

(1) Number of pages _____

(2) Date of repair _____

(3) Initials of the Referencer _____

MADRAS RECORD OFFICE.

Government of Madras.

Public Works DEPARTMENT.

G.O. No. 2686	Press
285-286	Mis.
Dated 13-9-	1865

Not to be folded or roughly handled

No. 285. Read the following letter from Æ. R. McDONELL, Esq., Magistrate of Trichinopoly, to the Honorable A. J. ARBUTHNOT, Chief Secretary to Government, Fort Saint George, dated Trichinopoly, 12th August 1865, No. 30 :—

SIR,

1. As called for by the Government in their Order dated 26th July 1865, No. 429, I have the honor to submit an abstract of the case of receiving stolen property with a guilty knowledge, against one Akilanda Ariaperian of Navalpettah, which was thrown out by Vencatasamy Naidoo, the then 2nd Class Sub-Magistrate of the Trichinopoly Taluq, as well as a statement of my opinion whether the matter was properly disposed of by the Sub-Magistrate.

2. Previously to the receipt of the said Government Order, my Head Assistant, Mr. Comyn, to whose orders the Trichinopoly Taluq Sub-Magistrate is subject, had called for the record of the case in question, to satisfy himself as to the manner of its disposal by the Sub-Magistrate. On a perusal of the proceedings held in the case, that Officer had expressed himself perfectly satisfied with the decision of the Sub-Magistrate, and in this opinion I concur.

3. From the abstract of the case herein enclosed, it will be seen that the prisoner's house at Navalpettah, and the houses of others residing in the same village, were searched on the 11th May 1865, by the Police, with a view to apprehend one Rengan, an offender, who was supposed to have taken refuge in the village.

4. In the course of the search a fish plate, apparently belonging to the Railway Company, was discovered by the 6th Witness, a Police Constable, in a room in the prisoner's house.

5. This fish plate is identified by the 1st and 2nd Witnesses, servants in the employ of the said Company, as being Railway property, and as being one out of four fish plates which were stolen at Kotrapatty, on the Railway line, two years ago. The prisoner was accordingly placed upon his trial by the Sub-Magistrate for receiving stolen property with a guilty knowledge, under Section 411, I. P. C.

6. There is no doubt but that this fish plate is part of the property of the Railway Company, but the statement made by the Witnesses, viz., that it is one out of the four fish plates which were stolen or found missing two years ago can hardly be relied upon, as the Railway Company possess many thousands of articles of exactly the same description all along the line.

7. As will be seen from the accompanying plan of the premises made by the Sub-Magistrate, who visited the place in person, the fish plate was found in a room marked * at the back of the house. It was discovered lying on the ground in this room by the 6th Witness, when no one else was present.

8. It was remarked by the Sub-Magistrate that this room is skirted by a back yard in which straw, &c., is kept, and that though it was roofed in, there was ample space between the wall and the roof to allow of the fish plate being shoved or thrown into the room by any one from the outside.

9. It would appear from the proceedings that the search was not made in the presence of the accused person and of two respectable inhabitants of the village, as required by Sections 125 and 142, C. C. P.

and

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10. To ensure a conviction under Section 411, I. P. C., not only must it be proved that the property received is "stolen property," but there must be a receipt of the same. This is generally proved by the property being found in the possession of the prisoner, but it would always be open to him to show that he was not aware of its being there, or that the place of its deposit was one to which others might have free access besides himself.

11. In the present case, I argue that the prisoner was not proved to have been in possession of the stolen property in question; he denied all knowledge of its being in the place where it was found, and it is established by the testimony of the Sub-Magistrate's own eye sight, that the article in question might have been placed in the room where it was discovered without the prisoner's knowing any thing at all about it.

12. The receipt or possession of the stolen property in question by the prisoner not having been established, it is unnecessary to enter into the question of the essential to the offence of receiving stolen property, viz., the guilty knowledge. Not only, therefore, do I consider that the charge was not established against the prisoner in a legal point of view, but I am clearly of opinion that all the facts of the case point the other way, viz., that far from being consistent with the assumption of a possession with guilty knowledge, on the part of the prisoner, they would point to the covert act of some other person, who may have had grounds for cherishing feelings of revenge or animosity against the prisoner, and so thrown the fish plate into the prisoner's house in order to ensure his conviction; and looking at the circumstance that the prisoner is a notorious and troublesome offender, and taking into consideration the highly irregular manner in which the search was conducted, suspicion might reasonably attach to the Police.

13. Had the prisoner been aware of the existence of this fish plate, which is an article perfectly useless to him, he would have taken good care to have placed it in some secure place of concealment, instead of allowing it to lie on the ground where it might be seen by any person entering his house.

14. Under all the circumstances I consider that the Sub-Magistrate was not only perfectly justified in dismissing the case, but that upon the evidence, no other course was open to him.

15. In conclusion, I trust, should the Government concur with me in thinking the Sub-Magistrate disposed of this case in a proper manner, that they will relieve me of the censure passed on me, resting as it does on Mr. Betts' insinuation alone that justice had failed in this particular case. Mr. Betts might, on application to me, have been furnished with full reasons for the dismissal of the case, and the Government would have been saved all trouble as regards a reference in this matter.

No. 286.

ORDER THEREON, 13th September 1865, No. 2,686.

RAILWAY, No. 30.

The Government fully agree with the Magistrate of Trichinopoly in considering the Sub-Magistrate exercised good judgment, and took a correct view of the charge of receiving stolen property belonging to the Railway Company, to which Mr. Betts adverted in his letter to Colonel Anderson, recorded in the Proceedings of Government No. 429, dated 26th

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13th September 1865.*

July 1865. If this case be the only one which it was in Mr. Betts' power to adduce in support of his representation that "when articles forming part of the permanent way are found, beyond the return of the articles to the possession of the Railway Company, no further result follows," it is most obvious that Mr. Betts was not justified in permitting himself the insinuation which the representation seems intended to convey.

(True Extract.)

(Signed) CHARLES A. ORR, Colonel, R. E.,
Secretary to Government.

To the Consulting Engineer for Railways.
,, Magistrate of Trichinopoly.

Exd. S. T. Augustin.

Railway Departt.
N^o 625

From
The Magistrate of Trichinopoly.
Dated 12th August 1865.

For Orders.

MR
I fully agree with the Magistrate of
Trichinopoly, Mr. McDonnell, in con-
sidering the Sub-Magistrate's decision
not judgment - and took a correct
view of the charge of receiving stolen
property belonging to the Railway
Company, to which Mr. Bell's asserted
in his letter to Colonel Anderson
dated the 11th ultimo.
If then, this case be the only one
which it was in Mr. Bell's power to
address in support of his representation

that taken articles forming part of the
 "permanent way are found, beyond the
 "return of the articles to the possession of
 "the R. Comp'y. no further result follows"
 it is most obvious that Mr. Kelly was
 not justified in permitting himself
 the insinuation which his reputation
 seems intended to be damaged.
 19 Aug. W.D.

Public Works Department
 Proceedings of the Madras Government.
 Under date the 13th Sept. 1865.
 Read the following

From the Magistrate of
 Trichinopoly.

Submitting as called for by the
 Government in their Order dated
 26th July 1865 No. 429, an Abstract
 of the case against one Agilanda
 Ariaperian of Navelpattinam who
 was charged with receiving stolen
 property with a guilty knowledge,
 together with a statement of his
 opinion whether the matter was
 properly disposed of by the
 Sub-Magistrate

J. E. 12th August 1865
 No. 30.

The Government
 fully agree with the
 Magistrate of Trichin-
 opoly in considering
 the Sub-Magistrate
 exercised good judgment
 and.

W.D.

and took a correct view
of the charge of receiving
stolen property belonging
to the Railway Company,
to which Mr. Betts
adverted in his letter
to Colonel Anderson
recorded in the Pro-
ceedings of Government
No 429 dated 26th
July 1865. If this
case be the only one
which it was in Mr.
Betts' power to address
in support of his
representation that
"where articles forming
"part of the permanent
"way are found, beyond
"the return of the ar-
"ticles to the possession
"of the Railway
Companies

-9

Company, no further
"result follows," it
is most obvious that
Mr. Betts was not
justified in permitting
himself the misstatement
which the representa-
-tion seems intended
to convey.

W. H.

J. H. Consulting Engineer
for Railways

Magistrate of
Tottenham
18
3
Sept 14th September

No 1565 Depart
Memo: of Govt for Sept.

No 2656
Memo: of the M. Govt
of 13 Sept/65

Sept 9-9

The magistrate
of Trichinopoly informed
that the Sub Magistrate
was justified in dismissing
the case of receiving stolen
property belonging to the
Railway Company brought
against one Akilundar Arca.
pericini.

No 286-286