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MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No. 870 Press Misc

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Dated 4 — 6 -19 1966

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Not to be folded or roughly handled

JUDICIAL DEPARTMENT.

No. 870.

FROM

J. D. SIM, Esq.,

Acting Chief Secretary to the Government of Fort Saint George,

To

THE SECRETARY TO THE GOVERNMENT OF INDIA,

HOME DEPARTMENT.

SIR,

With reference to your letters of the 22nd July and 27th September 1862, Nos. 3694 and 5324, I am directed by the Right Honorable the Governor in Council to forward, for the consideration of His Excellency the Viceroy and Governor General in Council, a tabular Statement, showing the constructions of the Madras High Court upon the principal questions which arose during the past year, in connection with the Indian Penal Code and the Code of Civil and Criminal Procedure.

I have the honor to be,

Sir,

Your most obedient Servant,

FORT SAINT GEORGE,
4th June 1866.

Acting Chief Secretary.

From the Registrar of the High Court of Judicature at Madras, Appellate Side, to the Chief Secretary to Government, Fort Saint George; dated Madras, 25th May 1866, No. 29.

Adverting to the Proceedings of Government, dated 16th August and 21st October 1862, Nos. 1337 and 1733, I am directed by the High Court to forward, for the purpose of being submitted to the Government of India, a tabular Statement, showing the constructions of the Court upon the principal questions which arose in the past year upon the Penal and Procedure Codes.

TABULAR STATEMENT containing the Rulings of the High Court on the Codes of Civil and Criminal Procedure and the Indian Penal Code, during the year 1865.

PENAL CODE.

Section	Nature of the Question.	Opinion of the Lower Court.	Ruling of the High Court.
5	A prisoner was committed to the Session Court by a Sub-Magistrate, charged, under Section 465 of the Penal Code, with having forged a signature to a declaration, under Section V, Act X of 1841, before the Registrar of Shipping.	Section 23 of the Act referred to specially provides a penalty to which any person making such false declaration shall be liable, and a special law having made provision for the punishment of the offence, the Session Court is precluded by Section V of the Indian Penal Code from taking action.	Section V of the Penal Code merely declares that no special or local law shall be affected by the enactment of the Code. It by no means renders unpunishable, under the Penal Code, an act which is an offence within its definitions, because it is also punishable by some special law.
Do.	Certain Karnams were convicted of breach of trust as public servants, and sentenced to imprisonment under Section 409 of the Penal Code.	This conviction is illegal. The accused might have been prosecuted under the provisions of Regulation IX of 1822 and therefore, by Section 5 of the Penal Code, the application of the general law in the Code is barred.	The effect of this Section is to preserve jurisdiction in certain cases, notwithstanding the enactment of the Code, but it does not prevent the application of the Code to any case falling under its provisions. Regulation IX of 1822 gave to Collectors certain powers, which, but for it, they would not have possessed, but there is nothing in it to declare the jurisdiction exclusive of all other; and as a matter of fact, before the Code came into operation, persons were often tried, and properly tried, under the general provisions of the law, for offences cognizable by a Collector under Regulation IX of 1822.
75	A prisoner was convicted of House-breaking by night and theft in a building, and a previous conviction having also been found against him, he was sentenced by the Magistrate to receive 100 lashes and to be imprisoned for 4 years.	This Section renders an offender liable on a second conviction to double the ordinary amount of punishment, but does not give a Magistrate authority to pass a sentence beyond the limit of his ordinary jurisdiction. Section 46, Criminal Procedure Code, applies only to a conviction at the same time of two or more offences, but the Session Judge is not aware of any other Section that gives extended jurisdiction to a Magistrate in case of a second conviction under Section 75 of the Penal Code.	The sentence of imprisonment was passed under Section 75 of the Penal Code, but that Section, though it declares a prisoner liable to double punishment on a second conviction, gives no authority to the Magistrate to exceed his ordinary jurisdiction. The only provision which enables a Magistrate to award a longer term of imprisonment than 2 years is Section 46 of the Code of Criminal Procedure, but that only applies to the case of a prisoner convicted at one time of two distinct offences, and a former conviction is not an offence at all.

Section	Nature of the Question.	Opinion of the Lower Court	Ruling of the High Court.
75	.....	.....	Where the law provides for an increase of punishment on account of a previous conviction, the proper course is, first, to try the prisoner on the substantive charge then under inquiry, and, if he should be convicted on that charge, to charge him with and try the fact of the previous conviction. Of course, if the prisoner admits the previous conviction, further trial is unnecessary.
174	Two prisoners were convicted under this Section, on their refusing to appear before a Village Magistrate as directed by him.	The offence for which the prisoners were summoned by the Village Moonsiff was one triable only by the Magistrate of the District, or a Sub-Magistrate of the 1st class. A Village Magistrate is not legally authorized to hold a preliminary inquiry in such cases, or to forward the parties concerned therein, his duty being confined to reporting the occurrence to the Police and Sub-Magistrate.	It appears, from the explanation given by the Magistrate of the District, that the offence of which the prisoners were accused before the Village Magistrate was one over which the latter had no jurisdiction. It is clear, therefore, that their disobedience of his summons was not an offence at all.
176	A Village Moonsiff was convicted under this Section of having illegally omitted to give information of a theft by a wife of her husband's property.	As the husband and wife are legally one person, the carrying away by the latter of the property of the former was no theft, and the Village Moonsiff was not therefore legally bound to furnish information on the subject.	The conviction is illegal for the reasons stated by the Session Court.
Do.	A Village Moonsiff was convicted under this Section of intentionally omitting to give information of the detention of Z, in custody for having stolen property in his house.	Z having been discharged without punishment, the Moonsiff was not legally bound to report his detention.	The view of the Session Court is correct.
179	A defendant was sentenced to imprisonment under this Section for declaring himself unable to answer a question asked by the Deputy Magistrate in the exercise of his legal powers.	The sentence is illegal, on the grounds that the preliminary step ordered by Section 192 of the Procedure Code had not been observed, and that, under Section 163 of the Procedure Code, the Magistrate was only authorized to sentence to imprisonment in default of payment of a fine.	It is clear from the statement of the grounds of conviction that the defendant did not *refuse* to answer the Magistrate's question, but merely said that he did not know, and the Proceedings of the Deputy Magistrate should therefore be annulled.

PENAL CODE.—*(Continued.)*

Section	Nature of the Question.	Opinion of the Lower Court.	Ruling of the High Court.
193 409	.....	.....	Under these and other Sections similarly worded, the Court is bound to pass a sentence of imprisonment before inflicting a fine. A sentence of fine alone is illegal.
390	.....	A thief, finding himself observed, abandoned his booty and ran away, throwing stones at the owner, apparently to deter him from continuing his pursuit. The Session Judge convicted him of robbery.	In this case there was no robbery. The use of violence will not convert the offence of theft into robbery, unless the violence be committed for one of the ends specified in Section 390 of the Penal Code, viz. in order to the committing of the theft, or in committing the theft or in carrying away or attempting to carry away property obtained by theft.
457	Two prisoners were convicted in two cases of having committed house-breaking, by breaking into a granary, which in one case is described as a vessel constructed of straw for the custody of grain, and built up in the back-yard of the house, and in the other as in the middle of a yard which was surrounded on three sides by portions of the house and on the other by a wall.	In both cases the granaries are large detached circular receptacles for grain, constructed of straw, with an opening at the top and situated in a back-yard.	The conviction of house-breaking upon these facts is incorrect. The offence really committed is the dishonest breaking open of a closed receptacle containing property (Sec. 461.)
506	A prisoner was convicted by a Deputy Magistrate and fined under this Section, for criminal intimidation, in having made use of threatening expressions to neighbours with regard to the Prosecutor.	The conviction is illegal, because the threat was not addressed to the Prosecutor direct, or calculated to alarm him.	It is quite open to the Deputy Magistrate to find that the threat, though addressed to the neighbours, was intended to reach the prosecutor as the party threatened, that mode of threatening being even more calculated to cause alarm than the addressing of the threat to the person himself.

CRIMINAL PROCEDURE CODE.

Section	Nature of the Question.	Opinion of the Lower Court.	Ruling of the High Court.
36	A Sub-Magistrate dismissed, after inquiry a, charge of house-breaking and theft.	The Magistrate of the District, on perusal of the record, found sufficient evidence to warrant the committal of the prisoner, but doubted if he could call up the case under Sec. 36 of the Code of Civil Procedure.	The offence was not one which the Sub-Magistrate was competent to try, and his discharge of the accused on a mere preliminary inquiry cannot preclude a Magistrate having jurisdiction from taking up the case again for trial.

CRIMINAL PROCEDURE CODE.—*(Continued.)*

Section	Nature of the Question.	Opinion of the Lower Court.	Ruling of the High Court.
196	.....	.....	In *authorizing* a Magistrate to take down the evidence of witnesses in his own hand-writing, the meaning of the executive must be taken to have been that he shall so take *all depositions*, unless prevented by some sufficient reason.
356	Whether all Sub-Magistrates may commit cases for trial to the Session Court.	Under Section 38 they must be specially authorized by Government to commit. Sec. 356 confers no powers upon Sub-Magistrates. It merely specifies the Courts upon which certain work is to be thrown and thus relieves officers, who already possess the powers in question, of a doubt as to the way in which they should be exercised.	All Sub-Magistrates in the Madras Presidency possess the power in question by virtue of their appointment. Section 38 shows that persons may be "vested with such power by Law for the time being in force." Chapter XXIV is such a Law, and the language of Section 356—'Subordinate Magistrates shall commit to the Court of Session'—is sufficient to give to all Subordinate Magistrates in this Presidency the power of committal.
408	Whether an appeal can be admitted against a sentence of whipping under Act VI of 1864.	.....	The right of appeal in a Criminal case is wholly unaffected by the provisions of Act VI of 1864. It is governed solely by Sec. 408 *et seq.* of the Code of Criminal Procedure. As the accused in the present case have been convicted, and the sentence does not fall under the exceptional Section 411, an appeal lies under the general provision contained in Sec. 409.
409	.....	A Session Judge refused to hear an appeal from certain prisoners, on the sole ground that he had no jurisdiction to hear appeals from sentences under the Merchant Seaman's Act I of 1859.	Section 21 of the Criminal Procedure Code gives jurisdiction to all the tribunals mentioned to investigate all cases within the powers of punishment given by this Code, whether the offence is made punishable by the Code or by some special or local Law, and Sec. 409 gives a right of appeal to the Court of Session from such conviction. It seems, therefore, clear that the Session Court has jurisdiction to entertain such appeals.
411	Whether an appeal lies against a sentence awarding one month's imprisonment and 50 Rupees fine.	An appeal ought to be allowed if the two punishments together go beyond either a month's imprisonment or a fine of Rs. 50.	This Section merely denies an appeal where there is a sentence of not more than one month's imprisonment, *or* a sentence to a fine not exceeding 50 Rs. Where there is a sentence of a fine *and* imprisonment, an appeal unquestionably lies.

CIVIL PROCEDURE CODE.

Section.	Nature of the Question.	Opinion of the Lower Court.	Ruling of the High Court.
3	.....	....	When a defendant appears either in person or by Pleader, the mere circumstance that no written statement is put in on behalf of defendant does not warrant the trial of the suit *ex-parte*.

(Signed) P. P. HUTCHINS,
Registrar, Appellate Side.

Exd. J. H. Burns.

Judicial

No. 870.

To
The Secy to the Govt of India
Home Dept
Simla

Sir,

With reference to your letters of the 22nd July & 27 September 1862 Nos 3694 & 5324, I am directed by the Rt Hble the Governor in Council to forward ~~for the information of the Hble the President in Council~~, a Tabular statement showing the conclusions of the Madras High Court upon the principal questions which arose during the past year in connection with the Indian Penal Code & the Codes of Civil & Criminal Procedure.

I have &c

Fort St. George
4th June 1866

Judicial 1866 Departt.

No. 870

To

The Secretary to the Govt.

of India

Fds. 1759/69.

Dated 4th June 1866.

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C.J. 1/Aug
R.2 7 June