M.R.O. 1—33,000—16-10-27.

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No. 1147 Press Mis.

146-149

Dated 18-8- 19 1885

13/14

Not to be folded or roughly handled

3. To this I replied, remarking upon the irregularity of Mr. Elwin's passing comments upon my official acts, and pointing out the proper quarter in which he should make any complaints that might occur to him regarding my conduct. I also drew his attention to the fact that I had, in releasing Mr. Bench, in no way acted contrary to law, and requested him, as he has made an unfounded statement impugning my official character, to withdraw it.

4. This he has refused to do, and has challenged me to lay the whole correspondence before Government. As I feel pretty sure that, under the circumstances, I have acted rightly, and that Mr. Elwin has exceeded the bounds of official etiquette, and gratuitously interfered in a matter which did not concern him, I am quite willing, if you think the matter worthy of notice, that the case should, through you, be laid before Government.

5. I wish, however, for that purpose to make some statement of the case, and my reasons for releasing Bench as I did. On the 13th May last, a Mr. Johnson, acting as Agent for Mr. Elwin, appeared before me to apply for summonses for a Station Master named Park, a Guard named Yaull, and the Engine Driver Bench, to answer to a charge of an offence punishable under Sections 27 and 28, Act XVIII of 1854, which they were said to have committed on the 4th of the same month. The two latter were said to be at Madras, and summonses requiring their attendance were the same evening sent to the Deputy Commissioner of Police for service. These did not, through some delay in the Post office, reach Madras until the 16th. On the evening of the 17th, I was surprised to see Bench, whom I knew by sight, brought with a Warrant from Coimbatore, charging him with offences punishable under Section 27, Act XVIII of 1854, and Section 279, Indian Penal Code. On inquiry, I found that this Warrant related to the same matter as that in which Mr. Johnson had applied for a summons. As both offences were triable under Chapter 15 of the Code of Criminal Procedure, and as I knew that Park was at the time still doing duty as Station Master at Vellore; that Yaull was still in the service of the Company, though under suspension from his duties; that (from a note from Mr. Johnson) the summonses had miscarried; and that Bench had been dismissed from his post for impertinence to Mr. Wright, the Locomotive Superintendent of the Railway Company; and as I, setting aside any of these considerations, did not like to send to either Wallajah or Ranepett Lock-up, both of which you know are unfit for confining any one but Natives, a man who had been fasting since 2 P. M., of the day before, I released Bench, on his personal recognizance in the sum of 100 Rupees, such amount being, in my opinion, suited to his condition in life and the nature of the offence with which he stood charged, this latter view being entirely supported by the neglect of the Railway Company to arrest him on the 4th of May, and their delay in applying for a summons.

On the 18th May, the day fixed for hearing, the case came on, and was, for the convenience of the prosecution, adjourned until the 20th idem at 11 A. M. On that date Bench did not appear, and as I learned that he had gone to Salem on the evening of the 18th to join his wife, to whom he had been married not more than five weeks, and as Mr. Wright stated that he believed that Bench was escaping, I issued a Warrant for his apprehension, and telegraphed to all the stations along the line of rail and to the Magistrate of Malabar, requesting them to arrest Bench and send him down here. He was taken into custody at Calicut when going with his wife to a hotel, and was then forwarded to me. From what the Malabar Police told me, I do not think that he was attempting to escape.

6. I hold that, under the circumstances of the case, I was quite justified in releasing Bench on his own recognizances. It had neither been stated or proved that he was an European British subject, and it was not until the 20th May that I became aware that, by a special Act, he was not amenable to my jurisdiction for the offences with which he was charged by Mr. Johnson. Mr. Wright, on the 18th May, stated to me as his reason for procuring a Warrant to arrest Bench (it was on his representation that the Warrant from Coimbatore was issued) that he (Mr. Wright) was aware that I had issued a summons for Bench's appearance, and that he thought that the man was absconding. This was absurd; Bench, after being dismissed, could not be expected to wait at Madras until the Railway Company thought fit, or found it convenient, to prosecute him. He had a perfect right to go where he liked. Even admitting that Mr. Wright's supposition was correct, the charge should have been made under Section 172, Indian Penal Code.

7. I would further submit some remarks upon Mr. Elwin's letter, No. 642, dated 1st June 1865. He says that the "gravity of the offence" with which Bench stood charged was a reason why I should not have released him on his own recognizances. It appears to me that if Mr. Elwin considered the offence, with which Bench and his fellow defendants stood charged, so grave as he tries to make out, that he should have exercised the special powers given to servants of a Railway Company in Section 37, Act XVIII of 1854, and arrested the parties at once, instead of permitting Park to continue his duties, suspending Yaull who has since returned to his work, and neglecting to cause any complaint to be made until the 13th May, nine days after the commission of the offence.

As regards the opinion of the Solicitors of the Company on my proceedings, I know nothing of what Messrs. Boyson and Prichard thought, but Mr. Brockman, a partner of that Firm, and who carries on the Railway business, told me, on the 1st instant, in the presence of Messrs. Church and Wright, both officers of the Railway Company, that he considered Mr. Elwin entirely in the wrong, and that the Firm had not passed an opinion such as that stated by Mr. Elwin.

8. In conclusion, I trust, if you think fit to forward this letter, that Mr. Elwin may be requested to withdraw the uncalled for remarks which he has, under cover of working for the interests of his employers, thought fit to pass in a matter which evidently does not fall within his province, and that the propriety of in future excluding, from his official correspondence with Magistrates, all Judicial criticism may be suggested to him.

(True Copy).

(Signed) J. D. ROBINSON,
Magistrate.

From R. B. ELWIN, Esq., Agent and Manager of the Madras Railway Company, to J. F. PRICE, Esq., Acting Head Assistant to the Magistrate of North Arcot, Ranepett; dated Madras, 22nd May 1865, No. 599.

By a communication received this morning from Messrs. Boyson, Brockman, and Prichard, I regret to learn that a man of the name of "Bench", late an Engine Driver in this Company's employ, and for whose appearance before you a Warrant of apprehension had been obtained by the Locomotive Superintendent and Traffic Manager of this Railway from the Assistant Magistrate of Coimbatore, had escaped from your custody, and for a time had evaded justice.

2. As I am informed "Bench" with two other servants of this Company was prosecuted before you on the 18th instant, for negligence, whereby life of passengers and others on the Madras Railway was endangered, and that on the evening of the said 18th instant, you released the defendant "Bench", on his *personal* bail, in the sum of Rupees 100.

3. It is very much to be lamented that as to the defendant "Bench" there has been a failure of justice, owing to your having released him on his own *personal* bail, a course which, in my opinion, was in the particular case under notice most inexpedient, and was also in direct opposition to the requirements of the Criminal Procedure Code.

4. I have the honor to request that you will be good enough to inform me what steps have been taken for the capture of the prisoner, in order that the result of the prosecution by this Company may be duly reported to Government.

(True Copy).

(Signed) J. F. PRICE,
Ag. Hd. Asst. Magistrate.

(True Copy).

(Signed) J. D. ROBINSON,
Magistrate.

From J. F. PRICE, Esq., Acting Head Assistant Magistrate, to R. B. ELWIN, Esq., Agent and Manager, Madras Railway Company; dated Ranepett, 26th May 1865.

With reference to your letter, No. 599, dated 22nd instant, I have the honor to inform you that the party therein referred to has been apprehended, and will to-day be forwarded to me.

2. I have written to the Traffic Manager of the Company, to request that he will take the necessary steps to continue the prosecution.

3. I regret that my view of the proceedings taken by me in this case does not coincide with yours, but would remark that it is not customary with officers, not in the employ of Government, to make comments to Magistrates on their official acts. Such privilege rests only with the Local Government and the Magistrate's Superior.

4. Any act, therefore, of mine which you considered improper should have been brought to the notice of the Session Judge, North Arcot, the Judges of the High Court, or the Local Government.

5. As regards the legality of my releasing Mr. Bench, I would draw your attention and that of your legal advisers, under whose advice, I presume, you have written the letter under reply, to Section 258, Code of Criminal Procedure, the heading to Chapter XV, Code of Criminal Procedure, column 4 of the Schedule attached to the Code of Criminal Procedure, and to the statement of your Agent, Mr. William Johnson, who applied to me for a summons for Mr. Bench; observing at the same time that it has not yet been shown that Mr. Bench is an "European British subject."

6. From these you will find that your assertion as to the legality of my procedure is without any foundation.

7. I consider it, therefore, but just, as you have made, in your capacity as Agent and Manager of the Madras Railway, a statement which impugns my official character, and which, you must now see, was groundless, to request that you will in the same capacity withdraw it.

(True Copy).

(Signed) J. F. PRICE,
Ag. Head Asst. Magistrate.

(True Copy).

(Signed) J. D. ROBINSON,
Magistrate.

From R. B. ELWIN, Esq., Agent and Manager, Madras Railway Company, to J. F. PRICE, Esq., Acting Head Assistant Magistrate of North Arcot, Ranepett; dated Madras, 1st June 1865, No. 612.

On my return to the Presidency, your letter of the 26th ultimo, No. 46, has been placed before me.

2. With regard to paragraphs 3 and 4, I have the honor to remark that it is quite within my competence, as the representative of the Madras Railway, to state my views to Magistrates on matters relating to the interests of this Company; but I have no desire to communicate with gentlemen who consider otherwise, and therefore, in future, I will bring to the notice of Government any matter in connection with your Court, at which I may take exception.

3. The view which I expressed as to the legality of your releasing Engine Driver Bench, upon his own personal bail, was my own, and was based upon the gravity of the offence with which he stood charged. I thought then, and still think, as do also our Solicitors, that your act was in opposition to the requirements of the Criminal Procedure Code, and therefore am not prepared to withdraw my remarks, but shall have much pleasure in submitting a copy of the whole of the correspondence, if you so desire, for the orders of Government.

(True Copy).

(Signed) J. F. PRICE,
Ag. Head Asst. Magistrate.

(True Copy).

(Signed) J. D. ROBINSON,
Magistrate.

From J. F. PRICE, Esq., Acting Head Assistant Magistrate, of North Arcot, to R. B. ELWIN, Esq., Agent and Manager, Madras Railway Company; dated Ranepett, 3rd July 1865.

With reference to your letter, No. 612, dated 1st instant, I have the honor to inform you that the Magistrate of the District being the proper channel through which the matter at issue

between us should be put before the higher authorities, I have forwarded to him copies of the whole of the correspondence, with a request that it may, with an explanation and some remarks from me on your letter under reply, be laid before Government.

2. The delay in replying to your letter above alluded to, has arisen from my recent severe illness, and the extra duties which have devolved upon me through my having charge of an office in addition to my own.

(True Copy).

(Signed) J. F. PRICE,
Ag. Head Asst. Magistrate.

(True Copy).

(Signed) J. D. ROBINSON,
Magistrate.

No. 147. ORDER THEREON, 18th August 1865, No. 1147.

The Governor in Council observes that the Agent and Manager of the Madras Railway Company was not entitled to address the Acting Head Assistant Magistrate, with reference to any order passed by him in his capacity as a Magistrate or Justice of the Peace. If Mr. Elwin was of opinion that the course taken, or proposed to be taken, by the Acting Head Assistant Magistrate was calculated to defeat the ends of justice, his proper course was to address the Magistrate, or the Government, on the subject.

2. The Magistrate seems to have misapprehended the meaning of the orders of Government quoted in the margin of the 2nd paragraph of his letter, where he says that Mr. Price had no jurisdiction in the case referred to. Mr. Price had jurisdiction to entertain the charge, and if he deemed the evidence sufficient, to commit the accused for trial before the High Court, and this, it would seem, was the course actually taken after the re-apprehension of the accused.

(True Extract).

Chief Secretary.

To the Magistrate of North Arcot.
" Consulting Engineer for Railways.

Exd. J. H. Burns.

No 37

North Arcot
Magistrate's Cr. Office
Palmanair 13th July 1865

From

J. D. Robinson Esq
Magistrate of North Arcot.

To The Honourable A. J. Arbuthnot
Chief Secretary to Government
Fort Saint George

Sir,

I have the honor at the particular desire of my Acting Head Assistant Mr Price to lay before Government transcript of some correspondence which has passed between him and the Agent and Manager of the Madras Railway Company on the subject of an Engine Driver charged with an offence punishable under Sections 27 Act 18 of 1854 and 279 of the Indian Penal Code who was released by Mr Price on his personal recognizances.

2 Under the rulings quoted in the margin, Mr Price had clearly no jurisdiction, and although when first called on to act, Mr Price had as he states in para 6 nothing before him to show whether the man was an European British subject, still looking to the nature

× Letter 7 3d July 1865 No 59.

Progs: of the Madras Govt. Jud. Dept. dated 8th Sept, 24th & 31st Oct 1865. Nos 1342, 1534 & 1567 respectively

with 2 other servants of this Company was prosecuted before you on the 18th Instant for negligence, whereby life of passengers and others on the Madras Railway was endangered and that on the evening of the said 18th Inst, you released the Defendant "Benck" on his personal bail, in the sum of Rs 100.

3 It is very much to be lamented that as to the Defendant "Benck" there has been a failure of Justice owing to your having released him on his own personal bail, a Course which in my opinion, was in the particular case under notice most unexpedient and was also in direct opposition to the requirements of the Criminal Procedure Code.

4. I have the honor to request that you will be good enough to inform me, what steps have been taken for the Capture of the Prisoner, in order that the result of the prosecution by

impugning my official character, to withdraw it.

4. This he has refused to do, and has challenged me today the whole correspondence before Government. As I feel pretty sure that, under the circumstances, I have acted rightly and that Mr Elwin has exceeded the bounds of official Etiquette, and gratuitously interfered in a matter which did not concern him, I am quite willing, if you think the matter worthy of notice that the Case should through you be laid before Government.

5. I wish, however, for that purpose to make some statement of the case and my reasons for releasing Benck as I did. On the 13th May last, a Mr. Johnson, Agent for Mr. Elwin, appeared before me to apply for summonses for a Station Master named Park, a guard named Gault and the Engine driver Benck to answer to a charge of an offence punishable under Sections 27 and 28 Act 18 of 1854, which they were

charged was a reason why I should not have released him on his own Recognizances - It appears to me that if Mr. Elwin considered the offence with which Beech and his fellow defendants stood charged, so grave as he tries to make out, that he should have exercised the special powers given to servants of a Railway Company in section 37 Act 18 of 1854 and arrested the parties at once, instead of permitting Park to continue his duties, suspending Yaulk who has since returned to his work, and neglecting to cause any Complaint to be made to me until the 13th May - 9 days after the Commission of the offence -

As regards the opinion of the Solicitors of the Company on my proceedings, I know nothing of what Messrs Boyson and Pritchard thought, but Mr. Brack- -man, a partner of that firm, and who carries on the Railway business, told me, on the 1st Instant in the presence of Messrs Church and Wright both officers of the Railway Company that he considered

Mr.

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No 642. Madras Railway.

Madras 1st June 1865.

From

Robert B. Elwin Esqre
Agent & Manager Mr. R. C.

To

J. S. Price Esqre
Ag. Hd. Asst. Magistrate of
North Circle
Ramepett

Sir,

On my return to the Presidency your letter of the 26th Ultimo, No. 46 has been placed before me -

2. With regard to paras 3 & 4, I have the honor to remark that it is quite x within my Competence as the representative of the Madras Railway to state my views to Magistrates on matters relating to the interests of this Company, but I have no desire to communicate with gentlemen, who consider otherwise, and therefore in future I will bring to the notice of Government any matter in connection with your Court, at which, I may take exception -

Not by Mr Elwin

The

3: The view which I expressed as to the legality of your releasing Engine Driver Beech upon his own personal bail, was my own, and was based upon the gravity of the offence with which he stood charged - I thought them, and still think, as do also our solicitors, that your act was in opposition to the requirements of the Criminal Procedure Code, and therefore am not prepared to withdraw my remarks, but shall have much pleasure in submitting a Copy of the whole of the Correspondence, if you so desire, for the orders of Government -

I have &c

/ Signed / Robert B. Elwin
Agent & Manager

/ True Copy /

/ Signed / J. St Price
Actg Asstt Magte

/ True Copy /

J. D Robinson
Magistrate

L.A. As Treasr

Pro: 8th Sept 1865 ct 51 to 53.
" 21st Oct " ct 180 to 182
" 31st " " ct 236 to 238.

I do not see how the Govt can interfere to depose the course to be taken by the Railway authorities in relation to the Magistracy. It is very possible that Mr Price may have been mistaken in his Law - but Mr Elwin was in no way entitled to call up Mr Price on the subject - & he thought that position had not been done he should have complained to the Attorney to the Govt through the Attorney

In strictness, there should have been no correspondence whatever between the Magistrate holding a Court & anyone coming into it for business

Ch 21 Oct
R 25
C 25
R 29

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Jud 1865 Despatch
Pro. of Can
From J D Robinson Esq
Magt of Ha
To Hble A J Arbuthnot
Chief Secretary
to Govt
Prov Govt
Dated 13th July 1865
Recd "
No 37 to 15 1/2
Enclosures in number

Copy before Govt
transcript of same
correspondence which
has passed between
Mr Price late Acting
Magt of Ha
Railway on the subject
of an Engine driver
charged with an offence
under Section 27 act 18
of 1864 & 279 of P.C.

S.O. No 1147

3.

formally referred in his Court and an outsider, as in this case, was Mr Clarke.

However, the Magistrate permitted himself an exchange of written communication with Mr Clarke, as stated by H.L. the President, that the Govt cannot defend the course of the Railway authorities should take. I fully agree also, in the observations of the Pres[t] has made.

It seems somewhat strange, that newspaper reports explanation from the Assistant Magistrate Mr Robertson Barnes, the Appl Magistrate, Mr Price, had no personal doctrine in the matter of the complaint against Beach & the two others, of what are with the European Magistracy along the line of rail at Mr Ro restrict[s] on the occasion of charges of the Kaffirs under notice being laid against the Railway servants, their committal for trial by the High Court must be preceded by an enquiry of the local magistrate & should hold & there is nothing in the authorities quoted to warrant the Magistrate in the exercise of his discretion in declaring that such enquiry is closed.

These authorities simply show that European British subjects, if tried at all, must be tried by the H. Court. Enquiry & trial are defined in Sg. Code Criminal Procedure and Act 52 of 1860 does not. That and the speaking of the Magistrate may be merely permissive. I don't know what special act the Appl Magistrate is under from para 6 of his letter to Mr Robertson

28 July

WM

A. Travers Magis

Judicial Department.

PROCEEDINGS of the MADRAS GOVERNMENT.

Read the following letter from the Magistrate of North Arcot Her. date 13th July 1865 No 37

Order thereon 18th August 1865 No 1147.

The Governor in Council observes that the Agent and Manager of the Madras Railway Company was not entitled to address the Acting Head Assistant Magistrate with reference to any order passed by him in his capacity as a Magistrate or Justice of the Peace.

W.H.

W.H.

If Mr Elwin was of opinion that the course taken or proposed to be taken by the Acting Head Assistant Magistrate was calculated to defeat the ends of justice, his proper course was to address the Magistrate or the Government on the subject.

2. The Magistrate seems to have misapprehended the meaning of the orders of Government quoted in the margin of the 2nd para of his letter, where he says that Mr Price had no jurisdiction in the case referred to. Mr Price had jurisdiction to entertain the charge and if he deemed the evidence sufficient, to commit the accused for trial before

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before the High Court, and this it would seem was the course actually taken after the re apprehension of the accused.

[signature]

To the Magistrate of North Arcot
Executive Engineer
for Railways
dated 18

Fra. Office.

Secret 1865. Department.

No. 1147.

PROCEEDINGS OF GOVERNMENT.

Dated 12th August 1865.

146-147