

THE KING v. MENCHOHAMI.

D. C. (Criminal) *Negombo*, 2,380.

1905.  
December 5.

*Injury to trespassing animal—Ineffectual attempts to drive away the animal—Mischief—Civil remedy—Penal Code, ss. 409 and 412.*

A person who injures a trespassing animal, without making a reasonable attempt to drive it away by less violent means, commits the offence of mischief.

THE facts appear sufficiently from the judgment.

Appeal by the Attorney-General from an acquittal by the District Judge.

1905.

*Van Langenberg, A. S.-G.*, for the Attorney-General.

December 5.

No appearance for respondent.

5th December, 1905. WENDT, J.—

In this case the Attorney-General appeals against the acquittal of the accused on an indictment charging her with having committed mischief by maiming a bull, an offence punishable under section 412 (Penal Code). The facts as found by the District Judge are that the bull had passed on accused's garden, which had a young coconut plantation. It had previously trespassed there and been driven out, and on the occasion in question had damaged some cocoanut plants. Accused chased it, and in driving it away hacked at it and cut it on the hind leg. The District Judge holds that the owner of an animal has only his civil remedy against a person who injures or kills it in the attempt to rid himself of it when it has become a nuisance, and as authority for this proposition he cites two cases reported in 2 *N. L. R.* 162 and *Koch*, 63. The more recent case, *P. C. Panadure*, 9,526, reported in 5 *N. L. R.* 23 was not cited to the District Judge, or he would, I have no doubt, have taken a different view of the accused's liability upon the facts found. The case in 2 *N. L. R.* 162, as pointed out by Bonser, C.J., in 5 *N. L. R.* 25, proceeded upon the footing that reasonable and ineffectual efforts had been made to drive the beast from the land, without doing it harm, before the injury in question was inflicted. The decision of Lawrie, J., referred to by the District Judge is distinctly to the same effect. In the present case the evidence shows that the animal, when chased by the accused, was going away from the land and would presumably have left it. The cut inflicted by the accused was therefore an injury caused without a previous ineffectual attempt to save the land from further damage. The accused therefore was guilty of causing mischief. It is however doubtful whether the animal was in the legal sense "maimed" by the cut. I therefore convict the accused (who has had notice of the present appeal and has not appeared to answer it) of having at the time and place named in the indictment committed mischief by cutting a bull belonging to Hendrick Appu, an offence punishable under section 409. I sentence accused to pay a fine of Rs. 40, or in default to undergo one month's rigorous imprisonment.