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No. 10

APPELLATE DIVISION.

SECOND DIVISIONAL COURT.

MAY 17TH, 1917.

*CAMPBELL v. HEDLEY.

Animals—Escape of Valuable Fox from Premises of Breeder—Animal Born and Reared in Captivity—Destruction by Defendants on Premises of Stranger—Right of Action—Animal Feræ Naturæ—Qualified Property of Breeder—Ontario Game and Fisheries Act, R.S.O. 1914 ch. 262—Criminal Code, sec. 345 (3), (4).

Appeal by the plaintiff from the judgment of the Senior Judge of the County Court of the County of Middlesex, upon the findings of a jury, dismissing the action, but without costs.

The action was brought to recover the value of a "patch" fox shot and killed by the defendant Hedley assisted by the defendant McIntosh. The plaintiff was a breeder of foxes for profit. This fox was born on the plaintiff's ranch, one of a third generation of captive foxes, reared in captivity. It escaped and was at large for several days before the plaintiff was aware of it, and was shot upon the premises of a stranger. The jury found that the fox had escaped from the plaintiff's ranch or kennels, and that the defendants when they killed it had no reason to believe that it was a fox which had escaped from the kennel or ranch of any fox-breeder.

The appeal was heard by MEREDITH, C.J.C.P., LENNOX, J., FERGUSON, J.A., and ROSE, J.

J. M. McEvoy, for the appellant.

W. R. Meredith, for the defendants, respondents.

* This case and all others so marked to be reported in the Ontario Law Reports.