leased to them, and in default of their doing so, decreed their ejectment. From this decree the renter has preferred no second appeal and it is not necessary to consider whether the decree is right in ordering a conditional ejectment. To that extent the decree is in the appellants' favor, and we are not prepared to attach weight to the contention that the Judge had no power to grant prospective relief, nor do we consider that in the absence of a local custom, tenants are entitled to convert the land under cultivation into a mango grove without the consent of their landlord and thereby change the nature of the property. As tenants from year to year, the appellants were under the obligation to restore the land in the condition in which it was when it was leased to them, and they were not at liberty to change the usual course of husbandry except with the consent of their landlord. Having regard to the form in which the decree is made, we do not consider them to be entitled to notice after committing waste. The decision of the Judge is right, and we dismiss this second appeal with costs. But in view to giving the appellants sufficient time to comply with the direction contained in the decree, we order that the current fasli mentioned in the decree of the Lower Appellate Court be taken to be the fasli current at the date of this decree.

APPELLATE CRIMINAL.

Before Sir Arthur J. H. Collins, Kt., Chief Justice, and Mr. Justice Parker.

1887. July 8.

QUEEN-EMPRESS

against

JOGAYYA.*

Penal Code—Act XLV of 1860, *s.* 504—*Intent to provoke a breach of the peace.*

A abused B to such an extent as to reduce B to a state of abject terror:

Held, that A having given to B such provocation as would under ordinary circumstances have caused a breach of the peace was guilty of an offence under s. 504 of the Penal Code.

THIS case was reported for the orders of the High Court under

* Criminal Revision Case No. 102 of 1887.

EMPRESS v. JOGAYYA.

s. 438 of the Code of Criminal Procedure, by J. Thomson, Acting Sessions Judge of Ganjam.

The accused was convicted by the Second-class Magistrate of Chicacole, under s. 504 of the Penal Code. He appealed to the Principal Assistant Magistrate of Ganjam, who acquitted him, observing that the complainant had been reduced to a state of abject terror by the abusive language of the accused, whose insults were accordingly unlikely to cause him to break the public peace or commit any other offence.

The Sessions Judge submitted the case with the observation that, in order to substantiate a charge under s. 504 of the Penal Code, it was not in his opinion necessary that the "provocation given" should have been accepted by the other party.

Counsel were not instructed.

The Court (Collins, C.J. and Parker, J.) made the following

ORDER :—The accused was convicted of intentionally insulting and thereby giving provocation to the complainant, with the intention, or knowing it to be likely, that such provocation would cause the complainant to break the public peace.

On appeal, this judgment was reversed on the ground that the complainant was in such an abject state of terror that it was impossible to suppose the provocation was likely to cause him to break the public peace.

We agree with the Sessions Judge that the law makes punishable the insulting provocation which, under ordinary circumstances, would cause a breach of the peace to be committed, and that the offender is not protected from the consequences of his acts because the person insulted became too terrified to accept the provocation in the manner intended.

We set aside the acquittal and direct that the appeal be reheard.