M.R.O. 1—77,000—3-6-37.

(1) Number of pages 20

(2) Date of repair 2-

(3) Initials of the Referencer

MADRAS RECORD OFFICE.

Government of Madras.

Public Works **DEPARTMENT.**

G.O. No. 2565 Press
Mis.

512-14

Dated 22. 8 1867.

Not to be folded or roughly handled

Proceedings of the Madras Government, Public Works Department, 22nd August 1867.

Read the following papers:—

No. 512. Endorsement of the Consulting Engineer for Railways, dated Madras, 8th August 1867, No. 223.

From the Agent and Manager of the Madras Railway Company, to the Consulting Engineer for Railways, dated Madras, 7th August 1867, No. 271.

Adverting to the conversation at the Stores Committee yesterday, I have the honor to annex copy of a communication* from the Traffic Manager, and shall feel obliged by your obtaining the opinion of the Advocate General as to the correctness of Mr. Wilkinson's views, viz., that a man charged with "abetting," an offence punishable under the Railway Act, cannot be committed under the Penal Code.

* No. 211, 1st August.

From the Traffic Manager, to the Agent and Manager, dated Madras, 1st August 1867, No. 211.

1. On the 10th June last, a man called "Mulliah," temporarily employed in the Telegraph Department, was prosecuted under the Railway Act, and was fined 30 Rupees for travelling between Bangalore and Arconum on a free ticket issued to one Nungoondappah, employed as a wire drawer in the same department.

2. Subsequently we obtained a summons against Nungoondappah, and put him up before the Magistrate under Section 108 of the Penal Code for "aiding and abetting," but Mr. Wilkinson, the Head Assistant Magistrate of North Arcot, was of opinion that a man charged with "abetting," an offence committed under the Railway Act, could not be tried under the Penal Code.

3. Will you kindly bring this matter to the notice of Government.

1. Submitted for the consideration of Government.

2. The Agent and Manager quotes, as the opinion of the Head Assistant Magistrate of North Arcot, "that a man charged with 'abetting,' an offence committed under the Railway Act, could not be tried under the Penal Code." I have also been informed verbally that the Assistant Magistrate recommended the Railway authorities to report the failure of the charge against Nungoondappah.

3. Should Mr. Wilkinson's views have been rightly interpreted, the subject would appear to be worthy of the attention of Government.

(Signed) J. C. ANDERSON, Lieut.-Colonel, R. E.,
Consulting Engineer for Railways.

Referred to the Government Solicitor, for the opinion of the Advocate General.

(Signed) J. H. M. SHAW STEWART, Major, R. E.,
9th August 1867. *Under Secretary to Government.*

No. 513. From the Acting Government Solicitor, to the Under Secretary to Government, Department Public Works, dated Madras, 12th August 1867, No. 550.

Dated 9th August 1867, and made on Memorandum from the Consulting Engineer for Railways to Government, of the 8th idem, No. 223.

1. I have the honor to acknowledge the Order of Government noted in the margin, with its enclosures, requesting the Advocate General's opinion as to the legality of trying under the Penal Code a charge of "abetting," an offence punishable under the Railway Act.

2. I have submitted the matter for the consideration of the Acting Advocate General, and

3. I now forward a copy of his opinion, and also return the order and enclosures above noted.

OPINION.

Mr. Wilkinson is quite right. It has been expressly decided in Bengal that the offence of abetment under the Penal Code cannot be committed in respect of offences punishable under a special or local law. (3, Revenue, Civil, and Criminal Report, Criminal Rulings 31, 33.) It may be that this is one of the cases not punishable under the Penal Code, and therefore in respect of which an indictment might be maintained under the old criminal law, for being an accessary before the fact to a criminal offence. But I by no means say that such an indictment would be successful.

(Signed) J. D. MAYNE,
Acting Advocate General.

12*th August* 1867.

(True copy.)

(Signed) H. J. BROCKMAN,
Acting Government Solicitor.

No. 514. ORDER THEREON, 22nd August 1867, No. 2,565.

RAILWAY, No. 23.

Ordered that the foregoing letter from the Acting Government Solicitor, with the opinion of the Acting Advocate General, be communicated to the Consulting Engineer for Railways.

(True Extract.)

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

To the Consulting Engineer for Railways.
,, Judicial Department.

Exd. S. T. Augustin.

Opinion.

Mr. Wilkinson is quite right. It has been expressly decided in Bengal that the offence of abetment under the Penal Code cannot be committed in respect of offences punishable under a Special or Local law. (3 Rev. Civ. and Crim: Rep: Criminal Rulings 31. 33.) It may be that this is one of the cases not punishable under the Penal Code, and therefore in respect of which an indictment might be maintained under the old Criminal law for being an accessary before the fact to a criminal offence. But I by no means say that such an indictment would be successful.

(Signed) John D. Mayne
Ag. Adv. Gen.
Aug 12/67

(True copy.)

H. J. Brockman.
acting Gov. Solr.

Q

Legality of trying under the Penal Code, a charge of abetting an offence, punishable under the Railway act.

P. Dr. 30 57/67
(Copy)

acting advr. General's opinion

Dir. 22 Augt 1867.

In a letter from the acting Govt. Sols. to the Under Secry. Govt. Dpmt. dated 12th Augt 1867 no 550.

No 550

Madras August 12th 1867

From H. J. Brockman,
acting Government Solicitor,
Madras.

To Major I. Shaw-Stewart. A.C.
Under Secretary to Government, P.W.D.
Madras

Sir,

1. I have the honor to acknowledge the order of Government noted in the margin, with its Enclosures, requesting the advocate Generals opinion as to the legality of trying under the Penal Code, a charge of "abetting" an offence, punishable under the Railway act.

Dated 9th Augt: 1867 and made on memo: from the Consulting Engr. for Railways to Govt: of the 8th idem no 228.

2. I have submitted the matter for the Consideration of the acting advocate General, and

3. I now forward a Copy of his opinion, and also return the order and Enclosures above noted.

I have the honor to be
Sir,
Your most obedt Servant.

H. J. Brockman.

Acting Govt Solr

No. 271

MADRAS RAILWAY.

AGENT AND MANAGER'S OFFICE.

Madras, 7th August 1867.

From

R. B. Elwin Esqre,

Agent and Manager. of the M.R.Co.

To

Lieut.Col. P.G. Anderson, R.E.

Consulting Engineer for Railways.

SIR,

× No 211 – 1st August.

Adverting to the conversation at the Stores Committee yesterday, I have the honor to annex copy of a Communication from the Traffic Manager, and shall feel obliged by your obtaining the opinion of the Advocate General, as to the correctness of Mr. Wilkinson's views, viz. that a man charged with "abetting" an offence punishable under the Railway Act, cannot be committed under the Penal Code.

I have the honor to be,
Sir,
Your most obedient Servant

R. B. Elwin

Agent and Manager.

Wm

Rec. 16 Aug. 67 R. 19.

Ch. 573

Ag. 2565 - 22 Aug. 67

Encl.

Rec. 13 Aug.

Dated 12.

Lr. 4 V No. 560

Forwards letter from Colonel Wilkinson, as to liability of persons under the Penal Code, abetting of abetting an offence, punishable under the Railway Act; and returns the other enclosure, relating thereto.

Lieut. Col. P.G. Anderson, R.E.
Consulting Engineer for Railways.
Madras.

From
R. B. Elwin Esqre,
Agent and Manager of the M.R.Co.

MADRAS RAILWAY.

From

The Agent and Manager.

To

The Consulting Engineer,
for Railways.

P. No. 3059
Dated 4th August 186 7
Recd. —

No. 271.

Requesting that the opinion of Advocate General may be obtained as to the Correctness of the views of the Head Assistant Magistrate of Arcot in charging a man with "aiding & abetting" a Railway servant

Madras Railway
Traffic Manager's office
Madras, 1st August 1867

No 211.

Dear Sir,

On the 10th June last, a man called "Mullah", temporarily employed in the Telegraph Department, was prosecuted under the Railway Act, and was fined 30 Rupees, for travelling between Bangalore and Arcoonum on a Free Ticket issued to one Rungoondappah employed as a Tree Dresser in the same Department.

Subsequently we obtained a Summons against Rungoondappah and put him before the Magistrate under Section 108 of the Penal Code for "aiding and abetting", but Mr Wilkinson, the Head Assistant Magistrate of North Arcot was of opinion that a man charged with "abetting" an offence committed under the Railway Act, could not be tried under the Penal Code.

Will you kindly bring this matter to the notice of Government.

Yours faithfully
(Signed) H.S. Church
The Agent & Manager Traffic Manager.

(True Copy)
W. J. Shirley
Agent & Manager

Compd. wm

No. 223.

Submitted for the consideration of Government.

2. The Agent and Manager quotes as the opinion of the Head Assistant Magistrate of North Arcot "that a man charged with "abetting" an offence committed under the Railway Act, could not be tried under the Penal Code". I have also been informed verbally that the Assistant Magistrate recommended the Railway authorities to report the failure of the charge against Nungoondeppah.

3. Should Mr. Wilkieson's views have been rightly interpreted, the subject would appear to be worthy of the attention of Government.

F. Anderson Lieutt Colonel R.E.
Consulting Engineer for Railways

Madras
8th August
1867

To
The Secretary to Government
Public Works Department
Fort Saint George

322
Rec'd
Aug. 15 10 enclt
returned 15th

41

Referred to the Govt
Solicitor, pr the opinion of the
Advocate General -

9th August 67

Mun Stewart
Major - RE
Under Secy to Govt

S & I

P. W. 1867 Pros. of Govt for Dept
(1)

1867.

RAILWAY DEPARTMENT.

From No. 2999

The Consg. Engineer for Railways,

To

The Secretary to Government,
P. W. Dept.

Dated 8th August 1867.
Received 9th

No. 223.
P. W. 3050/67
Enclosures, No. 2
Pros. 22nd Augt 1867 No. 513.

Observations on a letter from the Agent & Manager of the So. R. Comp.y requesting that the opinion of the Advocate Genl may be obtained with regard to a charge of "aiding & abetting" brought against a Railway Servant.

No. 2565. 22nd Augt 1867

Referred

No. 512

Pros. 16th Augt 1867 Pub. 19th

7 February 19A

Public Works Department.

2565

No. 2565

PROCEEDINGS of the MADRAS GOVERNMENT.

Under date the 22nd Augt 1867

Read the following

From The Consulting Engineer for Railways (Here enter No. 223 dated 8th August 1867)

From The Acting Government Solicitor Madras (Here enter No. 550 dated 12th August 1867)

Ordered that the foregoing letter from the Acting Government Solicitor, with the opinion of the Acting Advocate Genl be communicated to the Consulting Engineer for Railways.

JP

WM

To

The Cons.g Engr for Railways

" Judicial Dept.

Dept. 22/8/67

Pub: Works 1867 Depart.

Pro: of Govt. for August.

No. 2565

Pro: of the British Govt.

of 22d August 1867.

Communicating to the Consulting Engr. for Rlys. the Advocate Generals opinion relative to the legality of trying under the Penal Code, a charge of "Abetting" an offence punishable under the Railway Act.

No. 572 & 574