

1946

Present : Howard C.J.

SEIMON, Appellant, and VELAPPAN (S. I., POLICE),
Respondent.

1,363—M. C. Galle, 46,272.

Mischief—Destruction of pig—Accused's plea that the pig was found straying in his garden—Burden of proof—Cattle Trespass Ordinance (Cap. 331), s. 14, proviso 2.

Where the accused, who was charged with causing mischief by destroying a pig which belonged to the complainant, pleaded the benefit of proviso 2 to section 14 of the Cattle Trespass Ordinance—

Held, that before the accused could invoke the privilege conferred on him by the enactment the burden lay on him to prove that the pig which he destroyed was found straying in his garden.

A PPEAL from a conviction by the Magistrate of Galle.

H. W. Jayewardene, for the accused, appellant.

J. G. T. Weeraratne, C.C., for the Attorney-General.

February 5, 1946. HOWARD C.J.—

In this case the accused was convicted of causing mischief by destroying a pig which belonged to the complainant. The pig no doubt was in the garden of the appellant and the appellant maintains that proviso 2 to section 14 of the Cattle Trespass Ordinance operates to his benefit. He maintains that by that proviso he was entitled to destroy the pig inasmuch as it was found straying in his garden. The Magistrate has found that the appellant was not entitled to destroy the pig by clubbing it and if he did invoke the provisions of this proviso he was only entitled to shoot it. I am of opinion that if the pig was found straying in his garden the appellant was entitled not only to shoot it but to use other means for destroying it such as employing a club. I think, therefore, that that part of the Magistrate's decision was wrong. On the other hand, before the appellant could invoke the privilege conferred on him by this proviso the burden lay on him to prove that the pig which he destroyed was found straying in his garden. I do not think, having regard to the facts of this case, viz., that he was standing outside the complainant's gate with a rice-pounder in his hand while the other people were endeavouring to get hold of the pig, that he has discharged this onus. In other words, I do not think it is established conclusively that the pig was found straying in the appellant's garden. The appeal is therefore dismissed.

Appeal dismissed.
