

1907.
September 24.

Present: Mr. Justice Grenier.

ZOYSA v. EDORIS APPU *et al.*

P. C., Balapitiya, 30,731.

Mischief—Cutting off ears and tail of a cow—"Maiming"—Permanent injury—Penal Code, ss. 410 and 412.

Cutting of the ears and tail of a cow does not amount to "maiming" within the meaning of section 412 of the Penal Code.

A PPEAL, by the accused from a conviction under section 410 of the Penal Code.

The facts sufficiently appear in the judgment.

Bawa, for the accused, appellant.

Soyza, for the complainant, respondent.

Cur. adv. vult.

September 24, 1907. GRENIER A.J.—

The facts of this case were not disputed, but it was argued by Mr. Bawa for the appellants that the charge should have been laid under section 412 and not under section 410 of the Penal Code. The appellants indicted certain injuries on the complainant's cow, which the Magistrate has rightly described as very cruel. They

appear to have cut off the animal's ears as well as its tail; and I agree with the Magistrate that the act was a malicious one, and intended to cause loss or damage to the complainant. The cow was in milk at the time, and the complainant stated that she gave about six bottles of milk every morning, and that until the animal recovered from the injuries inflicted on it he would not be able to milk it. He estimated the loss to be at Rs. 50. I am of opinion that the charge was rightly laid under section 410, because the word "maiming" as used in section 412 implies any injury by which the speed or endurance or use of a domestic animal has been permanently diminished. In the case of *Rex v. Owens*¹ it was held that pouring acid into the eye of a mare and thereby blinding her was "maiming." But if a person inflicted a wound on an animal whereby it was disabled for some days only, it was held in the case of *Subrao*² that the offence would fall under section 426 of the Indian Penal Code, which corresponds to section 409 of our Code. In the case of *Nga Tha*³ it was held that where a pony's ribs were broken so as permanently to diminish its usefulness, the animal should be considered as "maimed." It cannot be said in this case that the use of the cow has been permanently affected or diminished by the injuries inflicted on it, and the Magistrate was therefore right in convicting the appellants under section 410. I would affirm the conviction and sentence.

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GREVILLE
A.J.

Appeal dismissed.
