P. C., Panadure, 9,526.

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Mischief—Penal Code, ss. 409, 411—Meaning of maiming.

It is a wrongful act to inflict wanton injury upon an animal belonging to another person merely because it is trespassing on your ground. For such an act damages can be recovered.

A, finding two cows trespassing on his land whereupon paddy was growing, lost his temper and slashed them with a knife, without attempting to secure them. The animals were not killed, maimed, or rendered useless.

Held, per BONSER, C.J., that these circumstances justify a conviction under section 409 for mischief, and not under section 411.

To constitute maiming it is essential that permanent injury should be inflicted on the animal.

BONSER, C.J.—I should be disposed, if necessary, to decline to follow *Lane v. Waselino* (*9 S. C. C. 109*), *Ranhami v. Bodiya* (*2 C. L. R. 176*), and *Queen v. Sultan* (*2 N. L. R. 162*).

THIS was an appeal by the accused against a conviction for mischief, under section 411 of the Penal Code. The facts of the case appear fully in the judgment of his Lordship the Chief Justice.

E. Jayawardena appeared for appellant.

BONSER, C.J.—

This is a case in which the appellant has been convicted under section 411 of the Penal Code and sentenced to pay a fine of Rs. 75, in default to three months' rigorous imprisonment. Section 411 provides that "whoever commits mischief by killing, poisoning, maiming, or rendering useless any animal or animals of the value of Rs. 10 or upwards, shall be punished with imprisonment of either description for a term which may extend to two years or with fine, or with both."

Now, the facts proved in this case are these: the appellant is a cultivator, and he found two cows trespassing on his paddy. Thereupon, without any attempt to secure them, he seems to have lost his temper on seeing his paddy injured, though the injury is said to be very trifling, and slashed them with a knife, inflicting

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a cut on each. The result in the case of one is that she was with calf, and that she miscarried two days after, and that the complainant lost the calf in consequence. But no permanent injury was done to this animal or to either of them. It seems to me therefore that the conviction was wrongly had under section 411. The animals were not killed, or poisoned, or maimed, or rendered useless. The only word under which this injury could possibly be brought would be maiming, but it has been held in an English case that to constitute maiming of an animal it is essential that permanent injury should be inflicted on the animal. That was decided in the case of *Regina v. Jeans* (*1 C. and K. 539*), and it has also been so decided in *Andris v. Sarneld* (*1 C. L. R. 48*).

But although the case does not fall under section 411, I see no reason why it should not fall under section 409, simple mischief. It is said that the fact that the animal was trespassing on the complainant's premises renders it impossible for the offence of mischief to be committed.

Now, what is mischief? It is defined thus: "Whoever, with "intent to cause, or knowing that he is likely to cause, wrongful "loss or damage to any person, causes the destruction of any "property or destroys or diminishes its value or utility or affects it "injuriously, commits mischief." It seems to me quite clear that in law it is a wrongful act to inflict wanton injury upon an animal which is the property of another person, merely because it is trespassing on your premises. No doubt that is a wrongful act for which damages can be recovered in a Civil Court, but it seems to me that such an act fulfils all the conditions of the offence of mischief. On what principle could it be that the mere fact of the animal trespassing should render the unlawful act lawful? Three cases have been cited as authorities for that proposition. The first decided in 1890 by Mr. Justice Clarence. In that case the defendant had been convicted of shooting a cow which had been trespassing on his land at the time it was shot. Mr. Justice Clarence set aside the conviction, and said that it was clearly in evidence that the cow was shot by the defendant while trespassing on defendant's plantation, and, according to the complainant's evidence, the defendant shot the cow after unsuccessfully attempting to noose her. He says, "I do not consider the defendant in "shooting the cow is amenable to the Criminal Law; he may be "civilly liable, but that is another question." No reason whatever is given for this decision. The only ground I can suggest is that the judge thought that the defendant had done all he could to try and capture the cow, and that the shooting in his opinion was absolutely necessary to prevent the cow from doing

further harm. However, if that be the true reason, it does not apply to the present case. No attempt was made in this case by the appellant to secure the cow; he seems to have at once lost his temper and slashed at the cow.

The next case was decided by Mr. Justice Withers in 1892 (*Ranhami v. Bodiya, 2 C.L.R. 176*). In that case Mr. Justice Withers on the facts held that the accused was not guilty, but he is careful to say, "I do not of course mean to say that in no circum- "stances could a man be not found guilty of committing mischief "to a trespassing animal." So that that case is no authority for the proposition that the mere fact that the animal was trespassing is an answer to such a charge.

The next case was also decided by Mr. Justice Withers (*The Queen v. Sultan, 2 N. L. R. 162*). In that case it was found as a fact that a buffalo trespassed in a paddy field of the defendant's which was under young plants. The accused tried to drive it away from the field, and being unable to do so he made a slash at it with a katty, and he says: "Was it causing wrongful damage to "the owner of the animal, in a criminal sense, to hack at the "animal, whatever the result, in order to drive it out of the field "where it was trespassing and doing damage, or to stop its doing "any more damage, after reasonable and ineffectual efforts had "been made to drive the beast from the field without doing it "harm? I do not think it was." And he goes on to refer to the case of *Lane v. Wasilino*, reported in *9 S. C. C. 109*, to which I have referred, decided by Mr. Justice Clarence. But it will be observed that the facts in that case are different from the facts in the present case. In that case the judge was of opinion that the accused had made reasonable efforts to drive away the beast from the field without doing it any harm; so that that case is no authority for the proposition which is sought to be laid down in the present case, that you could not commit mischief on a trespassing animal.

I must say that I cannot follow the reasoning of these three cases; and I should be disposed, if it were necessary, to decline to follow thm. But it is unnecessary to say any more of those cases, as they do not cover this case.

The only question on which I have any doubt is as to the amount of the fine. The Mudaliyar who examined the animals, with the consent of both the parties, stated that if the animals were in good condition they would be worth Rs. 90 or Rs. 100, but in the condition in which he saw them they were worth only Rs. 50 or Rs. 60. It does not appear clearly what is the meaning of that statement. There is no definite statement that injuries

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inflicted upon the animals by the cuts had deteriorated their value to the extent of Rs. 40. It may be that they were insufficiently fed or out of condition. There is no doubt that the complainant suffered some loss by the loss of the calf, but there is no evidence what that loss was. I think that in the circumstances a fine of Rs. 30 would be sufficient, the whole of that amount to be paid to the complainant as compensation; in default, three months' rigorous imprisonment.