

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No.	1346	Press ~~Mis~~
Dated	20 8 19 1867	

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Not to be folded or roughly handled

20th August 1867.

No. 209. Read the following letter from the Acting Head Assistant Magistrate, Trichinopoly, to the Acting Magistrate of Trichinopoly; dated Trichinopoly, 16th July 1867, No. 86.

I have the honor to enclose a copy of column 7 of my Calendar in the case which arose out of the prosecution directed by Government, on a report about an accident on the Railway. I have not thought it right to punish severely the defendants in the case because the accident is attributable to a general lax observance of the two clauses of the Railway Regulations which I have referred to in the summary, and it would be unfair to make scape-goats of these persons. My object in referring the Calendar to you, is that you may consider whether it is advisable both to warn the Government of the possibility of a similar laxity existing all through the Presidency, and to obtain an opinion on the meaning of the clauses as regards the point I have noticed in the end of the summary.

No. 36.

Submitted for the information of the Government, and for an authoritative ruling regarding the meaning of Regulation 15, subsidiary to Section 18 of Act XVIII of 1854.

TRICHINOPOLY DISTRICT MAGISTRATE'S
CIRCUIT CUTCHERRY, LALGUDI,
27th July 1867.

(Signed) G. VANSAGNEW,
Acting Magistrate.

To the Acting Chief Secretary to Government, Fort Saint George.

Column 7 of Calendar Case No. 66.

An accident happened to the afternoon train; which was due at Worriore Railway station on the 5th June 1867, on account of a trolley being on the line without the prescribed precautions being taken for giving warning to the Engine Driver. The persons who were with the trolley tried to get it off the line in time but failed, two of the trolley wheels were broken, and the possible danger to the train is represented as having been considerable. The persons charged as responsible for the accident are the Store-keeper of the Chief Engineer's Office, and the Time-keeper of the Chief Engineer's Office. The facts, as admitted by the defendants, are that the Time-keeper had occasion to send stores in haste to the Worriore station, and not finding the Foreman's trolley at the workshop, asked the Store-keeper for a new trolley which was to go to Worriore station, representing that it was a good opportunity for sending it. The new trolley was handed over to the Time-keeper; and I may here remark that the Store-keeper's defence, that it was the Time-keeper who put the trolley on the line is a bad one, for his consent was necessary, or the trolley could not have been placed on the line at all, and I consider him equally responsible with the Time-keeper by whose actual order it was so placed. The trolley is said to have started at 3½ o'clock from the Chief Engineer's Office to go to the station, which is between 1¼ and 2 miles off. It passed through two gates and was overtaken by the train at a distance of 65 chains from the station; the three coolies who were shoving it along the line tried to take it off the rails, and had half done so when the train ran into it breaking two of its wheels, and causing considerable risk to the train and its occupants. The question then arises as to whether the defendants had negligently or wilfully omitted to do anything, which they were legally bound to do, to prevent this risk. Section 18, Clause XV of the Regulations accompanying the Act, rules, "that no truck or lorry shall be placed on the line without the permission of the Inspector of the District, and notice shall be sent to each of the nearest Station Masters on either side;" and Clause XVI of same Section rules, that "a red flag is to be borne before and behind such truck or lorry at an interval of half a mile." These precautions were omitted by the defendants according to their own admission, and that they were legally bound to take them is evident from the definition of legally bound in

*Proceedings of the Madras Government, Judicial Department,
20th August 1867.*

the Act, Section 29. The defendants must, therefore, necessarily be convicted under the Section; but the extenuating circumstances shown by them from the admission of the witnesses for the prosecution are so great, that I do not feel at all bound to inflict on them anything but an almost nominal punishment, especially as they have been already punished departmentally. They show by their cross-examination of the Inspector of the District, that there has been considerable laxity in the observance of the Clauses XV and XVI of Section 18 above referred to; he admits that he has seen trolleys on the line and used them himself without notice having been given to the Station Masters, or without red flags half mile preceding and half a mile following. He accounts for not interfering with them by a statement, to the effect that he concluded that they were placed on the line under the order of the Head of one of the Departments, and that, therefore, he did not think himself called upon to interfere. The defendant, the Time-keeper, had been in the habit of travelling before in charge of a trolley belonging to the Foreman of the workshop according to the evidence of one of the gate-keepers; and as he has not been provided with a book of the Rules; (because his position is one that doesn't seem to have required it,) it is only wonderful that he took the precautions he didn't; he started in ample time according to his own account, and his account cannot be far wrong, for both keepers of the gate through which they passed thought themselves justified in showing a white flag when the train came up, because the trolley had gone by such a length of time. The persons with the trolley adopted the absurd precaution, which appears to be usual, of keeping a red flag on their trolley; the trolley was a new one and ran slower than an old one, and moreover the train was some minutes before the time it was expected. I therefore do not think the present to be a case for exemplary punishment; it has been of importance in showing the object with which the rules referred to were made, and what might result from laxity in their observance. I think it is necessary to have the meaning of Clause XV, Section 18, authoritatively defined; the section is headed "Regulations for the Inspectors, Foremen, Maistries and labourers, &c.," and the clause is worded "No truck or lorry is to be placed on the line, without the permission of the Inspector of the District." It is doubtful whether, under that clause, the Heads of Departments are prohibited or not from placing a truck or lorry on the line without ascertaining from the Inspectors of the District whether it is permissible. The present accident was led up to, by the Inspector thinking that he was not bound to interfere with the persons under the orders of Heads of other Departments, and reading the clause with the heading of the section it may appear so; but I doubt whether that was the intention of the clause, as it certainly can bear the other interpretation with more safety to the public.

(Signed) C. W. W. MARTIN,
Ag. Head Asst. Magistrate.

12th July 1867.

Column 8 of Calendar Case No. 66

The Court finds that Morichetty and Abraham Pillay are guilty of the offence specified in the charge, viz., that Morichetty and Abraham Pillay have committed the offence of negligently omitting to do what they were legally bound to do, and so endangered the lives of persons travelling on the Railway, and that they have thereby committed an offence punishable under Section 26 of the Railway Act; and the Court directs that the said Morichetty and Abraham Pillay be kept to simple imprisonment for 14 hours, and pay a fine of five Rupees each.

(Signed) C. W. W. MARTIN,
Ag. Head Asst. Magistrate.

No. 210.

ORDER THEREON, 20th August 1867, No. 1346.

The Government see no necessity for any authoritative interpretation of the Rules subsidiary to Section 18 of Act XVIII of 1854. Rules 15 and 16, which require certain precautions to be observed when trucks or lorrys are used on the line of Railway, are sufficiently clear. It is evident that these precautions were neglected on the occasion to which this correspondence refers, and the Government fail to perceive any grounds for the leniency with which this gross act of neglect on

*Proceedings of the Madras Government, Judicial Department,
20th August 1867.*

the part of the Railway servants has been treated by the Head Assistant Magistrate.

2. This correspondence will be forwarded to the Consulting Engineer for Railways, with a view to his calling the attention of the Manager of the Great Southern of India Railway to the remarks of the Head Assistant Magistrate as to the laxity which prevails on that Railway, in the observance of Rules 15 and 16.

(True Extract.)

Acting Chief Secretary.

To the Acting Magistrate of Trichinopoly.
" Public Works Department.

Ed. J. Tulloch.

Judicial Department

Memo for orders

Letter from Asst. Secy of Michigan State - Dated 27th July, 1864 No. 36.

It does not seem to me necessary for the Government to give any authoritative ruling or to obtain an opinion from the Advocate General on the case referred.

Sections XXVI and XXIX of Act XVIII of 1854, and Rules 15 and 16, Section XVIII, in the Book of ^{Railway} Rules (sent) seems to furnish all the necessary precautions, if the Rules had been observed, and the sentence of the Magistrate ^{appears} ~~was~~ absurdly lenient.

The rules regarding Trolleys, 15 and 16, are absolute and

and the heading of the
section does not in any way alter or modify these
rules, but indicates generally
the Railway servants to
whom the numerous rules
on various subjects contained
in this section apply.

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The several rules &c.
bear on the office des-
cribed by the A. G. & are
made to work unobtrusively
pursued by him, evidence
as to the construction
that I believe they seem
to be too abundantly
clear & of them has been
said in previous the
provisions w. they resemble,
Mr. Martin has indirectly
attempted to escape, an
inherent opportunity
enforced a definite course
of proceeding for the future.

W.D.

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rather cool, & much, in
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is supported by the A. G. & may
be.

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communicate to the
papers & the Com. & for
the Railways in view to
his bringing in notice
of the appointment of the Railway
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that point.

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PROCEEDINGS of the MADRAS GOVERNMENT.

Recd the following letter from
the Secy. to the Govt. of Madras
dated 27 July 1867 No 36.

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Order No 1346 of 20 inst 1867

The Government see
no necessity for any au-
thoritative interpretation
of the Rules Subsidiary
to Section XVIII of Act XVIII of
1851: Rules 15 and 16 which
require certain precautions
to be observed when Trucks
or Lorrys are used on the
line of Railway, are
sufficiently clear in their
intentions. It is evident
that these precautions were
neglected on the occasion
to which this correspondence
refers

Wm

refers, and the Government fail to perceive any grounds for the leniency with which this gross act of neglect on the part of the Railway servants has been treated by the Head Assistant Magistrate.

2. This correspondence will be forwarded to the Consulting Engineer for Railways, with a view to his calling the attention of the Manager of the Great Southern of India Railway to the remarks of the Head Assistant Magistrate as to the laxity which prevails on that ~~Great Southern~~ of India Railway, in the observance of Rules 15 and 16.

ALL

To the Secy Magr of the Municipality
— P.W. Dept. —