the plaintiff and concealing the transaction from the company; the necessity in his mind, therefore, for immediate action. I think I am not drawing an unreasonable conclusion, looking besides at the plaintiff's conduct afterwards; that he, the plaintiff, really did not understand when subscribing the affidavit prepared by McLeod, that he was making a claim on the Western or any claim other than upon his original insurance which had been effected with the Royal eight months previously, I think the evidence shows that on the morning of the 21st July, McLeod, hearing that the inspector of the Western Insurance Company was coming down, hurried out to the plaintiff with the receipt issued in the name of the Western Insurance Company, and instructed him that when the agent went out to the plaintiff he was to show him the latter receipt and say that his claim rested on it; the plaintiff seems then at once to have felt that there was something wrong, and without waiting to see the Inspector or attempting to impose upon him or aid McLeod in his fraud, comes on at once on the same day to his legal adviser, tells the whole truth, has it explained to the agents of both companies, for whom McLeod had been acting, and makes his claim upon the Royal, admitting that he has no claim upon the Western. I cannot, under these circumstances, I think, hold that the plaintiff abandoned his right to look to the Royal, or made an insurance in the Western in substitution or otherwise—but that what was done in his respect, was done by McLeod, and the plaintiff made an innocent instrument for him in the matter.

Decree for the plaintiff for amount of insurance and interest according to the terms of the policy, as if it had issued, and costs.

ENGLISH REPORTS.

CROWN CASES RESERVED.

REG. v. GEORGE BULLOCK.

Malicious injury to cattle—24 & 25 Vic. c. 97, sec. 40—Proof of wounding—Instrument.

It is not necessary in order to prove a wounding within 24 & 25 Vic. cap. 97, sec. 40. to show that injury done to the cattle has been caused by any instrument other than the hand of the prisoner.

[C. C. R., Jan, 25,—16 W. R, 405.]

Case reserved by the chairman of the Quarter Sessions for the County of Gloucester.

George Bullock was tried before me on an indictment which charged him with maliciously and feloniously wounding a gelding, the property of James Ricketts. The prisoner pleaded not guilty.

On the trial it was proved that the prisoner, who was sent by his master with a cart and horse to fetch stone from a distant field on the 20th of December last, at half-past one p.m., returned about four p.m., bringing back the horse with his tongue protruding seven or eight inches, and unable to draw it back into his mouth. The veterinary surgeon who examined the horse the following day proved that he found the roots and lower part of the tongue much lacerated, and the mouth torn and clogged with clotted blood; the injury he considered might have been done by a violent pull of the tongue on one side. He was obliged to amputate five inches of the tongue and the horse is likely to recover. The prisoner's statement was that the horse bit at him and he did it in a passion. There was no evidence to show that any instrument beyond the hands had been used. The prisoner's counsel contended that no instrument having been proved to be used in inflicting the injury, the prisoner could not be convicted under the 24 & 25 Vic. cap. 97, sec. 40. For the prosecution it was maintained that under the statute it was not necessary to show that the injury had been caused by any instrument other than the hand or hands of the prisoner. The prisoner's counsel, on the point being reserved, declined to address the jury, and a verdict of guilty was found by them.

I respited the judgment and liberated the prisoner on recognisance, in order that the opinions of the justices of either bench and the Barons of the Exchequer might be taken on the question—whether the prisoner was properly convicted of the wounding, there being no evidence to show that he used any instrument other than his hand or hands?

No counsel appeared for the prisoner.

Sawyer for the prosecution.—This was a wounding within the meaning of 24 & 25 Vic. cap. 97, sec. 40. COCKBURN, C. J.—This indictment was simply for wounding?] Yes. There was no count for maiming, as there is authority that such a count could not be sustained where there is no evidence of a permanent injury: *Reg.* v. *Jeans*, 1 C. & K. 539. That case was upon statute 7 & 8 Geo 4, cap. 30, sec. 16, which in terms is substantially the same as the present section; but it is no authority that such an injury as this is not wounding. There the point seems not to have been argued by the counsel for the prosecution, and the decision only goes to show this injury would not be a maiming: *Reg.* v. *Owens*, 1 M. C. C. 205; and *Reg.* v. *Hughes*, 2 C. & P. 420, are there cited by the counsel for the prisoner to show that an instrument is necessary to constitute a wounding; but the former case only shows that pouring acid into the ear of a mare by which her sight was destroyed is a maiming; and in the latter case, biting off the end of a person's nose was held not a wounding within 9 Geo. 4, cap. 31, sec. 12, where the words are "stab, cut or wound any person." In *Jenning's case*, 2 Lewin's C. C. 130, where the prisoner with his teeth bit off the prepuce of a child three years old, it was held not a wound within 1 Vic. cap. 85, sec. 4; but there also the words of the Act are "stab, cut, or wound," and very different from those of the section on which this indictment is framed.

COCKBURN, C. J.— You have satisfactorily accounted for the decisions referred to; but no difficulty exists in the present case as this statute makes it felony, unlawfully and maliciously to "kill, maim, or wound" any cattle, and we may interpret the word "wound" in its ordinary acceptation, which means any laceration which breaks the continuity of the internal skin. It may not manifest so much malice on the part of a man if, in his passion, he uses his fist only; but it is within the words of the statute, and it is probable that in altering the words of this statute the Legislature may have intended to get rid of the difficulty.

The rest of the Court concurred.

Conviction affirmed.