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cannot agree with the learned commentators. My opinion is in agreement with the opinion expressed in that case. All that is necessary to prove the offence is that a public servant had promised to show favour in the exercise of his official functions, although he might in reality have no such opportunity.

The conviction is upheld. I reduce the sentence to rigorous imprisonment for one month.

APPELLATE CRIMINAL.

Before Mr. Justice Dalal.

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Indian Penal Code, sections 489A/511—Attempt at counterfeiting currency notes—Product must be capable of causing deception—"Counterfeit"—Indian Penal Code, section 28.

For a thing to be termed "counterfeit" according to the definition given in section 28 of the Indian Penal Code, there should be some sort of resemblance sufficient to cause deception. In a case of counterfeiting currency notes, where the ability of the accused persons and the capacity of the materials with which they worked were not such as to produce a currency note which would take in even the most ignorant villager: *Held* there could be no conviction under section 489A, read with section 511, of the Indian Penal Code.

THE facts of the case sufficiently appear from the judgement of the Court.

Appeal from jail.

The Government Pleader (Mr. Sankar Saran), for the Crown.

DALAL, J. :—Badri has been convicted of an offence of possessing instruments or materials for forging or counterfeiting currency notes, under section 489D. He

*Criminal Appeal No. 656 of 1928, from an order of L. V. Arnlagh, Sessions Judge of Shahjahanpur, dated the 5th of July, 1928.

and Jwala have been convicted of an offence under section 489A of counterfeiting currency notes. The offence of which they have been convicted is one of an attempt under section 511. These materials were found in Badri's house, and it has been proved that his intention was to forge currency notes. In my opinion, in considering an offence under this section it is not necessary to prove that Badri had the ability to produce counterfeit currency notes with the materials in his possession. The question, therefore, will not arise whether his ability and the materials at his command could have produced a note which may be termed counterfeit according to the definition given in section 28 of the Indian Penal Code.

The case, however, is different under section 489A. Whoever counterfeits, or knowingly performs any part of the process of counterfeiting, any currency-note or bank-note is to be punished under that section. A person is said to counterfeit who causes one thing to resemble another thing, intending by means of that resemblance to practise deception or knowing it to be likely that deception will thereby be practised. It is true that it is not essential that the imitation should be exact, but there should be some sort of resemblance sufficient to cause deception. In the present case the learned Judge has ridiculed both the ability of the appellants and the capacity of the materials to produce such a note as would take in even the most ignorant villager. He was of opinion that the accused were experimenting in order to discover a satisfactory method of counterfeiting. Such an experimental stage cannot be considered an attempt at counterfeiting. The learned Government Pleader rightly drew my attention to the illustrations to section 511 under which in cases where theft would not be possible by reason of the absence of any valuable property there would be an attempt at theft. In those cases, however, the accused does an act towards the commission of

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theft. In the present case no such act is possible because according to the Sessions Judge the appellants are incapable of performing such an act. If the materials had been perfect and the appellants had ability, and through some error in the operation or by sudden seizure the perfect article had not been produced, the acts of the appellants could have been called attempts. Every one, if he is so inclined, can commit a theft. It does not require any special ability. In the case of the counterfeiting of a currency note both ability and materials of a particular kind are required. If those materials and ability are not present it cannot be said that an act performed without the ability to counterfeit and without materials which may help to a useful counterfeiting would be an attempt. Moreover in the present case the appellants had done everything possible that they could do, and the result was a most pronounced failure. The stage of attempt had been passed and yet there had been a failure of realization. When admittedly according to the Sessions Judge no offence was committed under section 489A even after the appellants had used their full ability and utilized all the materials at their disposal, recourse cannot be had to the provisions of the Code relating to an attempt simply because the appellants' desire had ended in failure.

I uphold the conviction of Badri under section 489D but reduce the sentence to rigorous imprisonment for five years. His appeal is otherwise dismissed. I set aside the conviction and sentence of Jwala and order his release.