M.R. G. 1—32,000—16-10-23.

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No.	1781	Press ~~Mis.~~	
126-128 Dated	9-12-	19 1864	

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Not to be folded or roughly handled

913

Proceedings of the Madras Government, Judicial Department, 9th December 1864.

Read the following papers:—

No. 126. From J. FRASER, Esq., Officiating Magistrate of the Godavery District, to the Honorable A. J. ARBUTHNOT, Chief Secretary to Government, Fort Saint George; dated Cocanada, 20th October 1864, No. 331.

I have the honor to forward copy of a letter which I have received from my Acting Head Assistant, and to request that the question contained in it may be referred to the Advocate General for his opinion.

2. I may state that the case mentioned by Mr. Linton is one which came before him, and in which he felt at a loss how to act; also that A and B are in nowise connected with, or related to, each other, and that the ground around the godown is not the property or in possession of A.

3. If B is not punishable under Section 447 of the Penal Code, can he be punished at all? and, if so, under what section?

From H. LINTON, Esq.; Acting Head Assistant Magistrate, to J. FRASER, Esq., Officiating Magistrate, Godavery District; dated Cocanada, 17th October 1864.

I have the honor to request your opinion on a difficulty which has occurred to me, in connection with Section 441 of the Penal Code, (Criminal Trespass.)

2. A complains that B, without authority, has put a padlock on a godown belonging to, and containing property of A; there being no compound, &c., round the godown. B has not literally "entered into or upon property in the possession of B." Is B. punishable under Section 447? Looking at the spirit of the Section and taking the English law of trespass as illustrative of it, I imagine that he is; but the wording of the Section scarcely admits such a construction.

3. It appears to me that it would be a mere verbal quibble to punish such an offence as "mischief;" though, doubtless, the act of B may be said to have caused such change in A's property as "affects it injuriously."

(True Copy.)

(Signed) J. FRASER,
Officiating Magistrate.

Referred to the Government Solicitor for the opinion of the Advocate General.

FORT SAINT GEORGE,
31*st October* 1864.

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

No. 127. From J. R. BOYSON, Esq., Government Solicitor, Madras, to the Honorable A. J. ARBUTHNOT, Chief Secretary to Government, Fort Saint George; dated 6th December 1864, No. 627.

I have the honor to acknowledge the Order of Government, noted in the margin, (with its enclosure) requesting the Advocate General's opinion as to whether the case of trespass therein referred to, amounted to an offence against the provisions of Section 441 of the Indian Penal Code.

Dated 31st October 1864, and made on letter from Officiating Magistrate, Godavery District to Government, of 20th idem, No. 331.

2. Having obtained from the Acting Head Assistant Magistrate of Rajahmundry, full information as to the facts of the case in question, I submitted the matter for the consideration of the Advocate General, with whom I have also conferred; and,

3. I now forward a copy of his Opinion, and return the order and enclosure above noted.

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Proceedings of the Madras Government, Judicial Department,
9th December 1864.

COPY—OPINION.

I am clearly of opinion that no offence has been committed under Section 441 of the Penal Code.

2. It is clear, now that the facts of the case are before me, that the defendant did not put the padlock on the complainant's door with any of the *intents* enumerated in that Section, although 'annoyance' may have been a consequence of his act. His act arose in assertion of his supposed title, and his intent was to secure property in which he believed that he had an interest.

3. His act may have subjected him to a Civil action for trespass, at the suit of the complainant, in which he may be cast in damages; but it has not brought him within the danger of the Indian Penal Code.

4. I could have given an answer to the case much earlier, but that the Officiating Magistrate, in the 3rd paragraph of his letter, requested to be informed whether the defendant was liable under any other Section of the Indian Penal Code, if he was not punishable under Section 447.

5. This necessitated a reference to the Acting Head Assistant for information as to the *facts* of the case, as the case originally submitted was simply an A. B. case—a most inconvenient form, which almost necessarily leads to correspondence and delay.

3rd December 1864.

(Signed) J. B. NORTON,
Advocate General.

(True Copy).

(Signed) J. R. BOYSON,
Government Solicitor.

No. 128. ORDER THEREON, 9th December 1864, No. 1781.

Ordered that the foregoing letters be circulated among the Magistrates of Districts.

2. The Governor in Council directs that, in future references for the opinion of the Advocate General, the facts of the case shall be fully and clearly stated.

(True Extract).

A. J. ARBUTHNOT,
Chief Secretary.

To the Magistrate of
" Government Solicitor.

Exd. J. H. Burns.

Judicial Department.

PROCEEDINGS of the MADRAS GOVERNMENT.

Read the following letters—

From the Magistrate of the Godavery District—Dated 20th Oct. '64. No. 331.
" the Govt. Solicitor—" 6th Decr.—" 627.

Order—of 9th December 1864 No. 1781.

Ordered that the foregoing letters be circulated among the Magistrates of Districts.

2. The Governor in Council directs that in future references for the opinion of the Advocate General the facts of the case ~~stated~~ be fully and clearly stated.

The Magistrate of
the Govern'l Civil & Sessions Judge
Govt. Solicitor

Judicial 1864. Department.

No. 1721

PROCEEDINGS *of* GOVERNMENT.

Dated 9th Dec 1864.