

Department

MADRAS RECORD OFFICE.

Judicial DEPARTMENT.

Dated 29. 7. 1882 19

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*Proceedings of the Madras Government, Judicial Department,
29th July 1862.*

No. 281. Read the following Despatch from the Right Honorable Sir C. WOOD, Bart., Secretary of State for India; to His Excellency the Honorable the Governor in Council, Fort Saint George, dated London, 16th June 1862, No. 14.

I herewith transmit for your information and for that of the Chief Judicial authorities under your Government, six copies of a Despatch No. 14, addressed by me on the 15th May, to the Government of India, on the course to be followed with a view to prevent uncertain and contradictory constructions of the Penal Code, which, from the 1st January last, has become the Criminal Law for the whole of the British possessions in India.

Despatch from the Right Honorable Sir C. WOOD, Bart., Secretary of State for India; to His Excellency the Right Honorable the Governor General of India in Council, dated London, 15th May 1862, No. 14.

1. The Penal Code having become the Criminal Law for all India, I am desirous, at this early period of its operation, of drawing your attention to the remarks of the Indian Law Commissioners, in their letter to the Government of India of the 14th October 1837, relative to the serious inconvenience which is likely to arise from uncertain and contradictory constructions of the Code by Courts possessing equally competent authority, and to the course which they suggest, in order to avoid a state of things so undesirable, and so calculated to prejudice the due administration of justice.

2. The remarks of the Commissioners (which, notwithstanding their length, I have annexed to this Despatch) appear to me very important; and I request that you will lose no time in drawing to them the attention of the Members of the High Court at Calcutta, and of the Supreme and Sudder Courts elsewhere, and of the Chief Judicial authorities in territories over which the jurisdiction of those Courts does not extend, with the view of obtaining their assistance and co-operation in giving effect to the suggestions of the Commissioners, and of thereby preventing, as far as possible, any uncertainty in regard to a matter so important as the Criminal Law applicable to the whole of the British possessions in India.

3. There is little doubt that, when the High Courts shall have been established throughout the Presidencies, all the Judicial authorities will be guided by the decisions of those Courts, and by the interpretation put by the Judges presiding over them on difficult and doubtful portions of the Code. On important matters connected with the Code, the High Courts of the Presidencies should be encouraged to communicate with each other as to the interpretation to be put on any doubtful or difficult points of the Code, and to lay such suggestions regarding them as they may think proper, before their respective Governments. The Sudder Court at Agra might likewise be instructed to communicate on such points with the High Court at Calcutta, and the Judicial Commissioners or other chief Judicial authorities of the Non-regulation Provinces, with the High Court of the Presidency to the Government of which those Provinces are respectively subordinate.

4. Your own attention is requested to the remarks of the Commissioners, as to the mode in which those Penal laws which, from time to time, you may find it necessary to pass, should be framed so as to form part of the Penal Code.

Extract from Letter of the Indian Law Commissioners to the Government of India, dated 14th October 1837.

The decisions on particular cases which we have annexed to the provisions of the Code resemble the Imperial rescripts in this, that they proceed from the same authority from which the provisions themselves proceed. They differ from the Imperial rescripts in this most important circumstance, that they are not made *ex post facto*; that they cannot, therefore, be made to serve any particular turn; that the persons condemned or absolved by them are purely imaginary persons, and that, therefore, whatever may be thought of the wisdom of any judgment which we have passed, there can be no doubt of its impartiality.

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The publication of this collection of cases decided by legislative authority will, we hope greatly limit the power which the Courts of Justice possess of putting their own sense on the laws. But we are sensible that neither this collection, nor any other, can be sufficiently extensive to settle every question which may be raised as to the construction of the Code. Such questions will certainly arise, and, unless proper precautions be taken, the decisions on such questions will accumulate till they form a body of law of far greater bulk than that which has been adopted by the Legislature. Nor is this the worst. While the judicial system of British India continues to be what it now is, these decisions will render the law not only bulky, but uncertain and contradictory. There are, at present, eight Chief Courts subject to the legislative power of your Lordship in Council, four established by Royal Charter, and four which derive their authority from the Company. Every one of these tribunals is perfectly independent of the others. Every one of them is at liberty to put its own construction on the law, and it is not to be expected that they will always adopt the same construction. Under so inconvenient a system, there will inevitably be, in the course of a few years, a large collection of decisions diametrically opposed to each other, and all of equal authority.

How the powers and mutual relations of these Courts may be placed on a better footing, and whether it be possible or desirable to have in India a single tribunal empowered to expound the Code in the last resort, are questions which must shortly engage the attention of the Law Commission. But, whether the present judicial organization be retained or not, it is most desirable that measures should be taken to prevent the written law from being overlaid by an immense weight of comments and decisions. We conceive that it is proper for us, at the time at which we lay before your Lordship in Council the first part of the Indian Code, to offer such suggestions as have occurred to us on this important subject.

We do not think it desirable that the Indian Legislature should, like the Roman Emperors, decide doubtful points of law which have actually been mooted in cases pending before the tribunals. In criminal cases, with which we are now more immediately concerned, we think that the accused party ought always to have the advantage of a doubt on a point of law, if that doubt be entertained after mature consideration by the highest judicial authority, as well as of a doubt on a matter of fact. In Civil suits which are actually pending, we think it on the whole desirable to leave to the Courts the office of deciding doubtful questions of law which have actually arisen in the course of litigation. But every case in which the construction put by a Judge on any part of the Code is set aside by any of those tribunals from which, at present, there is no appeal in India, and every case in which there is a difference of opinion in a Court composed of several Judges as to the construction of any part of the Code, ought to be forthwith reported to the Legislature. Every Judge, of every rank, whose duty it is to administer the law as contained in the Code, should be enjoined to report to his official superiors every doubt which he may entertain as to any question of construction which may have arisen in his Court. Of these doubts, all which are not obviously unreasonable ought to be periodically reported by the highest judicial authorities to the Legislature. All the questions thus reported to the Government might, with advantage, be referred for examination to the Law Commission, if that Commission should be a permanent body. In some cases it will be found that the law is already sufficiently clear, and that any misconstruction which may have taken place is to be attributed to weakness, carelessness, wrongheadedness, or corruption on the part of an individual, and is not likely to occur again. In such cases it will be unnecessary to make any change in the Code. Sometimes it will be found that a case has arisen respecting which the Code is silent. In such a case it will be proper to supply the omission. Sometimes it may be found that the Code is inconsistent with itself. If so, the inconsistency ought to be removed. Sometimes it will be found that the words of the law are not sufficiently precise. In such a case it will be proper to substitute others. Sometimes it will be found that the language of the law, though it is as precise as the subject admits, is not so clear that a person of ordinary intelligence can see its whole meaning. In these cases it will generally be expedient to add illustrations, such as may distinctly show in what sense the Legislature intends the law to be understood, and may render it impossible that the same question, or any similar question, should ever again occasion difference

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of opinion. In this manner, every successive edition of the Code will solve all important questions as to the construction of the Code which have arisen since the appearance of the edition immediately preceding. Important questions, particularly questions about which Courts of the highest rank have pronounced opposite decisions, ought to be settled without delay, and no point of law ought to continue to be a doubtful point more than three or four years after it has been mooted in a Court of Justice. An addition of a very few pages to the Code will stand in the place of several volumes of reports, and will be of far more value than such reports, inasmuch as the additions to the Code will proceed from the Legislature, and will be of unquestionable authority, whereas the reports would only give the opinions of the Judge, which other Judges might venture to set aside.

It appears to us also highly desirable that, if the Code shall be adopted, all those Penal laws which the Indian Legislature may, from time to time, find it necessary to pass should be framed in such a manner as to fit into the Code. Their language ought to be that of the Code. No word ought to be used in any other sense than that in which it is used in the Code. The very part of the Code in which the new law is to be inserted ought to be indicated. If the new law rescinds or modifies any provision of the Code, that provision ought to be indicated. In fact, the new law ought, from the day on which it is passed, to be part of the Code, and to affect all other provisions of the Code, and to be affected by them, as if it were actually a Clause of the original Code. In the next edition of the Code, the new law ought to appear in its proper place.

No. 282.

ORDER THEREON, 29th July 1862, No. 1,199.

Copies of this Despatch and of its enclosures will be furnished to the Judges of the Supreme and Sudder Courts.

(Signed) A. J. ARBUTHNOT,
Acting Chief Secretary.

No. 283. To the Honorable Sir COLLEY HARMAN SCOTLAN, Kt., Chief Justice, and the Honorable Sir ADAM BITTLESTON, Kt., Puisne Judge of Her Majesty's Supreme Court of Judicature, Madras, dated Fort Saint George, 29th July 1862, No. 1,199A.

We have the honor to forward to you copies of a Despatch, 16th ultimo, No. 14, from the Right Honorable the Secretary of State for India, and of its enclosures, relative to the course to be followed with a view to prevent uncertain and contradictory constructions of the Penal Code.

Legislative Despatch to Government of India, 15th May 1862, No. 14.
Extract from letter of the Indian Law Commissioners to Government of India, 14th October 1837.

We have &c.,

(Signed) W. A. MOREHEAD,
(") E. MALTBY.

Exd. F. Cartledge.

Judicial Department.

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PROCEEDINGS of the MADRAS GOVERNMENT.

*Read Despatch from
the Secretary of State — Enter 16 June '62 No 14.*

Order — 29 July 1862 No 1199.

*Copies of this Despatch
& of its Enclosures will
be furnished to the
Judges of the Supreme
& Sudder Courts.*

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The Sudder Court.

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Sept. 31st

Judicial.

N^o 1199-1

The Honble Sir Colley Harman Scotland, Kt.
Chief Justice, &
The Honble Sir Adam Bittleston, Kt.,
Justice Judge of
H. M. Supreme Court of Judicature
Madras.

Honble Sirs.

We have the honor to
forward to you copies
of a Despatch, 15th Oct.
N^o 14, from the Rt. Hon.
ble the Secretary of State
for India, & of its en-
closures, relative to the
course to be followed
with a view to prevent
uncertain & contradic-
tory constructions of
the Penal Code.

Legislative Despatch to
Govt. of India, 15th
May '52. N^o 14.
Extract from Letter of
the Indian Law
Commissioners to
Govt. of India, 14th Oct.
1837.

Fort St. George
29 July 1882

Y^{rs} M^{rs}

Y^{rs} M^{rs}

Chd / 1862. Department.

No. 1199.

PROCEEDINGS OF GOVERNMENT.

Dated 29 July 1882

It is hereby ordered
that a copy of the
Despatch, 15th Oct.
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ble the Secretary of State
for India, & of its en-
closures, relative to the
course to be followed
with a view to prevent
uncertain & contradic-
tory constructions of
the Penal Code, be
forwarded to the Honble
Sir Colley Harman Scotland, Kt.,
Chief Justice, & to the
Honble Sir Adam Bittleston, Kt.,
Justice Judge of the
H. M. Supreme Court of
Judicature, Madras.

28/10/82

1861. Department.

No.

PROCEEDINGS OF GOVERNMENT.

Dated 17th 1861.

Communication to the Chief
of the High Court from the
Deputy relative to the
Indian Penal Code.