

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No.	211	Press
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Dated	11-2	1918

Not to be folded or roughly handled

*Proceedings of the Madras Government, Judicial Department,
11th February 1867.*

No. 61. Read the following letter from the Magistrate of Trichinopoly, to the Chief Secretary to Government, Fort Saint George; dated Trichinopoly, 5th January 1867, No. 1.

As requested in Proceedings of Government, dated 12th ultimo, No. 1929, Judicial Department, I have the honor to forward the records and explanation afforded by Major Brown in the Railway case, together with copy of covering letter to my address. As the case occurred in the Cantonment limits, it was taken up by the Cantonment Joint Magistrate.

From Major R. BROWN, Acting Cantonment Magistrate, to the District Magistrate of Trichinopoly; dated Trichinopoly, 5th January 1867, No. 2.

In forwarding, for submission to Government, the documents called for in Government Order, No. 1929 of 12th ultimo, I have the honor, in explanation of para. 6 of my former letter, No. 164, to observe, with reference to the marginal quotation, that such an unmistakable opinion of the guilt of the accused lad, coming from the Chief Executive Police Officer here, might well

have been received with due weight; it would hardly have occurred to any person unacquainted with the fact, to doubt that the Superintendent must have gathered his information in Court, or in some such reliable way. The Superintendent was not in Court at all during the investigation, and I am unacquainted with the source of his information, which enabled him officially to mention the case as "the crime committed by the accused." It was this point that I had in contemplation when I remarked, in the para. of my letter above referred to that the Superintendent appears to have misled the Chief Engineer.

History of Calendar Case No. 220 of 1866, on the file of the Cantonment Magistrate's Court at Trichinopoly.

1. The circumstances out of which this charge arose occurred on Thursday morning the 4th October 1866.

2. The alleged offence being punishable with imprisonment and not with fine, and the arrest having been made by the Railway authorities, the Police had no option but to receive the prisoner under Section 37 of Act XVIII of 1854, and they could not admit him to bail. Second witness "told the Police what had happened." It is not known if they made any preliminary inquiry, but this was a case in which the Police had power to arrest, without warrant, under the above Section, therefore had power to make preliminary inquiry.

3. Accused was brought up in custody on Charge Sheet dated 5th idem, asking for summons of two witnesses: none to prove the arrest was offered, and the Court called for another, the 1st witness.

4. On Saturday the 6th idem, prisoner was placed before the Court, and the Constable who took him into custody deposed to that fact. He knew nothing more. The case was remanded till Wednesday the 10th, Monday having been a holiday, and Tuesday the Small Cause day of the Court, ample time was thus afforded for the collection of evidence.

5. On the 10th idem, 2nd and 3rd witnesses gave evidence, and the accused having been examined was discharged.

with No. 11/1929 of 1866 5/12

Statement of grounds on which prisoner was discharged, with reference to Government Order, No. 1929 of 12th December 1866.

1. Second witness stated, that the circumstances occurred while he was on the engine behind the train, which was travelling from the Fort towards Cantonment, and had passed the level crossing at Mr. Comerford's house; thereafter, at the foot-path crossing, by the Mess house (within 300 yards of another). Witness in his evidence in chief, recorded as he spoke, swears that there he saw accused "lift either a stone or stones and place it on the rail," accused being "not more than 20 yards from the first waggon." Had witness been subjected to no further examination, his evidence would have been sufficient to sustain a conviction or warrant remand. The first two sentences of the cross-examination, recorded as if substantiating the fact of his having seen the stone placed, really did not do so; being in reply to the Court thus—

Question by the Court.—At what time was it when you say that you saw prisoner place the stone on the rail?

Answer.—"It was at 10-15 morning."

Question.—At what distance from the prisoner were you when you say you saw him lift the stone or stones?

Answer.—"I must have been at about 110 yards from him." This did not affect the question.

Question.—From the distance you were off, could you see if he had anything in his hand when he stooped down by the rail?

Answer.—"No, I could not."

Question.—Why did you say that he placed a stone or stones on the rail?

Answer.—"From finding the powdered stone on the line; when I got down I looked."

This was not said of witness' own accord, but in accounting—if not for a deviation from truth, at any rate—for a very loose appreciation of the gravity of his oath; otherwise it would have been deserving of more weight. Then witness adds, "I could tell it was some hard substance as I saw the first waggons jump!" The Court looked on this as his excuse for having said he saw what he did not see; moreover, this point was not unsusceptible of better proof than witness' distant sight.

Witness "did not see anything (like debris) at the side, off the rail; "anything not crushed would be propelled to a distance."

Yes! by a train travelling at a rapid pace, but probably the reverse by a train travelling at a slow pace such as the one witness was on; for "he (accused) was not more than 20 yards from the first waggon" when witness stopped the train by, as he says, "shutting off the steam," and it stopped (by gravitation) before the last waggon had passed over the spot. The train, therefore, could not have been put at a low speed, (moreover the line there had not then been opened); so if there had been debris it would not have been driven away, and would have been seen. "The prisoner made no attempt to escape," but "seemed frightened when taken hold of by witness."

Third witness says, I was on the engine when "Timmis called my attention to a cooly stooping down and placing a stone on the rail." Nevertheless, witness "can't swear that there was any thing in his hand," nor "that his hand was out" (in the attitude of placing anything); moreover, witness, in expectation of some source of impediment, "did not perceive any unusual movement of the train," and he "did not see the front carriages jump," as 2nd witness mentions he did; this certainly did not strengthen the evidence of 2nd witness!

Prisoner was examined, denied having lifted anything, or having had anything in his hand, or having put out his hand near the rail, and accounted for his stooping down to look at the rail shaking tremulously.

The whole evidence having been heard, it appeared that the prisoner's presence on the line at the crossing was not a trespass, therefore presumption of guilt from that fact was impossible.

His denial of having lifted anything, of having had anything in his hand, had not been proved false by unshaken evidence.

His stooping down was at once admitted by him; the admission was in his favor.

His object in doing so, to view the vibration of the rail, might be thought strange by some, but was not unreasonable in "a villager who had never seen a train."

His fear on being caught by 2nd witness was not inconsistent with his innocence.

His appearing to 3rd witness as if not knowing "that he was doing harm," and his not making any "attempt to run," were in favor of his innocence.

This evidence would not sustain a conviction, therefore the accused could not be put on his defence.

There was said to be no other witness, and no one was named in the depositions whom the Magistrate might have summoned to give evidence.

Riot.
Destruction or damage of life or property.
Theft.
Receiving stolen property.
Misappropriation.
Opening a closed receptacle.

Acts such as those mentioned in the margin leave the commission of an offence beyond a doubt.

At the termination of the evidence offered by the prosecution, the fact that any offence had been committed at all was not established, therefore the Court had no reasonable grounds for further remanding, or for taking bail from accused under Section 224 of the Criminal Procedure Code; thus on the seventh day of the arrest of the lad the Court had no legal right to deny him the liberty he was entitled to, and discharged him accordingly.

(Signed) R. BROWN,

Acting Cantonment Magistrate.

TRICHINOPOLY, 5th January 1867.

with the 11/1929 of 1866 5/12

Proceedings of the Madras Government, Judicial Department,
11th February 1867.

Charges taken at or information laid by Police of Dark Bridge Police Station on the (5th) fifth day of October 1866, before the Cantonment Magistrate.

MADRAS POLICE.

B. Division of the Trichinopoly District.

Station House number of charge.	Date and hour of the charge or intelligence of the crime being brought to station; and distance of scene from the station.	Defendant or person charged Name, address, and occupation.	Charge or information, name of offence and circumstances connected with it, in concise detail.	Persons charging or informing. Name, address, and occupation.	Witnesses. Name and address; present or not present.		Prisoner taken into custody by whom and at what hour. Process requested.		Property found on person or elsewhere, when and by whom; and list of articles forwarded.	At the Station House. Confined from what hour to what hour.		Date and hour of being placed by the Police before the Magistrate.
1	2	3	4	5	No.	6	7	8	9	10	11	12
Crime No. 184, Charge sheet No. 102.	Half mile distance from the Station; 12 o'clock, noon; 4th October 1866.	Shaik Ebram of Arnee, who is residing in the lines of the 9th Regiment N. I. Profession, Cooly.	Under Railway Act 18 of 1854. That, on the 4th instant, at about 12 o'clock, noon, the accused mentioned in column 3 did place stones on the rail near Manicka Moodelliar's Chuttrum in Chengoolum Village, for the purpose of obstructing the Railway waggons when they pass.	Regina.	1	Engine Driver Timmis, residing at Rail-way station.	The 1st and 2nd witnesses mention- ed in column 6 will de- pose that 1866, by En- gine Driver Loutit, re- siding ac- siding at Rail- way station. It is request- ed that the rail to cause obstruction witnesses while wag- gons pass.	Shaik Ebram, was seized at 12 o'clock, noon, on the 4th October 1866, by En- gine Driver Loutit, re- siding at Rail- way station. It is request- ed that the witnesses mentioned in column 6 may be summoned.		From 4 o'clock in the after- noon on the 4th October 1866, to 10 o'clock, A. M., on the 5th October 1866.		At 10 o'clock, A. M., on the 5th October 1866

(Signed) MURDAINOY GUM PILLAI, Head Constable.

(True Translation).

(Signed) R. BROWN,

Acting Cantonment Magistrate.

Proceedings of the Madras Government, Judicial Department,
11th February 1867.

No. of charge or on before whom Magis- trate's is brought. Magis- trate's file.	Date and hour of receipt of Charge sheet and prisoner by the Magis- trate.	Date and hour of issue of Process by Magis- trate, and its nature.	Date and hour of de- fendant ap- pearing be- fore Magis- trate.	Remands granted.		Charge how disposed of by Magistrate; what of- fence proved; date of sen- tence, committal or dis- charge, and name of Po- lice Officer conducting the case before the Magis- trate.	Remarks by the Magistrate on the conduct of the Police and the nature of the case. If not proved what further operation directed by the Magistrate. Charge sheet when transmitted to the Superintendent.	Date when charge sheet was received in the Superintendent's Office, and remarks by the Superintendent.	
13	14	15	16	17	18	19	20	21	22
Calendar Case No. 220 of 1866.	Major R. Brown, Acting Cantonment Magistrate.	5th October 1866, 11 o'clock, A. M.	Summonses issued 6th October 1866, 4 P. M.				Discharged under Section 250 of the Criminal Procedure Code. (Signed) R. BROWN, Ag. Cantl. Magistrate. 10th October 1866.	The evidences produced were on the Engine in rear of the train of 11 waggons, although the front open waggons had men in them who might probably have proved the jerk to the train, if such happened. (Signed) R. BROWN, Ag. Cantl. Magistrate. 10th October 1866.	

(True Copy).

(Signed) R. BROWN,

Acting Cantonment Magistrate.

Department
11th Feb 1867

Prisoner's Statement.

No. 220 of 1866.

Shaik Ebram duly warned, and states that—I am a villager. I had never seen a train in my life. I came and stood at three paces from the train; I looked at it. The train was coming along, and the rail shook tremulously, so I went close to the rail and stooped down to look, and as the train came up I went to one side. Then that gentleman (2nd witness) made me over to the Hindoo. They took me and brought me back to the place and looked for a stone, but none was found. I was at one pace distance from the rail when I stooped down to look at it. From that place I went to three paces on one side as the train passed.

From the place where I stooped to see the rail to the place where 2nd witness seized me, would be about two paces. No, I had nothing in my hand when I stooped. No, I did not put my hand near the rail. No, I did not lift anything off the ground when I stooped.

(Signed) R. BROWN,
Acting Cantonment Magistrate.

The Magistrate has taken the evidence for the prosecution, and finding that no offence has been proved against the accused person, Shaik Ebram, directs, under Section 250 of the Code of Criminal Procedure, that he be discharged.

TRICHINOPOLY,
10th October 1866.

(Signed) R. BROWN,
Acting Cantonment Magistrate.

1st Witness. P.

No. 220 of 1866.

Shaik Abdool Khader, Constable 576, sworn, and states, that on the 4th instant, at about $\frac{1}{2}$ past 11 o'clock, forenoon, I was on duty at the Railway crossing. A train of 7 or 8 waggons came from west to east; the crossing was open for the train and closed for passengers; Engine Driver Timmis called from the Waggon, called "Constable," I went to him. He said to me, a boy has placed a stone on the Railway, I have seized and given him over to a man, he is bringing him; and he drove away his train. A Tamil man brought and gave the prisoner over to me, saying, this is he who placed the stone on the Railway. He did not bring the stone. I asked, and Mr. Timmis told me that the prisoner had placed a stone on the Rail at the Fort side of a garden, near the old (25th) Mess House. I, therefore, took prisoner into custody.

6th October 1866.

(Signed) R. BROWN,
Acting Cantonment Magistrate.

CALENDAR CASE No. 220.

Name of the deponent..... Thomas Timmis.
His father's name..... John Timmis.
Age..... 31.
Calling..... Engine-man on the G. S. I. Railway Company.
Religion..... Protestant.
Residence..... On the Railway premises.

2nd witness for Prosecution sworn and deposes that, on the 4th instant, I was driving a train of empty waggons, with 7 or 8 coolies in each. After passing the crossing at the Engineer's office, I saw this man cross the line at the foot-path, next to the crossing at the Mess House; as soon as he had crossed, I saw him stoop down and lift either stones or a stone and place it on the rail nearest to him, that was on the left hand rail in the direction the train was going from the Fort station. I shut the steam off and stopped the train, but a number of the waggons had passed over the spot before I could stop the train. He was not more than 20 yards from the first waggon when he put the stone on; the engine was last, and I was on it. I saw him come on to the line by the opening in the wall for foot passengers; after putting the stone on the line, he stood watching the effect of the passing train. When the train stopped, I got

down and went forward, and found under the waggon, next to the engine, the remains of the stone or stones on the rail ground down; the prisoner was then not four yards from the rail at the spot. I caught hold of the prisoner and called one of the men out of the waggon. I gave prisoner over to him. I got on the engine and drove it to the place where we were loading ballast. I saw that man give the prisoner in charge to the peon at the crossing gate; that Constable brought prisoner down to me, and I told him what had happened.

By the Court in reply to the Question.—It was at 10-15 morning that I saw prisoner place the stone on the rail. I must have been at about 110 yards from the prisoner when I saw him lift the stone or stones.

From the distance I was off I could not see if he had anything in his hand when he stooped down by the rail. I say that he placed a stone or stones on the rail from finding the powdered stone on the line when I got down and looked. I could tell it was some hard substance, as I saw the first waggons jump. I do not know if the man I gave prisoner over to spoke to him at all. The prisoner made no attempt to escape. I did not see anything at the side, off the rail, at the place where the powdered stone was on the rail; anything not crushed would be propelled to a distance. The prisoner seemed to be frightened when taken hold of by me.

William Loutit was on the engine with me, he did not get down, I think, when I did to look at the rail.

(Signed) THOMAS TIMMIS.

Yes. After I saw prisoner lift what I thought was a stone, I saw him put his hand forward to the rail close to it, on the top of it.

(Signed) THOMAS TIMMIS.

10th October 1866.

This deposition was read over to the witness in English and acknowledged by him to be correct.

(Signed) R. BROWN,
Acting Cantonment Magistrate.

CALENDAR CASE No. 220.

Name of the deponent..... William H. S. Loutit.
His father's name..... Sinclair Loutit.
Age..... 22.
Calling..... Employed on the Railway—Fireman.
Religion..... Protestant.
Residence..... Trichinopoly, or on the Railway premises.

Sworn and deposes that, on the 4th instant, at about 11 o'clock, between the Fort and the old station, Timmis called my attention to a cooly stooping down and placing a stone on the rail. The train was stopped, the driver got off the engine and secured the prisoner, who was then at about 20 feet from the rails. I was on the engine, looked over and saw a small portion of powdered stone, a lump of sand stone as it were bruised. I got off the engine, and when the driver got the prisoner in charge I got on the train again and proceeded. I did not perceive any unusual movement of the train before it stopped.

By the Court.—I saw the prisoner stoop down, I can't swear that his hand was out, but he stooped within an inch or two of the left hand rail going from the Fort station to the old station. I can't say that there was anything in his hand, but it struck me that he did not know that he was doing harm, as he did not attempt to run. I did not see the front carriages jump or move unusually before stopping.

10th October 1866.

The deposition was read over to the witness in English, and acknowledged by him to be correct.

(Signed) W. H. S. LOUITIT,

(Signed) R. BROWN,
Acting Cantonment Magistrate.

Department
11th Feb 1867

Proceedings of the Madras Government, Judicial Department,
11th February 1867.

No. 62.

ORDER THEREON, 11th February 1867, No. 211.

On perusal of the papers submitted with the foregoing letter, the Governor in Council sees no reason to question the propriety of the proceedings of the Cantonment Magistrate in the case referred to.

(True Extract).

Chief Secretary.

To the Magistrate of Trichinopoly.

,, Public Works Department, with Proceedings No. 1929 of 1866.

Ed. J. Tulloch.

Judicial DEPARTMENT.
No. 36

From

The Magistrate of Trichinopoly.

Dated 5th January 1867.

FOR ORDERS.

I don't see that there is any order
to be given in this case.

The Act (Cantonment Mag.)
seems to have been fully acted on,
and it was for him to judge whether
if evidence was such as probably to
lead to conviction. If he thought
that it was not he did right not to
commit.

I do not myself think that
a Session Court would have

Magistrate in the case referred

to.

of Trichinopoly -
Department -
with No. 1929 of 1866

Subd. No. 18/2

concluded on the evidence. There is
suspicion but hardly sufficient of
direct testimony. - JP

I concur. The
case is now made
clear enough by
what is designated
the "History of Case
220/66". It was
was from being
clear before. -

W. H.
N.

PROCEEDINGS of the MADRAS GOVERNMENT.

Read the following letter
from the Magistrate of
Trichinopoly.

(Dated 5th January 1857 No 1.)

Order No. 11th February 1857 No 211.

On perusal of the
papers submitted with the
foregoing letter, the Council
in Council sees no reason to
question the propriety of the
proceedings of the District
Magistrate in the case referred
to.

W. H.

Exd. J. Tulloch.

To The Magistrate of Trichinopoly -
Public Works Department -
with No. 11th of 1856 }
Dated 18/2

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by the ...
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Indiana 1854. Department.

No. 211.

PROCEEDINGS OF GOVERNMENT.

Dated 11 February 1857.

12
List
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