

1952

Present : Swan J.

D. Y. EDIRISINGHE, Appellant, and P. S. NANAYAKKARA,
Respondent

S. C. 476—M. C. Galle, 3,467

Mischief—Trespassing cow—Right to destroy it.

Accused shot a cow after he had made several unsuccessful attempts to drive it away and as a last means of saving his field from further damage.

Held, that there was no offence of mischief.

APPEAL from a judgment of the Magistrate's Court, Galle.

G. E. Chitty, with *E. B. Vannitamby*, for the accused appellant.

W. Mendis, for the complainant respondent.

Ananda Pereira, Crown Counsel, for the Attorney-General.

Cur. adv. vult.

November 4, 1952. SWAN J.—

The appellant was charged with mischief by killing a cow belonging to the complainant. His defence was that he fired at the animal while it was trespassing on and causing damage to his paddy field. The learned Magistrate accepted the appellant's version of the facts but found him guilty because the cow was of greater value than the damage caused. I shall quote that passage from the judgment :—

“ in the circumstances of this case I find that I cannot lose sight of the fact that this cow is a valuable cow. It yields no less than three bottles of milk per day and there can be no doubt that by the destruction of this cow, the complainant had been put to very great damage. Now, was this destruction of the cow in the circumstances of the case in proportion to the damage caused to the crop? It is my view that if it is out of proportion to the damage caused or likely to be caused the destruction cannot be described as anything but criminal. ”

I do not think that the relative values of the cow and the damage done had any bearing on the matter in issue, namely, whether the accused had killed the cow with intent to cause or knowing that he was likely to cause wrongful loss or damage to the complainant. I express this view despite the fact that Schneider J. in *Saibo v. Perera*¹ said :—

“ In judging a man's state of mind in killing or injuring an animal the valuable nature of that animal cannot be lost sight of. A person could hardly justify the destruction of an elephant, a horse or a valuable cow on the ground that he had done the act to protect a field under paddy even if he has made an effort to drive it away. ”

In that case, however, Schneider J., having reviewed all the authorities up to that time and considering the facts in the light of those authorities, set aside the conviction on the ground that the destruction of the fowls was done for the protection of property, and not with the intention or knowledge of causing wrongful loss to the complainant.

Mr. Chitty has referred me to *Russel on Crimes* (1950 Ed.) Vol. 2, pages 1650 et seq. and has also cited the very recent case of *Goodway v. Becher*². I do not think it necessary or prudent to look to the English authorities

¹ 24 N. L. R. 65 at page 72.

² (1951) A. E. R. 349.

for help or guidance. There the matter is governed by sections 40 and 41 of the Malicious Damage Act 1861 (as amended by subsequent legislation). We have sufficient local authority and the Penal Code to guide and direct us.

In an attempt to support the conviction learned Crown Counsel drew my attention to the anonymous case reported in *5 N. L. R.* at page 23 as well as the case of *King v. Menchohami*¹. I do not think that the view I take of the facts of this case conflicts with the view of Bonser C.J. in the former of the cases referred to above. The learned Chief Justice held that it was a wrongful act to inflict wanton injury upon an animal belonging to another merely because it was trespassing on your ground. Nor is my view in conflict with that expressed by Wendt J. in *King v. Menchohami*¹. In that case the animal had been cut while it was going away from the land. Wendt J. said :—

“ In the present case the evidence shows that the animal when chased by the accused was going away from the land and would presumably have left it. The cut inflicted by the accused was therefore an injury caused without previous ineffectual attempt to save the land from further damage. ”

Here the evidence reveals that the accused fired at the cow after he had made several unsuccessful attempts to drive it away, and that he fired at it as a last means of saving his field from further damage.

Each case will depend on its merits. The wounding or destruction of an animal would be *prima facie* evidence of that intention or knowledge which is an essential ingredient of the offence of mischief. If the evidence as a whole negatives that intention or knowledge the accused is entitled to an acquittal.

I set aside the conviction and acquit the accused.

Appeal allowed.

