

FRANCISCO PERMAN, Appellant  
v.  
RUSSEL VARNER, Appellee  
Civil Action No. 339  
Trial Division of the High Court  
Ponape District  
December 23, 1968

Appeal from judgment for damages caused by trespassing animals. The Trial Division of the High Court, H. W. Burnett, Associate Justice, held that costs were properly allowed in the action and that appellee was liable for injury to one of the trespassing animals when he shot it without justification.

1. Appeal and Error-Scope of Review-Facts

Where no transcript of evidence or draft report accompanied the appeal, there could be no review of the sufficiency of the evidence and the District Court's findings of fact must stand.

2. Civil Procedure-Costs

While contention that complaint showed failure to comply with the requirements of the applicable statute relative to notice was correct, the complaint alleged, and the court found as a fact, that trespass occurred on more than one occasion.

3. Animals-Trespass--Injury to Animal

Appellee was liable for injury to one of the trespassing animals as such extreme action as shooting could be justified only if clearly required for the defense of either person or property.

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*Counsel for Appellant:*  
*Counsel for Appellee:*

EDWEL SANTOS  
YOSTER CARL

BURNETT, *Associate Justice*

This is an appeal from the Judgment Order in Ponape District Court Civil Action No. 959, entered December 29, 1967.

Appellee obtained judgment in the amount of \$5.00 damages caused by trespassing pigs, the property of appellant, \$5.00 for cost of feeding said pigs after their capture, and \$.50 costs. In turn, he was directed to pay \$5.00 for having injured one of the pigs by shooting it. The original action

was brought under Ponape District Law No. 3-9-59, as amended by P.L. 6-64.

[1] No transcript of evidence or draft report accompanied the appeal, so there can be no review of the sufficiency of the evidence. The District Court's comprehensive findings of fact, therefore, must stand.

[2] Appellee's sole contention is that the complaint shows failure to comply with the requirements of the applicable statute relative to notice, and that it was error to allow costs to accrue prior to giving notice. While his legal contention is correct, the difficulty with his position is that the complaint alleged, and the court found as fact, that trespass occurred on more than one occasion. The court further found that notice had been given as required by law. On this general question, see 4 Am. Jur. 2d, Animals, § 55.

[3] Nor was it error to find appellee liable for injury to one of the trespassing animals. Such extreme action can be justified only if clearly required for the defense of either person or property. See 4 Am. Jur. 2d, Animals, § 135.

The judgment appealed from is affirmed in all respects.