

1867.
July 11.

REG. v. NABA'JI valad VITHOJI.

Ind. Pen. Code, Secs. 323 and 324—Crim. Proc. Code, Sec. 427.

In a case referred by a District Magistrate, under Sec. 427 of the Crim. Proc. Code, on the ground that the charge should have been under Sec. 324 of the Penal Code,—an offence not within the cognisance of a Second Class Subordinate Magistrate ; and not under Sec. 323 :—

The Court passed no order ; and remarked that the case should not have been referred under Sec. 427, which applies only to the Court of Session acting in appeal from a court subordinate to it.

THE accused was convicted by a Second Class Subordinate Magistrate, under Sec. 323 of the Indian Penal Code ; and sentenced to suffer eight days' rigorous imprisonment.

The case was referred for the orders of the High Court, under Sec. 427 of the Criminal Procedure Code, by H. N. B. Erskine, Acting Magistrate of Ahmednagar, with the following remarks :—

“ The prisoner appears to have used violence to his wife,—to have burnt her on the thigh with a hot iron. The offence was one, therefore, that should have been tried under Sec. 324 of the Indian Penal Code ; and not one within the cognisance of a Second Class Subordinate Magistrate.

“ I may add, the wounds do not seem to have been very serious, as on the 8th of April, sixteen days after the attack, the complainant stated they had healed. If this was the case, however, the offence would not, under any circumstances, be ‘ grievous hurt,’ as the sufferer was not for twenty days in severe bodily pain.”

PER CURIAM (COUCH, C.J., NEWTON and WARDEN, JJ.) :—
The Court returns the papers, and passes no order ; as it does not think it right, under the circumstances, to direct the re-trial of the accused upon the proper charge.

It should be pointed out to the Magistrate that he should not have referred the case under Sec. 427 of the Criminal Procedure Code ; as the offence of which the accused was convicted was an offence triable by the Second Class Subordinate Magistrate. Sec. 427 applies only to the Court of Session acting in appeal from a court subordinate to it.

No order.