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TAMIL NADU ARCHIVES

GOVERNMENT OF TAMIL NADU

Judicial

DEPARTMENT

G.O. No.	973-74	Press.
B.P. No.		Mis.
173-175		
Dated	23-6-1862	198 .

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Not to be folded or roughly handled

Proceedings of the Madras Government, Judicial Department,

23rd June 1862.

No. 173. Read the following letter from the Honorable the Judges of Her Majesty's Supreme Court, Madras; to the Honorable the Governor in Council, &c., &c., &c., Fort Saint George, dated 4th June 1862.

We have the honor to acknowledge the letter of your Excellency in Council, dated the 2nd of May last, forwarding copies of a Bill to repeal Act 16 of 1852, and to re-enact some of its provisions and further to improve the administration of Criminal Justice in Her Majesty's Supreme Courts of Judicature; and requesting our attention to Section 55 of the Bill with reference to the last paragraph of the "statement of objects and reasons."

The Bill we find has passed into an Act which received the assent of His Excellency the Governor General of India on the day before the date of the letter of your Excellency in Council, and having now had an opportunity of considering the several provisions of the Act (Act 18 of 1862), we beg to state that we see no objection to its provisions so far as they go and we think it desirable that the Act should under Section 55 be brought into operation in Her Majesty's Supreme Court of Judicature in this Presidency with as little delay as possible.

We do not refer to other matters of procedure that now require alteration and amendment as we see by the preamble of the Act that it has not been passed as a complete measure, but pending only the preparation of a Code of Criminal Procedure for Her Majesty's Supreme Courts of Judicature.

We avail ourselves however of this opportunity to direct the attention of the Government to one or two matters connected with the punishment of offences under the Penal Code. By Section 75 of the Code provision is made for the severer punishment of certain offences after a previous conviction; and it seems, to say the least, a question of doubt whether a person convicted of any offence punishable under Chapters 12 and 17 of the Code with three years' imprisonment and upwards, and who before the coming into operation of the Code, had been convicted even of felony, can be subjected to any greater punishment than that provided for a first offence. It can hardly have been intended to confer the greater punishment on the committing of at least two offences under the Code and it seems to us most desirable that all doubt as to the power to inflict the greater punishment after a former conviction, previous to the coming into operation of the Code, should be removed. In the English Statutes relating to previous convictions it will be seen that convictions before the passing of the Statutes are expressly provided for.

Another matter to which we would call attention is this:—When Sections 75 and 79 of the Code are considered together it is doubtful whether it could have been intended to give a power to award the punishment of transportation for life after a previous conviction, where the maximum imprisonment for the first offence is three years and where therefore the only maximum alternative punishment would be six years' imprisonment.

And certainly as regards the offence of "theft," and other offences of a like character made punishable with the maximum imprisonment of three years, it is not too much to say that hardly in any case would the power (if it exists) to pass so extreme a punishment as transportation for life be carried into effect. The result is that as the law now stands a criminal though several times before convicted of theft or the like offence would not receive any greater punishment than that of imprisonment for a term not exceeding six years, or a fine. We think it a defect as regards theft and other cases similarly punishable that when committed after a previous conviction, there should not exist a discretionary power to pass a sentence of transportation for a limited term of years not less than seven years. This might have been done under the law in force here before the Code came into operation, and there can be no doubt that after previous convictions have taken place, further imprisonment as a punishment (with Natives more especially) loses its proper effect both as regards the Criminal and other evil disposed persons.

(Signed) C. H. SCOTLAND.

(") A. BITTLESTON.

Proceedings of the Madras Government, Judicial Department,
23rd June 1862.

No. 174. To the Honorable Sir COLLEY HARMAN SCOTLAND, 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, 23rd June 1862,
No. 973.

In acknowledging the receipt of your letter of the 4th instant, we have the honor to inform
you that a Notification to the effect required by the 55th Section of Act XVIII, 1862, (India)
will be published in next Tuesday's Gazette.

2. The remarks made in the 4th and following paragraphs of your letter, with reference
to certain provisions of the Penal Code which, you consider, require to be amended, will be
brought to the notice of the Government of India.

(Signed) W. T. DENISON.
(") H. GRANT.
(") W. A. MOREHEAD.
(") E. MALTBY.

No. 175. To the Secretary to the Government of India, Home Department, dated Fort Saint
George, 23rd June 1862, No. 974.

With reference to the annexure to the Bill lately brought into the Legislative Council by
the Honorable H. B. Harington, and which has been passed as Act XVIII of 1862, I am directed
to state for the information of His Excellency the Governor General in Council that copies of
the Bill in question and of its annexure having been furnished to the Judges of Her Majesty's
Supreme Court at Madras, they have recommended that the Act should be at once declared
applicable to the Supreme Court of this Presidency and that a Notification to that effect has been
accordingly published in the Official Gazette.

2. The Judges in their letter, a copy of which is annexed, call attention to certain provi-
sions of the Penal Code with reference to the punishment of offences,
which in their opinion require to be amended. In submitting, their
remarks for the consideration of the Government of India, I am directed
to say, that the Madras Government see no necessity for any alteration in the wording of the
Code on the first of the two points referred to. It appears to His Excellency in Council that
the words "any offence punishable under the Code" clearly include any offence of the nature
indicated although it may have been committed before the Code became law, and the sentence
passed under a different enactment. The Governor in Council does not consider that this con-
struction admits of any reasonable doubt.

3. On the second point referred to by the Judges, the Madras Government is also unable
to concur with them as to the necessity of any alteration of the existing law. The Governor in
Council is of opinion that the punishment of transportation should be confined to those cases in
which a sentence of imprisonment for life is passed.

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

Exd. F. Cartledge.

Recd. 24th

Judicial Department

No. 973.

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No

The Honorable Sir Colley Harman Scotland Knight
Chief Justice

and

The Honorable Sir Adam Bittleston Knight
Puisne Judge of
His Majesty's Supreme Court of Judicature
Madras

Honble Sirs

In acknowledging
the receipt of your letter of
the 4th instant, we have
the honor to inform you
that a Notification to the
effect required by the 55th
Section of Act XVIII, 1862 (India)
will be published in
next Tuesday's Gazette.
2. The remarks made
in the 4th and following
paras

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paras of your letter in
reference to certain pro-
visions of the Penal Co.
which you consider require
to be amended will be
brought to the notice
of the Government of
India.

Fort St George
23rd June 1862

We have &c

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No.

To

The Secretary to the Government
of India.

Sir,

With reference to the
information to the Will. Lloyd
Graham, Jr. of the Agents to
the President of the Boston
A. S. Fair, is that, in the
which has been printed
on Sept. XVIII of 1862, Vol.
I, page 10, it is stated
that the information of
the same is from the same
source as the information
of the copies of the same
in question, and of the
same nature, having been
furnished to the Agents
of the A. S. Fair, and
the same, they have
been printed in the
same, and should be
at once declared as
false to the Agents.

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Great Dane
 Feb. 6. 1862
 No 973
 of
 the Judges of the
 Supreme Court
 of California
 at
 the

225 June 1862.

Informing the post of India
that Act XVIII of 1812 between
communicated to the subject of
the diploma Court and notified
in the Gazette. Submitting the
principles of this post on the
instrument which is the subject
propose to be introduced in
action and review of the final
work relative to the
instrument of peace.

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Court of this Presidency
and that a notification
to that effect has
been accordingly pub-
lished in the official
Gazette.

1862

2. The Judges in their
letter, a copy of which
is annexed, call atten-
tion to certain provisions
of the Penal Code with
reference to the com-
mitment of offences which
in their opinion require
to be amended. In
submitting their remarks
for the consideration of
the Govt. of India, I
am directed to say
that the Madras Govt.
see no necessity for any
alteration in the word-
ing of the Code on the
first of the two points
referred to. It appears
to His Excellency in
Council that the words
"commitment" may apply
equally well to the

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code may include an
reference to the nature
indicated although it
may have been com-
mitted before the for-
mance of the
act. I have not under-
stood the object of the
amendment proposed.
The Governor in Council
will do so, and I am
not in a position to
advise otherwise.
In the second point
referred to by the Judges
the Madras Govt. are
unable to concur with
them as to the necessity
of any alteration. I
am directed to say
that the Governor in Coun-
cil has a strong opinion
that the punishment of
transportation should
be confined to those
cases in which the
nature of the offence
renders it necessary.

To the Honble Secy to Govt
of India

George Smith
Colonel the Sheriff

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George Smith

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Beginning the forty years
that ended with 1851
has been communicated to
the judges of the Supreme Court
and referred with regard to
the justice of the ruling of
which the judges wish to be
informed in certain proceedings
of the Court relative to the
in some of the proceedings.