

1914.

Present: Lascelles C.J.

SANCHI NONA v. DAVIT SINNO.

273—P. C. Kalutará, 29,284/

Maiming—Cutting off the tail of a cow—Penal Code, s. 411.

The act of cutting off the tail of a cow is maiming within the meaning of section 411 of the Penal Code.

THE accused was convicted under section 411 of the Penal Code for having cut off the tail of a cow, and sentenced to six weeks' rigorous imprisonment and a fine of Rs. 50. He appealed.

E. W. Jayewardene, for appellant, relied on *Anthoni Muttu v. Samuel*¹ and *Hudley v. Appuhamy*.²

No appearance for respondent.

Cur. adv. vult.

March 27, 1914. LASCELLES C.J.—

The appellant, who was proved to have cut off the tail of a cow, has been convicted under section 411 of the Penal Code, of the offence of committing mischief by "maiming," and sentenced to six weeks' rigorous imprisonment and a fine of Rs. 50.

On appeal, it was contended on the authority of *Anthoni Muttu v. Samuel*¹ and *Hudly v. Appuhamy*² that the act of cutting off the tail of a cow does not constitute the offence of mischief by "maiming." In the former case the offence was the same as that now under consideration, and in the latter case the offence was cutting off one of a cow's teats. In those cases it was held that the acts did not amount to "maiming," inasmuch as that term means "the deprivation of a member proper for defence." As a different view of the meaning of the term was taken by Bonser C.J. in *P. C. Panadure*, 9,526,³ I am at liberty to reconsider the meaning of the word "maiming" in sections 411 and 412 of the Penal Code.

In *Anthoni Muttu v. Samuel*¹ and *Hudly v. Appuhamy*² the decision of Wendt J. was based principally, I think, on the definition of the word "maim" or "mayhem" in *Wharton's Law Lexicon*. This definition is probably an abbreviation of that given in *Coke on Littleton* 288 (a), which is as follows: "Mayhem, mahemium, membri mutilatio, or obtruncatio, cometh of the French word *mahaigne*, and signifieth a corporal hurt whereby he loseth a member, by reason whereof he is less able to fight; as by putting out his eye, beating

¹ I S. C. D. 7.

² I S. C. D. 6

³ 5 N. L. R. 23.

out his fore teeth, breaking his skull, striking off his arm, hand, or finger, cutting off his leg or foot, or whereby he loseth the use of any of his said members."

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This definition, whether the word "maim" is used to denote the offence at common law or the injury for which the law gives a civil remedy, is clearly applicable only to injury to the human person. It is equally clear that the fighting there mentioned refers to fighting by human beings in the service of the Sovereign or in the exercise of the right of self-defence. The fighting is not the fighting of animals.

Any attempt to construe the word in this technical sense, when it is applicable to domestic animals, results in gross and palpable absurdity.

What is the fighting value of a cow which is diminished by maiming? What are the particular members the loss of which renders a cow less able to fight? Is it reasonable to suppose that the framers of the Penal Code intended to give special protection only to the horns, and perhaps the heels, of a cow? These and many other questions arise if the word when applied to domestic animals is construed in its original legal sense. When laws were enacted in England punishing the maiming of cattle (7-8 *Geo. IV.*, c. 30, and 24-25 *Vict.*, c. 97) the authorities show that the word was employed in a less specialized form, to denote the deprivation of the use of a member so as to cause permanent injury, whether that member was or was not specially adapted for fighting.

In *Regina v. Richard Jeans*¹ the *ratio decidendi* was that the injury, which consisted in tearing off part of a horse's tongue, did not amount to maiming, because it was proved that the animal had sustained no permanent injury.

The same meaning was given to the word in *Rex v. Hayward*²; the word "wound" in the statute (9 *Geo. 1.*, c. 22) was distinguished from the word "maim," which it was held denoted a permanent injury. In that case the injury was to a horse's foot.

In *Rex v. Owens*³ permanent injury to the eye of the horse was held to amount to maiming.

In section 428 of the Indian Penal Code, the terms of which are identical with those of section 411 of the Ceylon Code, a similar meaning has been given to the word "maiming" (*vide* authorities cited in *Ratanlal and Dhirailal*).

As I see no sufficient ground for differing from the Magistrate's finding on the facts, I affirm the conviction and sentence and dismiss the appeal.

Appeal dismissed.

¹ 1 *Carrington Kirwan* 539.

² 2 *East's Pleas of the Crown* 1076

³ 1 *Moody's Crown Cases* 206.