M.R.O. 1—39,000—16-10-23.

MADRAS RECORD OFFICE.

Government of Madras.

Judicial **DEPARTMENT.**

G.O. No.	1805	Press Mis—
170-171 Dated	14-12- 1864	

3/3

Not to be folded or roughly handled

No. 170 Read the following letter from H. E. SULLIVAN, Esq., Acting Session Judge of Salem, to the Honorable A. J. ARBUTHNOT, Chief Secretary to Government, Fort Saint Geroge; dated Salem, 26th November 1864, No. 20.

I have the honor to request that the opinion of the Law Officers of Government may be obtained with regard to the following *question*. Is a sheep or cattle pen, composed of hurdles, and without a roof, a "building" within the meaning of Section 380 of the Indian Penal Code?

2. The Acting Head Assistant Magistrate of this District is of opinion that it is, and, in Calendar Case, No. 167 of 1864 on his file, sentenced a man, who was convicted of stealing a sheep from a pen, to one year's rigorous imprisonment, under Section 380 of the Indian Penal Code, for having committed theft in a building.

3. I called upon the Acting Head Assistant Magistrate to explain why the prisoner in this case, which appeared to me to be one of simple theft, punishable under Section 379, had been indicted and convicted under Section 380. Copy* of his reply is enclosed.

* Will be forwarded in a day or two.

4. Not concurring with his views, and being of opinion that a man who had (according to my interpretation of the law) committed simple theft, as defined by Section 378, could not be legally convicted of the aggravated offence made punishable by Section 380, I referred the case, under the provisions of Section 434 of the Criminal Procedure Code, for the orders of the High Court. Copy of their Proceedings thereon is enclosed.

5. The Judges decline to give any opinion on the case in question, on the ground, apparently, that as the punishment awarded under Section 380 might also have been awarded under Section 379, the sentence was not contrary to law, and therefore did not call for their interference.

6. The term "vessel" is defined in Section 48 of the Code; but there is no definition of either a "tent or building", and I think it desirable, especially as they occur in other Sections* of the Code, that there should be some opinion recorded as to what the terms may be supposed to include, pending the introduction of an enactment to authoritatively set at rest this and other doubts which exist regarding the exact meaning of certain portions of the Code.

* 442 and 443.

7. If a cattle pen composed of hurdles is a "building" for the custody of property, there is no reason why a fenced field in which cattle and corn ricks are kept should not be viewed in the same light. A man cutting down a tree with a dishonest intention in such a field would commit theft in a building, and a boy forcing his way through the hedge, to steal mangoes, will be guilty of house-breaking in order to commit theft.

Proceedings of the High Court of Judicature at Madras, 24th November 1864.

Read letter, dated the 8th instant, from the Acting Session Judge of Salem, referring, for the orders of the High Court, under Section 434 of the Code of Criminal Procedure, the Proceedings of the Acting Head Assistant Magistrate in Case No. 167 of 1864, the Acting Session Judge being of opinion that the sentence passed by the Acting Head Assistant Magistrate is contrary to law.

Proceedings of the Madras Government, Judicial Department,

14*th December* 1864.

The prisoner in this case was sentenced by the Acting Head Assistant Magistrate to one year's imprisonment under Section 380 of the Penal Code, for having committed a theft in a building.

2. The property stolen was a sheep which was taken from a pen, and the Acting Session Judge raises the question whether a sheep-pen, no description of which is given, can be regarded as a building, tent, or vessel within the meaning of Section 380.

3. The High Court observe that there is no occasion for them to pronounce an opinion on this point at present. The punishment inflicted might have been awarded under Section 379 of the Penal Code for a simple theft. There is, therefore, with reference to Section 434 of the Procedure Code, no necessity for the High Court's interference.

(True Extract).

(Signed) P. P. HUTCHINS,
Acting Registrar, Appellate side.

(A true Copy).

(Signed) H. E. SULLIVAN,
Acting Session Judge.

No. 171. ORDER THEREON, 14th December 1864, No. 1805.

The Governor in Council does not deem it necessary to call for the opinion of the Advocate General on the question raised in the foregoing letter.

2. It will doubtless be determined by the High Court, on a suitable occasion arising.

(True Extract).

Chief Secretary.

To the Acting Session Judge of Salem.

Exd. J. H. Burns.

Should not a distinction be made between Cattle stealing & simple theft - this one describes

WD

14 December 1864 No. 1805.

The Governor in Council does not deem it necessary to call for the opinion of the Advocate General on the question raised in the foregoing letter

It will doubtless be determined by the High Court on a suitable occasion arising

1580-13

To The Acting Sessions Judge of Salem Despatch 20/12

To the Acting Session Judge of Salem.

Exd. J. H. Burns,