M.R.O. 1—50,000—16-10-22.

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No. 894 Press ~~Mis.~~

168-171

Dated 18-6— ~~19~~ 1864

4/5

Not to be folded or roughly handled

Madras Government. Judicial Department

[illegible] 1864

[illegible]e Honorable
[illegible]int George, dated Viza-

[illegible] by

eedings,

BOYSO
ARBUTHNOT, C
No. 215

Penal Code
[illegible]51 and 457 to suc
[illegible]cate General, and ha[illegible]nferred

with him thereon.

3. I now forward a copy of his opinion and return the order and accompaniments above noted.

COPY—OPINION.

I think the course pointed out by this Government is the proper one to meet the inconvenience which has arisen in practice from all charges under Section 380 being only triable by the Sessions Court or Magistrate of the District.

2. It is not necessary to consider, in my view of the case, the legality of the course suggested by Mr. Carmichael. I am opposed to doing by a side wind what cannot be done in a direct way. I would point out that the fact that the High Court has hitherto taken no exception to Mr. Carmichael's action under Section 457, as to which he has jurisdiction, is no argument in favor of trying what are clearly offences under Section 380; under another section not 457, but 451, the object being to give thereby to persons who, as the law stands, have no jurisdiction to try offences under Section 380, power to try them in another form.

3. If the Legislature thought that cases falling under Section 380 ought only to be tried by Magistrates or Courts of a particular quality or degree, I cannot approve of giving the intention of the Legislature the go-by as proposed by Mr. Carmichael. The remedy is evidently to apply to the Legislature if, as appears and as was to be anticipated, inconvenience has arisen from the limitation as it stands.

4. It appears to me that there is a wide distinction to be drawn between cases where the offence is complete, for which Section 380 provides, and cases where the crime is not complete; but the rights of private property have been only invaded with the intention of committing a theft.

Pro... ...rnment, Judicial De...
...h June 1864

...michael points o...

...ion is evidenced by the Act, to the Session Court...
...a lower class of Magistrates to try the more difficu...
...some difficulty to decide upon the intention where

...ng argument in favour of the c...

MADRAS, ...e 1864.

No. 170 ORDER THEREON, 18th June 1...
...y of the Advocate Ge... ...ted 9th...
...e Magistrate of Vizagapatam.

A. J. Ar...

...o the Secretary to th... ... Bombay, d... ...18th
...une 1864, No. 895

In continuation of my l... ...
...py of the annexed correspondence o...
...ng house.
...s enclosed for reference.

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

Exd. J. Tulloch.

Judicial. Bombay 30th June 1864

Proceedings of the Madras Govt.

Read the following papers—

[redacted] Letter from the Magistrate of Viagapatam — Enter y^r chair No. 117.

Opinion of the Advocate Genl. — 9th June — " X.

Order — 11th July. June 1864

Ordered that a copy of the Advocate Genls. Opinion, dated 9 Inst. be furnished to the Magistrate of Viagapatam.

[redacted]

The Magistrate of Viagapatam
" Govt. Solicitor

Judicial.

No. 895

The Secretary to the Govt. of Bombay.

Sir.

I am directed to forward you with copy of the annexed correspondence on the subject of the trial of cases of theft in any dwelling house, &c. &c. A copy of the Proc: of Govt., dated 27th Apl. last No. 609, is enclosed for reference.

Fort St. George.
18th June 1844.