

1931

*Present : Garvin S.P.J.*MOHAMADU KANDU *v.* APPUHAMY.

111—C. R. Anuradhapura, 17,323.

Damage—Cattle destroyed by cattle shooter—No written authority from Government Agent—Liability.

A cattle shooter, who caused damage, in the *bona fide* belief of the sufficiency of the written authority he holds—when in fact the authority was bad—is not exempt from civil liability.

A PPEAL from a judgment of the Commissioner of Requests, Anuradhapura.

C. V. Ranawake, for plaintiff, appellant.

H. H. Basnayake, C.C., for defendants, respondents.

October 21, 1931. GARVIN S.P.J.—

The plaintiff appeals from the dismissal of his action to recover a sum of Rs. 150 alleged to be the damages caused to him by the act of the defendants in shooting and killing a pair of bulls belonging to him. The first defendant is the Vel-Vidane of Eliyadulawa. The person who actually fired the shots was the second defendant. The area in which the incident took place was one which had been proclaimed under the Rinderpest Ordinance. On September 23, 1930, the Veterinary Surgeon on information received by the first defendant that there were some stray cattle at Ihala Siyambalawa went to the village in the company of the first and second defendants. Two bulls were pointed out to him grazing by the side of the tank. They were not tethered. On questioning the first defendant the Veterinary Surgeon was informed that the animals had broken the fence and come in. After making certain other inquiries he asked the second defendant to go and shoot the animals, which were shot in the presence of the Veterinary Surgeon. These are the simple facts of the case. There is no evidence against the Vel-Vidane save that in the execution of the duties of his office he informed the Veterinary Surgeon that there were stray cattle within this proclaimed area and gave other material information. The shooting was the act of the second defendant at the instance of the Veterinary Surgeon. No case has been established as against the first defendant and the order of dismissal as far as he is concerned must stand.

As to the second defendant, there can be no question that he shot these animals and as a result caused damage to the plaintiff. His defence is that he was authorized by the Government Agent to destroy all stray cattle or cattle infected with rinderpest in certain villages of which the village in question was one, and in support of this defence he produced the document D 1. The document is in the following terms:—

“By virtue of the powers vested in me by regulations framed under section 9 of the Ordinance No. 23 of 1909, I hereby authorize R. M. Banda of Eppawela to destroy all stray cattle or cattle infected with rinderpest at Mediyawa or other villages of Eppawela Korale. This permit to be in force as long as the said area remains proclaimed as an infected area under Ordinance No. 25 of 1909.

Sgd. For Gvt. Agent, N. C. P.”

Admittedly the document was not signed by the Government Agent. This is evident on the face of it. Nor indeed is there any evidence to show by whom it was signed; the signature itself is not legible. The second defendant has therefore failed to show that he was a person who was authorized by the Government Agent in writing to shoot stray cattle in this village. His defence that he was authorized by law to do the act he did therefore fails.

It was urged in appeal that he did it in the *bona fide* belief that the writing he held was a sufficient authority, but a person who causes damage in such circumstances is not exempt from civil liability because when he did the act he believed that he was authorized to do so by law.

The Commissioner of Requests has not found on the question of damages. The plaintiff is clearly entitled to some damages. The case must therefore go back for the purpose of the assessment of the damages he has sustained. The appeal so far as it relates to the claim against the first defendant is dismissed. The dismissal of the action as against the second defendant is set aside. The plaintiff is entitled to judgment against the second defendant for the amount of the damages assessed by the Commissioner. He is also entitled to the costs of action incurred up to date. Any additional costs which may be incurred in the assessment of damages will be in the discretion of the Commissioner. As to the costs of this appeal I make no order. The defendants were represented by one proctor. In appeal the plaintiff has succeeded as against one defendant and failed as against the other.

Set aside.
