M.R.O. 1—27,000—15-10-22.

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No. 760 Press Mis.

181-182

Dated 18. 5. 19 1830

3/3

Not to be folded or roughly handled

Proceedings of the Madras Government, Judicial Department, 18th May 1866.

No. 181. Read the following letter from the Magistrate of Malabar, to the Chief Secretary to Government, Fort Saint George; dated Calicut, 26th April 1866, No. 51.

As the Sections of the Penal Code under which in conjunction with the Whipping Act the punishment of whipping can be inflicted are specifically given in Act VI of 1864, and no mention is made of attempts (Chap. 23 of the Indian Penal Code) therein, I presume that an offence punishable with whipping must be completed before the offender can be sentenced to that punishment.

2. A case occurred a day or two ago in which two individuals were apprehended in an attempt to commit house-breaking. But though the intention and the attempt was clear, no part of the intending trespassers' bodies had been introduced into the house. I conceive, therefore, that the punishment of whipping could not be awarded.

3. Yet it may often happen that in such cases, whipping would be a peculiarly appropriate punishment.

A novice at theft, or house-breaking, bungling in his first "attempt," apprehended, brought to justice and whipped, stands, I think, a better chance of being effectually checked in a criminal career than if sent to Jail for a period.

4. And as attempts are punishable under the Penal Code, there seems no valid reason why they should not be punishable with whipping when made to commit offences or crimes so punishable.

I submit the question for such Orders as Government may see fit to pass.

No. 182. ORDER THEREON, 18th May 1866, No. 760.

The Governor in Council is not prepared to give an opinion on the question put in the foregoing letter, or to refer it to the Advocate General. Officers of the Magistracy must decide all cases that come before them to the best of their judgment. It is not the province of the Executive Government to expound the Law.

(True Extract).

Chief Secretary.

To the Magistrate of Malabar.

Ed. B. H. Lee.

18th May 1866 No. 760.

The Governor in Council is not prepared to give an opinion on the question put in the foregoing letter or to refer it to the Advocate General. Officers of the Magistracy must decide all cases that come before them to the best of their judgment. It is not the province of the Executive Government to expound the Law.

N.

To the Magts of Malabar dispatch 2/5