

BENSON
AND
SUNDARA
Ayyar, JJ.

SREEPADA
VENKATA-
RAMANNA
v.
SREEPADA
RAMA-
LAKSHMANAM-
MA.

in holding that there can be no cause of action for the suit and accordingly dismiss this appeal with costs.

P. Nagabhushanam for appellant.

P. Narayanamurti for respondent.

JUDGMENT.—We agree with the lower Courts that the mere fabrication of an authority to adopt will not entitle the rever- sioner to claim a declaration that the authority is not genuine. The deed of authority by itself cannot affect the plaintiff's right to any property, though the further act of adoption in pursu- ance of the authority would. The authority is not the proxi- mate cause of any injury to the plaintiff's rights. Section 42 of the Specific Relief Act does not authorise such a suit and we think it would be going too far to hold that a document which is merely a preparation for a distinct and separate act which may give the plaintiff a right to declaratory relief would by itself entitle him to ask for a declaration. The observations cited from *Brindaban Chandra Shaha v. Sureswar Shaha Pramanick* (1) must be understood in connection with the facts of that case. We dismiss the second appeal with costs.

APPELLATE CRIMINAL.

Before Mr. Justice Phillips.

MARIGOWDA AND ANOTHER (ACCUSED), PETITIONERS,
v.

SRINIVASA RANGACHAR (COMPLAINANT).^o

1911.
August 10,
15.

Indian Penal Code, s. 429—Cutting off the ears of a horse is 'maiming' within section.

The cutting off of the ears of a horse is 'maiming' within the meaning of section 429 of the Indian Penal Code.

PETITION under sections 435 and 439 of the Criminal Procedure Code praying the High Court to revise the judgment of N. Gopalaswami, the First-Class Sub-Divisional Magistrate of Kollegal, in Criminal Appeal No. 27 of 1910 confirming the conviction and the sentence passed on the petitioners (1) Mari- gowda and (2) Puttan by I. Purushothama Nayudu, Taluk Second-Class Magistrate of Kollegal, in Calendar Case No. 135 of 1890.

(1) (1909) 10 C. L. J., 263 at p. 271.
Criminal Revision Case No. 196 of 1911.

Dr. S. Swaminathan for petitioners.

Public Prosecutor on behalf of the Government.

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ORDER.—The question is whether cutting off the ears of a horse amounts to “maiming” within the meaning of section 429, Indian Penal Code. In Criminal Revision Case No. 583 of 1910 MUNRO, J., was of opinion that cutting off the ear and tail of a buffalo did not amount to maiming, but he gives no reasons. With all due deference I am unable to accede to this view, if it can be said that the facts here are the same as in that case. Maiming is not defined in the Indian Penal Code, but the definition given in Webster’s Dictionary is “(1) The “privation of the use of a limb or member of the body, by “which one is rendered less able to defend himself or to annoy “his adversary. (2) The privation of any necessary part; “a crippling; mutilation; injury; deprivation of something “essential.” In Gour’s ‘Penal Law of India,’ page 1769, we “find “‘maiming’ is a term of well-known import in English “Law, and is the same as, ‘mayhem’ which meant the depriva- “tion of a member proper for defence in fight. . . . “It has, however, since acquired a wider significance, and now “means the privation of the use of a limb or member, and “implies a permanent injury. It does not then mean merely “‘wounding,’ but wounding or otherwise injuring so as to “entail a permanent injury.” In *Regina v. Jeans* (1), removing the end of a horse’s tongue was held not to be maiming on the ground that no permanent injury was inflicted—the horse being able to eat and drink but unable to eat quite so fast as before. The blinding of a mare’s eye by pouring nitrous acid into it was held to be maiming [*Rex v. Owens* (2)]. Cutting off the ears does not mean the removal of the whole organ of hearing, but it is, I think, a permanent injury to one of the members of the body in that it must permanently affect the sense of hearing, and it is certainly a mutilation, which is also one of the definitions in Webster’s Dictionary. Stress is laid on the permanency of the injury in the two English cases cited—*vide* also “Russell on Crimes,” volume II, page 976. I therefore hold that cutting off the ears of a horse does amount to maiming. The petition is accordingly dismissed.

(1) (1844) 1, Carrington and Kirman, 539.

(2) (1828), 1, M. C. C., 205.