

## SITTAPPU v. SINNAPPU.

*C. R., Galle, 5,305.**Shooting trespassing cow—Mistaking cattle for leopard—Liability for damage done.*

A person firing at and maiming a trespassing cow in a dark night, under the mistake and in fear that it was a leopard coming towards him, is not liable in damages to the owner.

PLAINTIFF sued the defendant for the value of a cow, in that the defendant unlawfully shot and maimed it. Defendant denied the unlawful shooting and maiming, and averred that when he was in his watch-hut overlooking a paddy field he heard what he thought to be the growl of a leopard, when he fired a gun in the direction of the growl, and that it was the shot fired under such circumstances that injured the cow which was trespassing.

The Commissioner held that the misapprehension of the defendant did not relieve him of his responsibility for the damage done, and gave judgment for plaintiff for Rs. 30, being the value of the cow which had died since action brought.

Defendant appealed.

*Sampayo*, for appellent.

*Cur. adv. vult.*

28th July, 1899. WITHERS, J., set aside the decree of the Court below and dismissed the plaintiff's action by the following judgment:—

The question is whether the judgment is right. It all depends on the culpability of the defendant's conduct. If it was not culpable, he ought not to be made to pay for the cow. In the night in question the defendant went to his watch-hut to watch his field which was planted with paddy. He took a gun loaded with slugs. Natives have to protect their crops against wild beasts, and so there was nothing unlawful in his having a loaded gun with him.

It was a very dark night. While the defendant was engaged in watching, he heard what he thought to be the growling of a leopard. It had been reported in the village that a leopard had taken up its quarters in the place. He declares as this sound came nearer to him he fired in the direction of it through fear. He saw no object; he fired only at the place where the sound appeared to be; unfortunately he hit a tame cow instead of a dangerous leopard.

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WITHERS, J.

I see no reason to doubt that the defendant was telling the truth, although the Commissioner regards it as a fiction. How, asks the Commissioner could a man mistake a black cow for a leopard five or six fathoms off, and a cultivator, he thinks, must know a cow when he hears one. But then a cow does not make a noise like a growl, and it is not easy to see a black cow on a dark night even five fathoms off. The Commissioner however, assuming that the defendant thought he heard a leopard as it pounced near him, considers that the man should have kept his head and not fired the gun, and that he was incautious and imprudent and rash.

But I venture to differ from the Commissioner, if he goes so far as to hold the defendant guilty of *culpa* under the aforesaid circumstances.

It is admitted that the plaintiff and the defendant were good friends at the time, and it is not pretended that the defendant maliciously shot his friend's cow, nor is there room for suspicion that he intentionally shot any man's cow.

If any one, I think, was to blame, it was the plaintiff who allowed his cow to trespass by night. Not that of course the defendant would have been justified in shooting a cow simply because it was trespassing.

Had the defendant known it was a neighbour's cow, it is only fair to suppose that he would have got down from his hut and driven the cow out of the field, or tried to secure it for indemnity if it had done any damage. I therefore reverse the judgment and dismiss the action.

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