M.R.O. 1—88,000—16-10-27.

MADRAS RECORD OFFICE.

Government of Madras.

Judicial **DEPARTMENT.**

G.O. No. 1162 Press Mis.

167-168

Dated 23-8-1985

7/6

Not to be folded or roughly handled

No. 167. Read the following Extract from a letter from the Honorable J. B. NORTON, Advocate General, to the Honorable A. J. ARBUTHNOT, Chief Secretary to Government, Fort Saint George; dated 10th August 1865.

* * * *

2. The first was No. 20 in the Calendar, the Queen *versus* Rajah Gopaul Chetty, charged with forgery, criminal breach of trust as a public servant, theft as a public servant, and dishonest misappropriation. The offence was committed so far back as November 1863, when the prisoner was Cashier in the Income Tax office. He was discharged in December 1863, tried at the February Sessions of 1864 for cheating, found guilty and sentenced to eight months' imprisonment, which sentence he has suffered. The circumstances of his fraud in the Income Tax office have only been recently discovered. He effected it as follows:—It was his duty, as Cashier, to keep an account of all moneys received which were totalled daily, he keeping the key of the cash chest: whenever the money amounted to more than 500 Rupees, he prepared what is called a remittance note, purporting to shew the amount in his hands. This he took to Mr. Morison, who initialed it, whereupon the money was taken to the Bank. The Bank kept the Remittance note, and gave a receipt for the amount. On the 2nd November 1863, he had in his cash chest Rupees 3217-11-4, as shown by his cash book. On that morning, he prepared and took to Mr. Morison a remittance note for only Rupees 3170-11-4, which amount he sent to the Bank. He subsequently altered the Bank receipt both in the letters and figures from Rupees 3170-11-4 to Rupees 3217-11-4. The Bank Receipt and the entry in his cash book thus tallying and the Remittance note being in possession of the Bank, there was nothing in the Income Tax office whereby to trace the fraud. It appears to have been subsequently brought to light in the office of the Accountant General.

3. I am constrained to observe that had Mr. Morison taken the very obvious precaution of comparing the Cash-keeper's Remittance note with the daily balance in his cash book, the fraud could not have been effected.

4. The prisoner was found guilty on all counts, and sentenced to fifteen months' rigorous imprisonment.

* * * *

No. 168. ORDER THEREON, 23rd August 1865, No. 1162.

Paragraphs 2 to 4 of the foregoing letter are communicated to the Revenue Department.

2. A representation will be made to the Government of India on the subject of paragraphs 5 to 18, and it will be suggested that the Secretary of State should be advised to amend the Letters Patent of the Madras High Court.

(True Extracts).

Chief Secretary.

To the Revenue Department.
" Advocate General.

Exd. J. H. Burns.

JUDICIAL DEPARTMENT.

No. 1163.

FROM

A. J. ARBUTHNOT, Esq.,
Chief Secretary to the Government of Fort Saint George,

To

THE SECRETARY TO THE GOVERNMENT OF INDIA,
HOME DEPARTMENT.

SIR,

I am directed to transmit the annexed copy of the Report submitted by the Advocate General of the cases in which he appeared and prosecuted at the last Sessions of the High Court, and to draw the attention of the Government of India to paragraphs 5 to 18, which relate to the trial of one Alexander Bain, for an offence committed by him in Coorg. It will be seen that a verdict of guilty was brought in, but that the proceedings were set aside, and the prisoner acquitted, on the ground that the Court had no jurisdiction to try the case.

2. It follows from the result of this trial that, as pointed out by the Advocate General, European British subjects accused of offences committed in Coorg and Mysore, both of which are situated within the geographical limits of the Madras Presidency, must, in future, either be sent to Calcutta for trial, or tried by a Judge of the High Court at Calcutta acting under a Commission issued under Act XIII of 1865. The first of these arrangements must be very inconvenient to prosecutors and witnesses, while the second must be very expensive to the Government, and as the obvious course would seem to be to legalize committals from the territories in question to the High Court of Madras, I am to suggest that the Government of India should advise the Secretary of State to amend the Letters Patent of the Madras High Court, so as to bring those territories within its jurisdiction.

I have the honor to be,
Sir,
Your most obedient Servant,

FORT SAINT GEORGE,
23rd August 1865.

Chief Secretary.

From the Honorable J. B. NORTON, Advocate General, to the Honorable A. J. ARBUTHNOT, Chief Secretary to Government, Fort Saint George; dated 10th August 1865.

I have the honor to report for the information of His Excellency the Governor in Council, that I appeared, on behalf of the Government, to prosecute two cases at the recent Sessions.

2. The first was No. 20 in the Calendar, the Queen *versus* Rajah Gopaul Chetty, charged with forgery, criminal breach of trust as a public servant, theft as a public servant, and dishonest misappropriation. The offence was committed so far back as November 1863, when the prisoner was Cashier in the Income Tax office. He was discharged in December 1863, tried at the February Sessions of 1864 for cheating, found guilty and sentenced to eight months' imprisonment, which sentence he has suffered. The circumstances of his fraud in the Income Tax office have only been recently discovered. He effected it as follows:—It was his duty, as Cashier, to keep an account of all moneys received which were totalled daily, he keeping the key of

the cash chest: whenever the money amounted to more than 500 Rupees, he prepared what is called a remittance note, purporting to shew the amount in his hands. This he took to Mr. Morison, who initialed it, whereupon the money was taken to the Bank. The Bank kept the Remittance note, and gave a receipt for the amount. On the 2nd November 1863, he had in his cash chest Rupees 3217-11-4, as shown by his cash book. On that morning, he prepared and took to Mr. Morison a remittance note for only Rupees 3170-11-4, which amount he sent to the Bank. He subsequently altered the Bank receipt both in the letters and figures from Rupees 3170-11-4 to Rupees 3217-11-4. The Bank Receipt and the entry in his cash book thus tallying and the Remittance note being in possession of the Bank, there was nothing in the Income Tax office whereby to trace the fraud. It appears to have been subsequently brought to light in the office of the Accountant General.

3. I am constrained to observe that had Mr. Morison taken the very obvious precaution of comparing the Cash-keeper's Remittance note with the daily balance in his cash book, the fraud could not have been effected.

4. The prisoner was found guilty on all counts, and sentenced to fifteen months' rigorous imprisonment.

5. The other Case was No. 17 in the Calendar, the Queen *versus* Alexander Bain, charged upon five counts as follows:—The first was for the murder of one Borah a cooly in his employ; the second, for manslaughter; the third, fourth, and fifth, ringing the changes upon the offence of bodily hurt.

6. The prisoner was a coffee planter in Coorg. The deceased, on the 10th of June last, was returning from cutting jungle wood somewhat too slowly to please the prisoner, who took up a long sharp pointed areca nut pole lying on the road, and thrust with it at the deceased, as he was descending a steep bank with his face to the hill and his back towards the prisoner. The point of the pole entered some three inches into the right buttock of the deceased, passing most unfortunately through a small orifice, only large enough to admit the insertion of two fingers between the hip joint and the lower bones of the spine (called "*Sacrosciatic foramen*"). The lower intestine was pierced, and death ensued on the next day.

7. I and the Public Prosecutor appeared for the Crown; Mr. Miller and Mr. Mills, for the defence. In addressing the Special Jury, I expressed my belief that they would scarcely, under the peculiar circumstances of the case, think the prisoner guilty of wilful murder; but that there would probably be little doubt on their minds that his offence amounted to manslaughter. The facts were fully proved. The presiding Judge, Mr. Justice Bittleston, made some observations touching the thin distinctions between murder and manslaughter in the Indian Penal Code. He further dwelt on the necessity of *intending* to cause death, in order to constitute the crime of manslaughter. Upon this charge by the Judge, the Jury brought in a verdict, on the 3rd Count, of having caused grievous hurt.

8. I will take this opportunity of remarking that, with its many transcendent merits, the Indian Penal Code, in my judgment, is not an improvement upon the old law of murder.

9. It occurs to me that the safest rule is to hold that a man intended what is the necessary consequence of his act, and that if a person, as in the prisoner's case, thrusts at another with a heavy sharp pointed pole 15 feet long, holding it with both hands in the middle, and death ensues, the crime is, or ought to be, manslaughter. It is true that it is specially provided (by Section 14 of Act XVIII of 1862, the Criminal Law Amendment Act) that where grievous hurt has been inflicted the offender shall not escape because death ensues, but it seems to me that where the grievous hurt is found to have been inflicted by the act of an individual, and death ensues, as the necessary or natural consequence of that hurt, it is more logical to hold the offender guilty of manslaughter than mere grievous hurt.

10. Mr. Miller, in my absence, moved in arrest of judgment, on the ground that the High Court had no jurisdiction, the offence having been committed in Coorg, which, although now British territory, is not part of, or administered by, the Government of Madras. Having had time to look into the point, I found that it was manifestly fatal to the charge. The 21st Section of the Letters Patent of the High Court endows it with the old original Criminal jurisdiction of the late Supreme Court; and on a reference to the Supreme Court Charter, it is manifest that the case would not have fallen within its jurisdiction.

11. Judgment was accordingly arrested, the proceedings set aside, and a verdict of acquittal recorded, *on the ground that the Court had no jurisdiction to try the case.*

12. Mr. Justice Bittleston took some blame to himself for not having discovered the blot. I may do the same; so may the Committing Magistrate;—and I believe the case was under the consideration of Government, without any comment recorded on the want of jurisdiction by any of the Members of Council, when the question of issuing a Commission to try the prisoner was referred by the High Court to the Government.

13. I am happy, however, to be able to state that the ends of justice will not be defeated, though it is most annoying that all the expense and trouble of the late trial should be of no effect.

14. In communication with the Government Solicitor, I had taken steps for having Mr. Bain again arrested, as soon as he was discharged on a Warrant issued by Captain Hearn. He was accordingly taken into custody as soon as he left the precincts of the Court, and sent off by the 2 o'clock train to Coorg.

15. It will be the duty of the Committing Magistrate to re-commit the prisoner to take his trial before the High Court of Calcutta. A Calcutta Judge might be commissioned by the Supreme Government to try the case in Coorg, but a Jury of coffee planters would scarcely form a satisfactory tribunal.

16. His Excellency the Governor in Council will probably deem it necessary to bring the present very unsatisfactory state of things to the notice of His Excellency the Governor General. All cases, in which the offender is a European British subject, arising in Coorg, or even in Mysore, must now be committed to Calcutta. The expense, delay, and annoyance of sending the prisoner, witnesses (among whom is the Surgeon), documents, and a Canarese Interpreter, to Calcutta, while the Madras High Court is brought by the Railway within a few days of the locality, are too obvious to require comment.

17. Whether the prisoner has been well advised, it is not necessary to inquire. Had he not brought the objection to light and undergone his sentence, probably a light one, he never would have been tried again for the same offence. He was convicted of the lightest offence practicable, on the five counts of charge. True, he *may* be found not guilty at Calcutta; but on the other hand, it is by no means unlikely that his offence will be declared manslaughter, and it is possible that he *may* be hung, as the charge will of course contain a count for murder.

18. On the whole, however, it is perhaps satisfactory that the objection was taken, as it brings to light a state of things which certainly requires a remedy.

Exd. J. H. Burns.

Judicial.

Proceedings of the Madras Govt.

Read letter from the
Advocate General — Letter 10th Augt. '65.

Order — 23rd August 1865 No. 1162 —

Paras 2 to 4 of the foregoing letter are communicated to the Revenue Dept.

2. A representation will be made to the Govt. of India on the subject of paras 5 to 18, & it will be suggested that the Secretary of State should be advised to amend the Letters Patent of the Madras High Court.

W.H.M.

To Rev: Dept.
Advocate Genl. } dups 28/8

Judicial 1865 Dept.
23 Aug.
Proceedings

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Judicial Department.
No. 1163.

To

The Secretary to the Government
of India.
Home Department.

Sir, Simla

I am directed to transmit the annexed copy of the report submitted by the Advocate Genl. of the cases in which he appeared & prosecuted at the last Sessions of the High Court, & to draw the attention of the Govt. of India to paras: 5 to 18 which relate to the trial of one Alexander Bain for an offence committed by him in the ~~Coorg~~ Coorg. It will be seen that a verdict of Guilty

Pro... Beng.
2 Dear 1863 Department

No. 1162.

PROCEEDINGS OF GOVERNMENT.

Dated 25th August 1865

Guilty was brought in, but that the proceedings were set aside, & the prisoner acquitted on the ground that the Court had no juris-diction to try the case.

It follows from the result of this trial, that, as pointed out by the Advocate Genl., European British Subjects accused of offences committed in Coorg & Mysore, both of which are situate within the geographical limits of the Madras Presidency, must in future either be sent to Calcutta for trial, or tried by a Judge of the High Court to

+ acting under Commission issued under Act XIII of 1865. The first of these is more convenient to prosecutors & witnesses, while the second must be necessary in cases where the Court

be to legalise committals from the territories in question to the High Court of Madras, which is easily reached by means of the Railway, I am to suggest that the Govt. of India should advise the Secretary of State to amend the Letters Patent of the Madras High Court so as to bring these territories within its juris-diction.

Fort St. George
23rd August 1865.

From the Govt.
India 2 1805. Departt
No. 1163.

To
The Secry. to the Govt.
of India.

Dated 23d August 1805

No. 1163