

## Appellate Jurisdiction (a)

*Criminal Regular Appeal No. 157 of 1868.*

RAMASAMY ..... *Appellant.*

To constitute the offence of escaping from transportation under Section 226 of the Penal Code, it is essential that the convict should have been actually sent to a penal settlement and have returned before his term of transportation had expired or been remitted.

Where a prisoner had escaped from custody whilst on his way to undergo sentence of transportation.

*Held*, that he had committed an offence punishable under Section 224 and not under Section 226 of the Penal Code.

1868.  
December 2.  
C. R. A. No.  
157 of 1868.

**A** PPEAL by the prisoner against the sentence of the Session Court of Tinnevely. The charge was that prisoner, having been lawfully transported under sentence of the Session Court of Tinnevely, returned from such transportation, the term of such transportation not having expired and his punishment not having been remitted. The prisoner admitted that he was the man transported, and that he returned, having escaped on the road to Salem. He was sentenced to transportation for life under Section 226 of the Penal Code.

No counsel were instructed.

The Court delivered the following

**JUDGMENT:**—We are of opinion that the sentence in this case is illegal. By his confession the prisoner is shown to have escaped from the custody of the Police within the district of Salem, when under sentence of transportation for the offences of house-breaking and theft and whilst on his way to undergo such sentence. He was guilty therefore of the offence, punishable under Section 224 of the Penal Code, of escaping from custody in which he was lawfully detained for an offence of which he had been convicted, and not of the very serious offence punishable under Section 226. To constitute that offence, it is essential that the convict should have been actually sent to a penal settlement and have returned before his term of transportation had expired or been remitted.

The prisoner ought to have been charged and convicted under Section 224, and we must modify the sentence. We think the punishment should be reduced to two years' rigorous imprisonment, to take effect at the expiration of the period of the former sentence.

(a) Present: Scotland, C. J., and Collett, J.