Present: Mr. Justice Wendt.

1907.

November 7.

ANTHONI MUTTU *v.* SAMUEL.

P. C. Badulla, 9,876.

Mischief—Cutting a teat of a cow—"Maiming"—Permanent injury—Penal Code, ss. 409 and 412.

Cutting the teat of a cow does not amount to "maiming" within the meaning of section 412 of the Penal Code. It is an offence punishable under section 409 and not under 412 of the Penal Code, and is therefore cognizable by a Police Court.

APPEAL by the accused from a conviction under section 409 of the Penal Code.

The facts sufficiently appear in the judgment.

H. A. Jayewardene (with him *A. St. V. Jayewardene*), for the accused, appellant.

Samarakkody, for the complainant, respondent.

Cur. adv. vult.

November 7, 1907. WENDT J.—

The appellant in this case has been convicted of "mischief," in that he cut one of the teats of a cow belonging to Anthoni of Park estate, and thereby committed an offence punishable under section 409 of the Penal Code. For this offence he has been sentenced to three months' rigorous imprisonment. His counsel has submitted that the evidence is insufficient to establish the charge, but I cannot agree with him. The evidence is direct, and the Magistrate, though not considering it strong, has believed it. I cannot accede to the appellant's application for a mitigation of the punishment, because the offence is a cruel and wanton one.

The most important point argued in appeal, however, was this. Counsel submitted that the evidence disclosed an offence punishable under section 412, and not triable by the Police Court at all, but by the District Court. If that were so, it would be my duty to quash the proceedings and to direct the Police Magistrate to proceed as in a non-summary case. The point was considered by the Magistrate himself, and he says in his judgment: "Unfortunately it has been held that section 412 will not apply to cases where, like this, the animal is not permanently maimed." The medical evidence shows that the cow has not been permanently injured or rendered useless. The question is, whether it was maimed within the meaning of section 412. Maiming or *mayhem* is a technical term of the English Law, meaning, according to Wharton's lexicon, "the deprivation of a member proper for defence in fight, as an arm, leg, finger, eye,

1907. November 7. WENDT J.

or a fore tooth, yet not a jaw tooth, or the ear, or a nose, because they have been supposed to be of no use in fighting." This definition would exclude the part of which the animal in the present case was deprived, which could not properly be described as a member, nor as falling within the same category as a finger, eye, or fore tooth. In the case of *Regina v. Jeans*,[1] to which I have been referred, the prisoner was charged with feloniously maiming a horse. The evidence showed that he had wrenched away a part of its tongue. The wound had healed, and the animal was able to work as well as before, the only injury resulting from the loss of the point of its tongue being that it could not eat its corn quite so fast as before. In directing an acquittal, Wightman J. said, " there is no such permanent injury inflicted on the animal in this case as will support the count for maiming." Reading these words in the light of the argument, I think what the Court meant was that, although there was no question as to the permanency of the injury, the injury itself did not amount to maiming. Similarly, I think in the present case the cow was not maimed. The Court therefore had jurisdiction, and I dismiss the appeal.

Appeal dismissed.