Present : Wood Renton J. *July 27, 1910*

FRASER *v.* SINNAIYA.

420, *P. C., Matale*, 34,850.

Insult—Affirmative evidence to prove that insult caused actual provocation not necessary—Penal Code, s. 484.

In a prosecution under section 484 of the Penal Code it is not necessary for a conviction that there should be affirmative evidence to the effect that the insult caused actual provocation. It is sufficient, if the insult is clearly of a provocative character,—of a character likely to produce a breach of the public peace on the part of the person towards whom it is directed,—and if the Court is satisfied from all the circumstances of the case that the accused must have intended to produce, or must have known that he would produce, that result.

THE accused, a cooly, excited by the refusal of the respondent to give him and other coolies their discharge, made use of insulting language towards the respondent, and stepped out in front of the other coolies and, showing him a stick which he held

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in his hand, said: "If you come to the estate, I will break your head." He was charged under section 484, Penal Code, and was sentenced to six weeks' rigorous imprisonment.

The accused appealed.

Wadsworth, for accused, appellant, admitted that the words used were insulting, but contended that there was no proof that the complainant was thereby provoked to commit a breach of the peace. He cited *P. C., Hatton*, 7,282[1] and *Corea v. Anthonipillai*.[2]

Vernon Grenier, for respondent.—The Courts have always regarded, not so much the actual effect caused by the insulting words, but the probability of an offence resulting from the use of the words. See *R. v. Jogaya*,[3] *Senanayake v. Don John*,[4] *Sri Mudali v. Sebastian*.[5]

Cur. adv. vult.

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His Lordship, after disposing of the other points raised by the counsel for the appellant, continued :—

There remains only the third point as to whether or not it is necessary that either the complainant or some of his witnesses should, in a case of this character, give affirmative evidence to the effect that the insult, which forms the subject of the charge, caused actual provocation. I was inclined during Mr. Wadsworth's argument to think that this question should be answered in favour of the appellant, although, even if I had taken that view, I should not have set aside the conviction and sentence, but simply have sent the case back for the purpose of enabling formal evidence on the point to be given. After having heard Mr. Grenier on behalf of the respondent, and considered all the cases cited by Mr. Wadsworth and him in their careful and helpful arguments, I think it is not necessary that the complainant should say in so many words "I was provoked by the conduct to which I complain." It is sufficient, I think, if the insult is clearly of a provocative character, of a character likely to produce a breach of the public peace on the part of the respondent towards whom it is directed and if the Court is satisfied from all the circumstances of the case that the accused must have intended to produce, or must have known that he would produce, that result. It seems to me that this is the view of the law taken by Mr. Justice Lawrie in the case *Senanayake v. Don John*.[4] There

[1] *(1910) 2 C. L. R. 16, 22.*
[2] *(1906) 5 Tam. 88.*
[3] *(1887) I. L. R. 10 Mad. 353.*
[4] *(1901) 5 N. L. R. 22.*
[5] *(1898) 4 Bal. 133.*

is nothing contrary to it in the decision of Mr. Justice Wendt in *Corea v. Anthonipillai*,[1] where the *ratio decidendi* clearly is that the absence, at the time when the insult was given, of the person said to have been insulted rendered it impossible that he could have received the immediate provocation which section 484 contemplates. The same view of the law as I am adopting here, was taken by Sir Arthur Collins C.J. and two other Judges in *Queen Empress v. Venkatisagadu and others*[2] under section 504 of the Indian Penal Code, which corresponds with section 484 of our own. I may also refer in the same connection to the decision of Sir John Bonser C.J. in *Sri Mudali v. Sebastian*,[3] that section 484 is directed to the case of an open and avowed insult, which might cause the person insulted to assault the person who insults him. On the facts of the present case there can be no doubt but that such behaviour as the appellant has shown to have adopted towards his employer was provocative in a high degree, and there is some evidence showing that the respondent regarded it in that light, for he forthwith put the case in the hands of the police. On these grounds the appeal must be dismissed.

Appeal dismissed.