

HIGH COURT. Apia. 1955. 3, 10, February. MARSACK C.J.

Animals - right of destruction of trespassing pig - Samoa Native Regulations 1938 R. 22 - General Laws Ordinance 1931 section 23(21).

This was a claim for the value of the plaintiff's pig alleged to have been destroyed while trespassing on the defendant's land. The defendant pleaded authority under the Samoa Native Regulations 1938 or alternatively under the General Laws Ordinance 1931 section 23(21).

- Hold:
- (1) There is no common law right of destruction of trespassing animals.
 - (2) A pig found at large may be destroyed by the Fulenu'u or his agent under the powers contained in Regulation 22 of the Samoa Native Regulations 1938.
 - (3) The right of occupiers of land otherwise to destroy trespassing pigs is limited to the strict provisions of section 23(21) of the General Laws Ordinance 1931.

Judgment for plaintiff.

Jackson for plaintiff.
Phillips for defendant.

Cur. adv. vult.

MARSACK C.J.: This case raises an interesting point as to the rights of the owner or occupier of land to destroy animals found trespassing on the lands concerned.

Plaintiff Vaito'elau was the owner of one sow which normally was kept in an enclosure inside the pig-fence of the village of Vailele. On the 20th May 1954 this sow was, in the early hours of the morning, found rooting up grass near the house of the defendant Tuiavi'i Telesi who shot and killed the animal. The sow was at the time within a few days of giving birth to a litter of piglets, of which 10 were found in the body of the sow. The body was handed over to the plaintiff within a short time of its killing. This claim is for the sum of £30 representing the value of the sow.

Evidence was given by the defendant that a few hours before he killed the sow he had complained to Lefao, the Fulenu'u, of the trespass of the animal and had received permission from him to destroy it. This evidence, however, conflicts with that of the Fulenu'u himself, who states that the last time the defendant complained to him about damage from trespassing pigs was on the 21st April 1954; on which date he had given permission to defendant to shoot the pig. On this point I accept the evidence of the Fulenu'u and reject that of the defendant.

There would appear to be a general impression among the people of Western Samoa that any animal found trespassing in the plantation or near the house of a person other than the owner may be immediately destroyed by that person. That, however, is not the law.

Under the old common law the only remedy which the occupier of land had against trespassing animals was that known as distress damage feasant, whereby the occupier of land was entitled to seize and impound the animal as security for compensation for the damage suffered. The only rights of destruction of trespassing animals are those covered by legislative enactment. There are two relevant enactments in force in Western Samoa. The one on which both Mr Jackson and Mr Phillips rely is Regulation 22 of the Samoa Native Regulation 1938 made under the authority of the Samoa Act 1921.

his regulation reads as follows:-

"The owner of any pig found at large upon any road or in the neighbourhood of any dwelling-house is liable to a fine not exceeding £1, and the Fulenu'u of the village where any such pig is found, or any person authorised by him so to do, may if he has good reason to believe that such pig is the property of a Samoan, destroy such pig, unless it has been previously brought into proper confinement by the owner."

It is to be noted that the regulation contemplates the destruction by the Fulenu'u, or by his authorised agent, of any pig found at large upon any road or in the neighbourhood of any dwelling-house. It refers not to trespassing pigs generally, but to an individual pig which has been found wandering on the road or near a dwelling-house. It does not purport to confer upon the Fulenu'u a blanket authority to grant permission to all occupiers of land to shoot pigs at any time found trespassing on that land. In my view the regulation means: if any person finds a pig wandering on the road, or trespassing on his land in the neighbourhood of his house, he should immediately notify the Fulenu'u who may, if he thinks fit, either destroy the pig forthwith or depute some agent to do so. That agent may of course be the complainant.

It is contended for the defendant that a Fulenu'u to whom a trespassing pig has been reported may say to the occupier of the land "if that pig comes back again you may shoot it"; and that this justified the defendant's action in the present case. There is however no evidence that the animal complained of to the Fulenu'u on the 21st April 1954 was this same sow; and in my opinion the regulation does not give the Fulenu'u authority, on the making of such a complaint, to permit the person aggrieved to shoot any pig that he may find on his property at any time in the future.

I find therefore that the shooting of plaintiff's sow by the defendant was not authorised under the provisions of Regulation 22.

The other legislative enactment concerning the destruction of trespassing animals is contained in section 23(24) of the General Laws Ordinance 1931. This reads as follows:-

"No occupier of land shall kill or attempt to kill any animal found trespassing on such land except

- (a) bona fide in self defence;
- (b) a dog found near to or among any cattle;
- (c) a pig or goat found in a taro or similar patch of cultivation;
- (d) a wild pig.

This Ordinance imposes an absolute prohibition on the killing of any trespassing animal, unless the case comes within one of the exceptions stipulated in the section. On the face of it this section seems somewhat inconsistent with the provision of Regulation 22 already quoted, but in this present case I am not concerned to solve any problem arising from such apparent discrepancy. In my opinion the defendant is not protected by the provisions of subsection 24(c). The pig was not "found in a taro or similar patch of cultivation". When the pig was found it was rooting about in some grass near the house; but there is no evidence which would justify my holding that the grass was a patch of cultivation similar to a taro patch.

For these reasons I conclude that the defendant was not entitled to destroy the sow under the provisions either of Regulation 22 or of the Ordinance quoted. That being so, the plaintiff is entitled to recover against the defendant a sum equivalent to the value of the damage she has suffered. This sum must be the difference between the value of the sow alive and in farrow, and the value of the carcase, which was handed over to

the plaintiff within a reasonable time after the shooting of the animal. I fix the difference in value between the sow alive and the sow dead at the sum of £10. The plaintiff will have judgment for that amount, with costs and disbursements to be fixed by the Registrar.