

# SUPREME COURT REPORTS.

1879.

VOL. IX. PART III.

THE QUEEN vs. CAMP.

*Village Nuisances Act, No. 2, 1855, sec. 14.—Discharging  
fire-arms.*

*Shooting at fowls trespassing on enclosed land is a “lawful  
cause,” under the 14th section of Act No. 2, 1855, for  
discharging fire-arms.*

The defendant was charged before the Magistrate at Wynberg with contravening the 14th section of Act No. 2, 1855, in having wrongfully and unlawfully discharged a gun within the limits of the proclaimed village of Wynberg. The defendant's father had an enclosed garden at Wynberg, and being annoyed by neighbours' fowls trespassing therein, directed his son, the defendant, to shoot the poultry while trespassing, which he did. This was the offence complained of. The Magistrate found the defendant guilty, and fined him five shillings. The defendant now brought this judgment under review.

*Buchanan*, for the defendant, referred to the 50th section of the Pound Ordinance No. 16, 1847, to show that the owner of enclosed land was entitled to destroy all poultry trespassing thereon. The 14th section of the Village Nuisances Act did not altogether prohibit the discharge of fire-arms within the limits of a village, but only without “lawful cause,” and the killing of trespassing poultry was such a lawful cause.

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*Cole* appeared to support the Magistrate's decision, and urged that the use of fire-arms in a village, and near the high road, was dangerous, and should be discontinued.

The Court held that the shooting of fowls in enclosed and cultivated gardens was a "lawful cause" for discharging fire-arms, and quashed the conviction.

Conviction quashed accordingly.

[Defendant's Attorney, BUCHANAN.]

### LUCAS vs. HOOLE.

*Survivor's interest in joint estate.—Election.—Lex hâc edictali.—Act No. 26, 1873.*

*Where by mutual will husband and wife, married in community, institute as heirs of the first dying the survivor in a child's portion, together with the children of the marriage, the survivor to retain possession of the joint estate for life, and after the death of the survivor the joint estate to be divided among the children, Held,—that as to a child's portion and half the joint estate, the survivor was a fiduciary heir, but as to the residue the survivor was merely a usufructuary.*

*Where a survivor remarries, and by subsequent testament revokes his will made with his former spouse, and disposes afresh among the children of both marriages the whole of his estate, both property acquired subsequently to the death of the first spouse, as well as property which formed part of the joint estate of himself and first wife, the children of the first marriage instituted heirs under the first will must elect under which will they will take.*

*Where a husband, survivor of a previous marriage, on a subsequent marriage entered into before the repeal of the lex hâc edictali, by ante-nuptial contract irrevocably bequeaths to his subsequent wife a certain sum, to be paid out of his estate after his death to trustees upon trust to invest and*