

Present: Garvin J.

MENDIS v. HUNUCUMBURA

878—P. C. Kurunegala, 3,599.

*Cruelty to animal—Shooting a trespassing cow—Unnecessary pain—
Ordinance No. 13 of 1907, s. 4 (1) (b).*

Where a person shot at a trespassing cow and injured it,—

*Held that he was guilty of causing unnecessary pain to an animal
within the meaning of section 4 (1) (b) of the Ordinance for the
Prevention of Cruelty to Animals.*

A PPEAL from a conviction by the Police Magistrate of
Kurunegala.

H. V. Perera, for accused, appellant.

February 24, 1928. GARVIN J.—

The facts material to the decision of the point raised by this appeal are simple and well ascertained. The accused saw his neighbour's cow trespassing on his land. He might easily have driven the animal away. Instead of doing so he fired a shot and injured it in the knee. The animal made away and was later found lying injured on its owner's land. The defence, which the Magistrate has rejected, was a denial by the accused that he shot at the cow as alleged.

The accused was in those circumstances convicted under section 4 (1) (b) of the Prevention of Cruelty to Animals Ordinance, No. 13 of 1907. The case cannot be brought under sub-section (1) (a) or (1) (c) of section 4. The only question is whether the Magistrate is correct in his view that the case falls within sub-section (1) (b), and that the accused can be said to be a person who by his act caused unnecessary pain to this animal.

Counsel urged that though the accused by his act caused pain to this animal it was not unnecessary pain within the meaning of the section. He sought to exclude from the section all those acts by which pain is caused so long as no more pain was inflicted than was necessarily involved in the doing of the act. There undoubtedly are acts as, for instance, the branding of cattle which though they cause pain, so long as they are done without inflicting needless pain, are not obnoxious to this section, since the pain involved in the doing of the act is reasonably necessary for the purpose of identification or some other legitimate purpose. In such cases the pain caused by the act is not unnecessary pain and hence the acts are not obnoxious to the section. But an act by which any pain at all

is caused to an animal so long as it is needless pain is obnoxious to the section. In this instance it was wholly unnecessary to shoot the animal for the purpose of compelling it to move off the accused's land, and it is impossible to contend that the pain caused by that act was reasonably necessary for that purpose. The accused has, therefore, by his act caused unnecessary pain to the animal in contravention of the provisions of sections 4 (1) (b).

The appeal is dismissed.

1928
GARVIN J.
*Mendis v.
Hunucum-
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Appeal dismissed.

