

NUMBER of Pages 26

Date of Report 25.3.88

Initials of Referee

D  
25/3/88

Gen 1152 - 57 Jackson 11-8-5-187  
(Gen 71-73)

NY

GOVERNMENT OF MADRAS.

JUDICIAL DEPARTMENT.

8th May 1877, No. 1152.

High Court—Rulings.

Read the following paper:—

No. 71. From T. WEIR, Esq., Acting Registrar of the High Court of Judicature at Madras, Appellate Side, to the Officiating Chief Secretary to Government, dated 18th April 1877, No. 938.

With reference to the orders of the Government of India in the Home Department, dated 22nd July 1862, No. 3694, I forward the Tabular Statements of Rulings on the Civil and Criminal Procedure and the Penal Codes passed by the High Court of Madras during the year 1876.

ENCLOSURE No. 1.

Civil Procedure Code.

| Section. | Nature of the Question.                                                                                                                                        | Opinion of the Lower Court. | Ruling of the High Court.                                                                                                                                                                                                                                                                    |
|----------|----------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 13       | The Judicial Commissioner of Mysore applied for authority to proceed with a suit in which a portion of the property was situated in the Madras Presidency.     | .....                       | Held that Mysore not being in British India, the Judicial Commissioner's Court could not be constituted a Sadr Court within the meaning of Section 16, and that consequently the High Court had no power to convey the authority applied for—( <i>High Court's Proc.</i> , 26th Sept. 1876). |
| 83       | Whether attachment could be made under the section of property belonging to defendant situated without the jurisdiction of the Court directing the attachment. | .....                       | Held that attachment of property so situated could not be made—( <i>High Court's Judgment in R. C., No. 8 of 1876</i> ).                                                                                                                                                                     |



## Criminal Procedure Code—(Concluded).

| Section.              | Nature of the Question.                                                                                                                                                                                                                                                                                                                                                           | Opinion of the Lower Court.                                                                                                                                              | Ruling of the High Court.                                                                                                                                                                                                                                                                                                                                                                                                              |
|-----------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 457                   | In a case in which the accused was charged with the offence of theft under Section 379 of the Penal Code and the evidence failed, the Magistrate, without calling on the accused for a defence, convicted him of criminal misappropriation of property under Section 403 of the Penal Code.                                                                                       | .....                                                                                                                                                                    | mere rights and interests or shares in joint movable —<br>(High Court's Proc., 1876).<br>Held that it was not open to the Magistrate, the prosecution for theft having failed, to convict the prisoner without further prosecution or trial of criminal misappropriation which was not a part of the charge so as to bring it within the terms of Section 457 of the Criminal Procedure Code — (High Court's Proc., 9th October 1876). |
| 491 & 497             | On a complaint made that certain persons were constantly creating disturbances in the bazaars, the Magistrate called upon the persons complained against to show cause why they should not be bound over to keep the peace, and on such cause not being shown required them, under Sections 491 and 497, to enter into a bond of Rupees 50 each to keep the peace for six months. | .....                                                                                                                                                                    | Held that the recognizance must be annulled. The act of which information is given, and in respect of which security is required, must be an act which is shown to be in contemplation at the time of the information given and not merely one a repetition of which may be apprehended from past misconduct of the kind without anything further — (High Court's Proc., 29th August 1876).                                            |
| 214<br>(explanation). | .....                                                                                                                                                                                                                                                                                                                                                                             | .....                                                                                                                                                                    | The offence of criminal trespass under Section 447 is not an offence which may lawfully be compounded — (High Court's Proc., 19th January 1876).<br>A complaint of an offence against public justice punishable under Section 204 is not an offence which may lawfully be compounded — (High Court's Proc., 7th February 1876).                                                                                                        |
| 263 & 116             | A kidnapped a boy from his lawful guardians. After the kidnapping was completed B, knowing that the boy had left home without the consent of the lawful guardians, undertook, at the instigation of A, to convey the lad to Ceylon and had proceeded some distance with this object when he was arrested. B was convicted of abetting the kidnapping the boy.                     | The Sessions Judge on appeal reversed the conviction on the ground that there was no concert between B and A previous to the completion of the kidnapping by the latter. | Held that the conviction was good. The offence of kidnapping might be abetted so long as the process of taking the minor out of the keeping of his lawful guardians continued — (High Court's Proc., 5th December 1876).                                                                                                                                                                                                               |

## Penal Code.

## Penal Code—(Concluded).

| Section. | Nature of the Question.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | Opinion of the Lower Court.                                                                                                                                                                                                                                                                                                   | Ruling of the High Court.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
|----------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 417      | The accused, who were village-officers, pressed complainants to pay the amount of their kist (instalment of land-tax). A sum of Rupees 41 being due by A to complainants, complainants applied to A for money. A thereupon stated that the accused (village-officers) owed him the sum of Rupees 44 and undertook to settle his debt with the accused and thereby to get the complainants' receipts for the amount of the kist. This was done and receipts were given. Accused failed to pay into the Treasury the amount of complainants' kists, until after an Amin had been sent from the Treasury to collect the arrears. On these facts the accused were convicted of cheating. | .....                                                                                                                                                                                                                                                                                                                         | Held that the conviction could not be sustained. It was not cheating for a village-officer, intending to carry out his duty, to undertake to gratify a debt and pay kist in consideration of a debt due by him being cancelled. If an honest intention existed at the time of making the arrangement, nothing subsequent would make the offence cheating — (High Court's Proc., 23rd October 1876).                                                                                                                                                                                                                                                                                                           |
| 430      | The accused constructed a new embankment in a main irrigation channel, and diverted the water into a new side channel. The supply of water to complainant's field was diminished by the act of the accused, and the complainant's crops were injured. The second-class Magistrate convicted the accused under the section.                                                                                                                                                                                                                                                                                                                                                           | The District Magistrate held that the act of the accused did not amount to the offence of mischief by causing diminution of water, but was a simple case of unauthorized diminution of water, and was cognizable by the Civil Courts only. The section in his opinion was aimed at a wanton waste made with intent to injure. | Held (Innes, J.) dissenting that the conviction was good. It is not a part of the definition of the offence that the act of the accused should be in common language a mere wanton act of waste. The physical requisites of the act are the doing of an act which causes or, to the doer's knowledge, is likely to cause a diminution of the supply of water. The mental requisites are the doing of the act with the intention of causing wrongful loss. The intention to cause wrongful loss may properly be inferred when the act is done without any sort of right or under such a mere shadow of right that the claim is manifestly only an additional wrong — (High Court's Proc., 24th November 1876). |

(Signed) T. WEIR,  
Acting Registrar, Appellate Side.

No. 72.

ORDER THEREON, 8th May 1877, No. 1152.

Ordered that the Tabular Statements, received with the above letter, be forwarded to the Government of India, with reference to the correspondence noted in the margin.

From Govt of India, 25th July 1869, No. 5794, Home Dept.  
of " 27th Sept " 5794, " "  
of " 25th July 1869, " 118, 125 " "

(True Extract.)

D. F. CARMICHAEL,

Offg. Chief Secretary.

To the Registrar of the High Court.

19

J. Weir Esquire,  
Acting Registrar of the High Court  
of Judicature at Madras.

The Honorable B. F. Carmichael,  
Off. Chief Secretary to Government.  
Honorable Sir,

With reference to the orders of the Govern-  
ment of India, in the Home Department,  
dated 22<sup>nd</sup> July 1862, No 3694, I forward the  
Tabular Statements of Provisions in the Civil and  
Criminal Procedure and the Penal Codes—  
passed by the High Court of Madras during  
the year 1876.

I have the honor to be,  
 Sir,  
 Your Most Obedient Servant,

First Court of Auditors,  
Mexico, 18 April 1877. }

*Acacia*  
*Leucodermis*

Obit. of 1877  
JUDICIAL.

TO THE RECORDS OF THE  
HIGH COURT.

137-7711

Two

25

O.O., 64 May 1877, No. 1152.

MAY.  
 Nos. 71-73.

*For a Card—Prize.*—The four Elements of the Holographic will by the High Court of Madras, between 1802-1803, compared & connected with the Civil Code, the Criminal Procedure, and the Indian Penal Code, introduced to the Government of H. E. H.

Section

Nature of the Question. Opinion of the Lower Court. Ruling of the High Court.

13. The Judicial Commissioner of Mysore applied for authority to proceed with a suit in which a portion of the property was situated in the Madras Presidency.

Held that Mysore not being in British India the Judicial Commissioner's Court could not be considered a Sadr Court within the meaning of Section 12 and the consequent by the High Court had no power to convey the authority applied for. (S. C. Dec. 25<sup>th</sup> September, 1875.)

83. Whether attachment could be made under the Section of property belonging to defendant situated without the jurisdiction of the Court directing the attachment.

Held that attachment of property so situated could not be made (S. C. Judgment in R. C. No 5 of 1875.)

Section Nature of the

Section Opinion of the Lower Court. Ruling of the High Court.

46. A 23 Clasp A  
46. found an accused  
guilty of an offence  
his jurisdiction  
of opinion that the  
for, a one sentence  
than he was committed  
adjudge he submitted  
proceedings to the  
of the Division. The  
of the Division submitted  
the proceedings to 23 Clasp  
Magistrate with direction  
that the case should be  
committed to the Court of  
Session. The case was  
committed accordingly.

The Session Judge  
was of opinion that the  
commitment was illegal. Divisional Magistrate as of-  
fence as the accused had already, factually removed the con-  
viction as if it had been an ac-  
quittal of the prisoner. The words  
of the Section enabling the  
Magistrate to pass such  
judgment, sentence or order  
as he deems proper expressly  
provide for the disposal of  
the case otherwise than by  
an acquittal or sentence  
and it was quite competent  
to the Magistrate to whom  
the case was referred to say  
that either from the gravity  
of the matter or from any  
other sufficient reason  
the Session Court was the  
proper tribunal for the  
disposal of the case and to  
make an order in accordance  
with that opinion (H. C. Pro.  
21st August 1876.)

67. Aranted the one address  
at a place within the limits  
of Mysore. He was apprehended  
with the stolen property  
within British Indian  
territory and then committed  
of theft.

The Magistrate was  
of opinion that he had no jurisdiction to try  
jurisdiction, the offence the offence. Under the rule  
being a continuing one.  
Section 67, a Court in a District  
of British India would have  
had jurisdiction if the Magistrate  
had been committed in any  
other District in British India.  
The rule, however, is applicable  
only to the scope of the relative  
jurisdiction of laws in British  
India and cannot be applied  
to any offence not committed  
within the jurisdiction of any of  
them. In such cases the general  
rule applies that a Court trying  
an offence must have jurisdiction  
over the place of the deed. The  
general rule again is subject  
to modification by Statutes and  
jurisdiction might have been given  
allowing the accused to be British  
subject by an observance of the require-  
ments of the Extradition Act (Act II of 1872).  
(H. C. Pro. 31st October 1876.)

①

# Criminal Procedure Code.

## Section Nature of the Question

Opinion of the lower court. Ruling of the High Court.

Whether under Section 388 it is legal to commit to prison a person accused of a bailable offence if the case against him is a warrant case.

The words of Section 388 are imperative. Warrant cases are bailable and non-bailable. Section 194 provides for cases in which no steps have been taken as to bail. By demand the accused may be sent to prison or he may be bailed. There would therefore be an option save for the express words of Section 388 which compel the Magistrate to admit to bail if the offence is bailable. The latter part of the Section must be applied to a case which is bailable and in which adequate bail is tendered. There is no conflict between the two Sections. The imperative words of Section 388 compel the exercise of the apparent discretion in Section 194 in a particular manner (B. C. P. 175 October 1896.)

280. A 1st Class Magistrate acting as an Appellate Court refrained from enhancing the sentence which was one of fine by awarding imprisonment as an additional punishment on the ground that, in his opinion, the law did not authorize the enhancement of a sentence by awarding imprisonment differing in kind from that awarded by the court whose sentence is appealed against.

Held that the Magistrate's opinion was incorrect. Section 280 of the Code of Criminal Procedure authorizes an Appellate Court, subject to the provisions in the final sentence, to enhance any punishment that has been awarded. Punishment in this Section does not mean the sort of evil or inconvenience inflicted but the dose of punishment. That dose is enhanced or heightened equally whether another pain legally impossible is added or the one already imposed is increased in degree. (B. C. P. 222 February 1896.)

307. Whether when the amount of a fine cannot be levied by the distress and sale of the separate moveable property of an offender, it may be of the convicted person in district. Section 307 of the Criminal Procedure Code.

The Sessions Judge was of opinion that the fine, exemplary penalties must be strictly confined to the provisions of the law that gives the jurisdiction. Section 307 of the Criminal Procedure Code.

Nature of the Question

Opinion of the Queen Bench & King of the High Court.

457. In a case in which the accused was charged with the offence of theft under Section 37 of the Code and the evidence consisted of the evidence of a witness who had seen the accused without calling on him for a statement, and the evidence of a witness who had seen the accused in the company of a person who had been convicted of a similar offence, the Court held that the evidence was sufficient to prove the offence.

458. In a case in which the accused was charged with the offence of theft under Section 37 of the Code and the evidence consisted of the evidence of a witness who had seen the accused in the company of a person who had been convicted of a similar offence, the Court held that the evidence was sufficient to prove the offence.

moveable property belonging to the offender. This language denotes things which may be taken by distress and then sold so as, by the mere act of sale, to pass the property in them - not mere rights and interests or shares in joint moveables. (H. C. Pro. 16<sup>th</sup> February 1876.)

Held that it was not open to the Magistrate - the prosecution for theft having failed to connect the prisoner without further prosecution or trial of Criminal misappropriation which was not a part of the charge so as to bring it within the terms of Section 407 of the Criminal Procedure Code (H. C. Pro. 9<sup>th</sup> October 1876.)

Held that the recognizances must be annulled. The act of which information is given and in respect of which security is required must be an act which is shown to be in contemplation at the time of the information given and not merely one a repetition of which may be apprehended from past misconduct of the kind with out any thing further. (H. C. Pro. 29<sup>th</sup> August 1876.)

# Penal Code.

Section 147 of the Question. Opinion of the Lower Court. Reading of the High Court.

244  
(Explanations)

The offence of Criminal  
breach is under Section 147  
is not an offence which is  
lawfully compounded.  
(H.C. Dec. 19<sup>th</sup> January 1876.)  
Compulsion of an old wife  
as a well public justice.  
Peaceable under Section  
204 not an offence which  
may lawfully be compounded.  
(H.C. Dec. 7<sup>th</sup> February 1876.)

363 A kidnapped a boy from the Seldins gudge on  
his lawful guardians. After appeal reversed the com-  
the kidnapping was completed within on the ground  
B, knowing that the boy had left that there was no consent - so long as the process of taking  
home without the consent of the 'between B and A pre- the minor out of the keeping  
lawful guardians, understood, vires to the completion of his lawful guardians  
at the instigation of A, to con- of the kidnapping by the Court (H.C. Dec. 1876.)  
way the lad to Cayton and had latter -  
proceeded some distance  
with this object when he was  
arrested. B was convicted  
of abetting the kidnapping  
the boy.

417 The accused who were  
village officers pressed  
complainants to pay the  
amount of their kick (instal-  
ment of land tax). A sum  
of Rs 44 being due by A to  
complainants, complainants  
applied to A for money. A  
therefore stated that the  
accused (village officers)  
must give the sum of Rs 44  
and undertook to settle his  
debt with the accused and  
thereby to get the complainants  
receipts from the accused  
for the amount of the kick.  
This was done and receipts were  
given. Accused paid to  
pay into the Treasury the  
amount of Rs 44. Complainants  
trick, until after an annu-  
had been paid to some the  
Treasury to collect the ar-  
rears.

At these facts the re-

Held that the conviction  
could not be sustained.  
It was not checking for a  
village officer - in the  
to carry out his agreement  
to undertake to grant receipt  
any year but in the same  
of which he had been  
convicted. If he himself  
indeed he was not at the  
time of making the arrange-  
ment, making the arrange-  
ment to make the offence  
advisory (H.C. Dec. 1876.)  
September 1876.)

## Equal Code.

Set in Nature of the Question Opinion of the Lower Court. Ruling of the High Court.

430 The accused constructed The District Judge Field (James T. dissenting) a new embankment in a field that the act of that the conviction was good. main irrigation canal the accused did not. It is not a part of the defendant's other amount to the offence of the offence that the is like a canal. of a mischief by causing act of the accused should be the benefit of it. diminution of water in common language a more Complainant's friend was but was a simple wanton act of waste. -- diminished by the act of unauthorized The physical requisites of the accused of the diminution of water of the act are the doing of an Complainant's act, were and was cognizable act which causes or, to the injured. by the Civil Courts only. does knowledge, is likely

The 2nd Section in his opinion to cause a diminution of waste made with intent to injure. -- doing of the act with the intention of causing wrongful loss. The intention to cause wrongful loss may properly be inferred when the act is done without any look of right or under such a more shadow of right that the claim is manifestly only an additional wrong. (S. 6. P. 24 & November 1876.)

Edin

Attesting Registrar,  
Appellate Side.

(12)

Enclosure is a  
letter from the Hon. Secy. of Ag.  
of the Dept. of Int. Affairs.  
relative to the situation of  
the Indian 17 of 1898.

(11)

10/1/1941  
10/2/1941  
10/3/1941  
10/4/1941  
10/5/1941  
10/6/1941  
10/7/1941  
10/8/1941  
10/9/1941  
10/10/1941  
10/11/1941  
10/12/1941  
10/13/1941  
10/14/1941  
10/15/1941  
10/16/1941  
10/17/1941  
10/18/1941  
10/19/1941  
10/20/1941  
10/21/1941  
10/22/1941  
10/23/1941  
10/24/1941  
10/25/1941  
10/26/1941  
10/27/1941  
10/28/1941  
10/29/1941  
10/30/1941  
10/31/1941  
11/1/1941  
11/2/1941  
11/3/1941  
11/4/1941  
11/5/1941  
11/6/1941  
11/7/1941  
11/8/1941  
11/9/1941  
11/10/1941  
11/11/1941  
11/12/1941  
11/13/1941  
11/14/1941  
11/15/1941  
11/16/1941  
11/17/1941  
11/18/1941  
11/19/1941  
11/20/1941  
11/21/1941  
11/22/1941  
11/23/1941  
11/24/1941  
11/25/1941  
11/26/1941  
11/27/1941  
11/28/1941  
11/29/1941  
11/30/1941  
12/1/1941  
12/2/1941  
12/3/1941  
12/4/1941  
12/5/1941  
12/6/1941  
12/7/1941  
12/8/1941  
12/9/1941  
12/10/1941  
12/11/1941  
12/12/1941  
12/13/1941  
12/14/1941  
12/15/1941  
12/16/1941  
12/17/1941  
12/18/1941  
12/19/1941  
12/20/1941  
12/21/1941  
12/22/1941  
12/23/1941  
12/24/1941  
12/25/1941  
12/26/1941  
12/27/1941  
12/28/1941  
12/29/1941  
12/30/1941  
12/31/1941

10/1/1966

Handwritten notes on the left margin, including the word "Handwritten" and some illegible scribbles.

Handwritten word "Handwritten" in the left margin.

61153  
Handwritten text in the top right corner, including the number 61153 and the date 71-73.

71-73  
Handwritten date or reference number.

Handwritten text in the top right corner, including the words "Handwritten" and "Handwritten".

Handwritten text in the top right corner, including the words "Handwritten" and "Handwritten".

Handwritten text in the top right corner, including the words "Handwritten" and "Handwritten".

Handwritten text in the top right corner, including the words "Handwritten" and "Handwritten".