. Pl., and *Mason v. Keeling*, 12 Mod. 332, and 3 Bl. Comm. (Am. Ed.) 154, in notes.

Mr. Key, contra, cited 3 Chit. 643.

THE COURT (nem. con.) refused to quash the indictment, but told Mr. Hoban they would hear the question again, upon a motion in arrest of judgment, if the defendant should be convicted.

Verdict, not guilty on the first count; but guilty on the second count.

Motion in arrest of judgment, overruled. Fined \$20 and cost.

¹ [Reported by Hon. “William Cranch, Chief Judge.]