

1899.

November 22.

GOONERATNA v. POROLIS *et al.*

*D. C., Matara, 2,134.*

*Damages done by cattle belonging to several owners—Liability of each owner for damages done by his own cattle—Assessment of damages—Principle of apportionment.*

Where cattle belonging to several owners cause damage together, and it is impossible to ascertain precisely the damages done by the cattle of each owner, it is improper to enter a decree against all the defendants jointly for the total amount of the damages done.

The decree ought to direct payment by each defendant of the amount of damage done by his own cattle only.

If the parties cannot agree as to the share of damages which is to be apportioned to each defendant, the number of cattle belonging to each defendant which took part in the trespass should be ascertained, and the amount of damages distributed among the defendants in proportion to the number of cattle damage feasant, belonging to each.

PLAINTIFF sued for damages consequent upon certain cattle belonging to the two defendants depasturing his lands and treading upon his citronella plantation and otherwise injuring his cocoanut plants and pineapple bushes. The plaintiff's land, being of about 55 acres in extent, was unfenced. He proved that the cattle belonging to the two defendants roamed about his property together, so that he was unable to state separately what damage the cattle of each defendant had caused, but the damages in the aggregate were assessed by two headmen at Rs. 412. They were called as witnesses.

The District Judge gave judgment for Rs. 412.

*Wendt*, for defendants, appellants.

*Dornhorst* (with *Picris*), for plaintiff, respondent.

22nd November, 1899. BONSER, C.J.—

This is an action for damages done by cattle belonging to or in charge of the defendants to the plaintiff's plantation. The amount of damages proved was Rs. 412, and the District Judge made a decree against the defendants jointly for that amount. The evidence, however, discloses that the cattle belonging to the two

defendants that did the damage were not equal in number, and that being so I think that the decree fails to do justice between the parties. It seems to me that the decree ought to direct payment, by each defendant, of the amount of damage done by his own cattle, and that amount only.

In the term " his own cattle " I include cattle of which he was in charge. That principle of dividing the total amount of damages amongst owners of trespassing cattle in proportion to the number of the cattle was laid down nearly thirty years ago by this Court in a case reported in *Vanderstraaten's Reports*, 1870, p. 51. It seems to me a sound principle and one which should be followed.

If the parties can agree as to the share which is to be apportioned to each defendant, the decree may be amended in this Court. If the parties cannot agree, the case must go back to the District Court to take further evidence as to the number of cattle belonging to each defendant which took part in this trespass, and to apportion the damages amongst the defendants proportionately.

The costs will be borne in the same proportion as the damages.

The plaintiff will have the costs of the appeal.

WITHERS, J.—I quite agree.

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