

REVISIONAL CRIMINAL.

1901
November 15.*Before Mr. Justice Blair.*

KING-EMPEROR v. MOTI LAL AND ANOTHER.

*Act No. XLV of 1860 (Indian Penal Code), sections 426, 298, 504—**Mischief—Wilful pollution of food served at a caste dinner.*

Certain Hindus present at a caste dinner had sat down to partake of the food which had been served to them, when certain other members of the caste came, and, after telling those who were seated to move to another place, which they refused to do, threw down a shoe amongst the men who were seated. The persons who threw the shoe were convicted of mischief, on the ground that their action had polluted the food, and had, from a Hindu religious point of view, rendered it unfit to be eaten. On reference by the Sessions Judge, it was held that this conviction was wrong; neither could the accused be convicted under section 298 or under section 504 of the Indian Penal Code on the facts found.

THIS was a reference under section 428 of the Code of Civil Procedure made by the Sessions Judge of Benares. The facts of the case were as follows. A member of the Mallah caste was giving a feast to the brotherhood. After certain religious ceremonies had been performed and the Brahmans had been fed, the members of the caste were sitting down to take their food. Some of the party had already taken their seats and food had been served to them, when two Mallahs, Moti Lal and Bachcha, appeared on the scene. They first asked the people who were seated to get up and move elsewhere, and when they declined to do so, Moti Lal and Bachcha threw down a shoe on the ground in front of the persons who were about to eat. This action made the food which had been served impure; the guests refused to eat it, and the party broke up in confusion. Moti Lal and Bachcha were tried by a Magistrate and convicted of the offence of mischief punishable under section 426 of the Indian Penal Code. The Magistrate imposed a fine of Rs. 40. The convicts applied in revision to the Sessions Judge, who, being of opinion that section 426 did not apply to the case, reported the case to the High Court for orders.

The Assistant Government Advocate (Mr. W. K. Porter), for the Crown.

BLAIR, J.—Moti Lal Mallah and Bachcha Mallah have been convicted by a Magistrate of an offence under section 426 of the Indian Penal Code, and sentenced to a fine of Rs. 40 each, or in default to be imprisoned for one and a half months. The

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matter came in revision before the Sessions Judge, and he was of opinion that the facts disclosed no offence within the meaning of section 426. The facts, as found, are, that at a certain feast, which had been precluded by recitals from some religious books, after such recitals, the Brahmans having first taken their food, a number of persons of the same caste as the persons who have been convicted, took their seats to the south—whether south of a room or courtyard does not appear. That for some reason unexplained, Moti Lal Mallah and Bachcha Mallah wanted the persons who were seated to move from the south to the north. They refused to do so—the refusal likewise is unexplained. The food which was going to be eaten was on the spot, and the two persons convicted threw a shoe on the adjacent ground, the effect of which would be to render the food impure from the point of view of Hindus of the caste of the persons who were there assembled. They were thus, on account of their conscientious scruples, unable to eat it. It is quite manifest that section 426 can have no application to this state of facts. It deals only with a physical injury from a physical cause. It has been suggested by Mr. Porter that the case may fall within one of two other sections. The first is section 298, which renders punishable the uttering of words or sounds, or making gestures, or the placing of any object with the intention of wounding the religious feelings of any person. In my opinion this case is outside the scope and tenour of section 298. My attention has been called to the possibility that the facts of this case may fall within the purview of section 504. That section refers to an insult intentionally inflicted, and which was likely to result in a breach of peace. I doubt very greatly whether the intent here was an intent to insult. It was an intent to deprive these persons of an expected feast, and the insult, if any, would have been incidental and not intentional. However, these persons who have been convicted have not been charged under section 504, and I have no materials before me on which I could find that the facts fell within the provisions of that section. I therefore set aside the sentence under section 426, and order that the fines, if paid, be returned, and if the accused have been confined, that they be at once released.