

MADRAS RECORD OFFICE.

Government of Madras.

Judicial **DEPARTMENT.**

G.O. No.	432	Press ~~Mis.~~
Dated	5-5-19	18.67

52-53

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Not to be folded or roughly handled

No. 52. Read the following letter from the Magistrate of Coimbatore, to the Acting Chief Secretary to Government, Fort Saint George; dated Coimbatore, 20th August 1867, No. 75.

Section 21 of Act XVIII of 1854 (the Railway Act) runs as follows:—

“The owner of any animal which shall trespass or stray upon any such Railway, or upon any lands belonging to such Railway Company, except for want of the erection or maintenance of any fence or gate which the Company is bound to erect and maintain, shall be liable to a fine not exceeding ten Rupees for each animal; and it shall be lawful for the Company or any of their servants to take or drive every animal which shall be found so trespassing to the nearest Police Station, there to be detained until the highest amount of fine incurred by such trespass, and the expense of feeding and keeping the animal, be paid, or until a Magistrate shall otherwise order. A Magistrate may, upon proof of the trespass, cause such animal to be sold by public auction, and the proceeds of the sale, after deducting therefrom such fine, or such a sum not exceeding ten Rupees for each animal, as the Magistrate shall award to be paid in lieu of the fine to which the owner is hereby made liable, and such further sum as the Magistrate shall order to be paid for the expenses of detaining, feeding, and selling such animal, shall be returned to the owner of the animal on demand.”

2. Section 15 of Act III of 1857 is to the following effect:—

“Persons in charge of public roads, canals, embankments, and the like, may seize, or cause to be seized, any cattle doing damage to the sides or slopes of such roads, canals, embankments, and the like, and all the foregoing provisions of this Act shall be applicable to such seizures.”

3. I beg to be informed whether, in the event of animals trespassing on a Railway, it is optional with the Railway authorities to prosecute under either of the above enactments. It is obvious that, looking at the penalties provided in the Railway Act XVIII of 1854, the offence of cattle trespass on a Railway line was viewed in a much more serious light than the cattle trespass contemplated in Section 15, Act III of 1857, and it is, I think, reasonable to suppose that the framers of Act III of 1857 considered that trespass of cattle on Railways had been provided for by the enactment of 1854. Otherwise, one is justified in concluding, I think, that they would have provided severer penalties than those laid down in Act III of 1857, which are, I consider, utterly inadequate to prevent the trespass of cattle on Railways.

No. 53. ORDER THEREON, 5th September 1867, No. 1432.

The Government fail to perceive the object of this reference, but, in any case, they decline to pronounce any opinion upon the point raised.

2. The Magistrate of Coimbatore must himself decide as to the applicability of the law under which charges of trespass are preferred by the Railway Company, leaving it to the higher Criminal Court to correct his decision, if erroneous.

(True Extract).

Acting Chief Secretary.

To the Magistrate of Coimbatore.

Ed. J. H. Burns.

PROCEEDINGS of the MADRAS GOVERNMENT.

Read the following
letter from the Magistrate of
Jointatore.

Here, under 20th August 1867.

Order 5th Sept 1867 D. 1432.

The Government fail
to perceive the object of this
reference, but in any case,
they decline to pronounce
any opinion upon the point
raised.

It is suggested that it
Railway Company
The Magistrate of
Jointatore must himself
decide as to the applicability
of the law under which
charges of trespass are preferred
by the Railway Company.
leaving it to the higher
court to correct his
decision if erroneous.
The Magistrate of
Jointatore is not
competent to decide upon
the question of trespass
in this case.

Apr 18/54 should be
on record to

GP

In the absence of any thing
to show that the two trials
question does not rest on a
mere hypothesis, I should
decline to answer it. —

If, however, it is to be answered,
I should say that the Railway
people who may complain against
a person for trespass on a line
of rail or on ground belonging to the
R. Company, have nothing whatever
to do with the law under which
such person is to be punished.

They make their complaint — then
they go to the Magistrate — if the
complaint be proved, he decides
that one of the laws in force at
the time appears applicable. —

I am not aware that a
Prosecutor can direct a Magistrate
in regard to the provision of the
Code which seems to him (Pro.) to
fit a particular case.

Chapter II Code Crim. — Pro is
apparently the (Pro.) under which
trespass would be constituted —
Section 265 says "the substance of the
complaint shall be stated to the accused
person" — and after stating several Sections
which show how the inquiry is to proceed, we come to
Section 272 which declares in plain terms that
"if the accused person is convicted the Magistrate
shall pass sentence on him according to law"
The law applicable may be a local or a special
law or the Indian Penal Code. Whichever it may
be, it is for the Magistrate to determine it. M. E. C.

If the case is merely
hypothetical I should
refuse to reply to it.

If the case is a
practical one I do
wonder why the
Railway Authorities
should be debarred
from the common privilege
of all prosecutors to

show the law under which
the prosecution is to be urged. If
the Railway Authorities choose

the wrong law they will be
corrected by the Judge & will
avoid the same error in future.

They will probably find it more
consistent with their interests
and perhaps with law itself
to prosecute under the particular
act framed for their benefit.

Indian 1864 Department.

No. 1482

PROCEEDINGS OF GOVERNMENT.

Dated. 5 September 1864.

Committee

52.03.

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