

## [JURISDICTION AS COURT OF REVISION.]

*Proceedings of the High Court, dated 22nd February 1876.*  
*Criminal breach of trust by trustee of temple—Jurisdiction of ordinary*  
*Criminal Courts.*

1876.  
 February 22.

The ordinary criminal law is not excluded by Regulation VII of 1817, or Act XX of 1863.

Read Proceedings of the District Magistrate of South Arcot dated 8th January 1876, in the matter of a criminal breach of trust in respect of certain property belonging to the Pataleswara Covil of Tripapuliur.

In this case a complaint of criminal breach of trust in respect of property belonging to a Hindu temple was preferred against the trustee and manager of the temple.

The District Magistrate was of opinion that he had no jurisdiction to entertain the complaint and dismissed the complaint. The reasons stated by the District Magistrate for this decision are that Regulation VII of 1817, Section 16, required trustees and managers of Hindu temples to be proceeded against for breach of trust in the manner provided in Regulation IX of 1822 for the punishment of fraud and embezzlement on the part of public servants engaged in the collection of land revenue, that is by proceedings in the Court of the Collector of the District; that Act XX of 1863 vested in the Committees appointed by Government the powers formerly exercised by the Collector and the Board of Revenue, and that just as no prosecution for malversation of temple funds could have been entertained before the enactment of Act XX of 1863, without the consent of the Collector or the Board of Revenue, so no such prosecution could now be entertained except with the consent or on the motion of the Committees appointed under the Act.

The High Court does not concur in the view of the law stated by the District Magistrate. The ordinary criminal law is not excluded by Regulation VII of 1817 or Act XX of 1863 (vide Section 20). The permission of the Board of Revenue or of the Committees is required only for the procedure prescribed in the

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Special Acts, and these special provisions cannot be taken out of the Acts and applied as a restriction to the ordinary operation of the criminal law. The District Magistrate will restore the complaint to his file, and will proceed to dispose of it on the merits.

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[JURISDICTION AS COURT OF REVISION.]

CRIMINAL.

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1876.  
April 19.

PROCEEDINGS OF THE HIGH COURT,\* DATED 19TH APRIL 1876.

*Whipping Act, VI of 1864, Section 7.—Illegality of sentence of whipping, or its execution, on person who is under one or other of certain heavy sentences.*

A sentence of whipping passed on a person who is already under sentence of death, or transportation, or penal servitude, or imprisonment for more than five years, is illegal. If the sentence of whipping precede, instead of follow, the other sentence, the passing of the latter sentence renders the inflection of the whipping illegal.

*Read Calendar in Cases Nos. 90 and 91 of 1875 on the file of the Session Court of Bellary.*

IN these two cases the prisoner has been convicted of the offence of house-breaking by night and of theft in a building committed on two different and distinct occasions.

In Case No. 91 the Session Judge has sentenced the prisoner to be transported for seven years. In Case No. 90 the prisoner has been sentenced to receive one hundred lashes with a cat-o'-nine tails under Act VI of 1864. In passing this latter sentence the Session Judge has remarked that "having transported him (the prisoner) for seven years in Case No. 91, I have thought it sufficient to add a sentence of whipping."

The High Court is of opinion that the sentence of whipping in Case No. 91 is an illegal sentence. Section 7, Act VI of 1864, is as follows:—"No female shall be punished with whipping, nor shall any person who may be sentenced to death or to transportation, or to penal servitude or to imprisonment for more than five years be punished with whipping." These words are perfectly general. They do not touch the legality of the sentence, but the legality of the punishment: they declare distinctly

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\* (Morgan, C. J., and Holloway, Innes, Kernan, and Kindersley, J. J.)