M.R.O. 1—77,000—8-6-37.

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MADRAS RECORD OFFICE.

Government of Madras.

Public works DEPARTMENT.

G.O. No. 528 Press Mis.

1925

Dated 22 2 1850.

Not to be folded or roughly handled

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

No. 424. Read the following Proceedings of the Madras Government in the Judicial Department :—

Observing that the Government see no reason to question the propriety of the proceedings of the Cantonment Magistrate, relative to a charge preferred against a native for placing a stone on the rail as a train was passing. } (Here enter 12th February 1867, No. 211.)

No. 425. ORDER THEREON, 22nd February 1867, No. 528.

RAILWAY, No. 32.

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, with copy of G. O. No. 1,929, dated 12th December 1866.

Exd. S. T. Augustin,

Read the following :—

No. 62. Letter from the Agent, Great Southern of India Railway, to the Consulting Engineer for Railways, Madras; dated Negapatam, 7th November 1866, No. 2197.

As I understand there is no appeal to a higher Court, in the case alluded to in the attached papers, I have the honor to request that you will bring under the notice of Government the subject reported upon by the Chief Engineer of this Company.

From the Chief Engineer, to the Agent and Traffic Manager, Great Southern of India Railway ; dated Trichinopoly, 27th October 1866, No. 4040.

I enclose copy of correspondence with the Superintendent of Police, relative to a Native who was given in charge to the Police for putting a stone on the line.

2. It appears that he was acquitted, although the Driver and his Stoker saw the act. I have, on several occasions, failed in having offenders against the Railway Act punished, and it has the effect of producing carelessness on the part of the Railway watchmen and others, whose duty it is to bring cases of offence to notice.

3. Will you be so good as to represent this in the proper quarter, that the case may be examined.

From the Chief Engineer, Great Southern of India Railway, to the Superintendent of Police, Trichinopoly ; dated Trichinopoly, 25th October 1866, No. 1398.

Will you be so good as to let me know the result of the trial of a Native who was given in charge to the Police (for placing a stone on the Rail, as a Train was passing) by Engine Driver Timmis ?

From the Superintendent of Police, Trichinopoly, to the Chief Engineer, Great Southern of India Railway ; dated Trichinopoly, 26th October 1866, No. 159.

In reply to your letter, No. 1398, of the 25th current, I have the honor to quote, for your information, the remarks of the Cantonment Joint Magistrate, in the case to which you refer.

"The evidences produced were on the Engine, in rear of the Train of *eleven waggons*, although "the front open waggons had men in them, who might probably have proved the jerk to the "Train, if such happened."

The accused were "discharged, under Section 250 of the Criminal Procedure Code."

I do not understand this decision : whether the Train was actually affected by the attempt has nothing to do with the case. The Driver and Stoker, who were on the Engine, were the two witnesses who saw the accused actually put the stone on the rail ; on them, and them specially, did the duty of "looking out" devolve.

Secondly, it might have so happened that the Train could have been stopped before the leading trucks touched the obstacle, but this could not have affected the crime committed by the accused, which was that of putting the stone on the rails.

No. 442.

Observations by the Deputy Consulting Engineer for Railways.

Before submitting the Agent's letter to Government, it was considered advisable to obtain from the Cantonment Magistrate of Trichinopoly a copy of his decision in the case commented upon by the Superintendent of Police.

2. From the copy of the decision, herewith forwarded, and the explanatory letter* from the Acting Cantonment Magistrate, Major Brown, to the address of Mr. Banbury, Magistrate of the Dis-

* No. 164, dated 15th November 1866.

trict of Trichinopoly, it is evident that the charge brought by the Railway Authorities broke down purely for want of sufficient evidence.

3. It is clear from this and other cases that the appointment of Officers qualified to collect evidence, and to effectually prosecute persons detected, either in placing obstructions on the lines, or in committing robberies, would be advantageous to the Railway Companies.

MADRAS, (Signed) H. N. D. PRENDERGAST, Major, V. C., R. E.,
20th November 1866. *Depy. Cong. Eng. for Railways.*

From Major R. BROWN, Acting Contonment Magistrate, Trichinopoly, to G. BANBURY, Esq., District Magistrate of Trichinopoly; dated Trichinopoly, 15th November 1866, No. 164.

I have the honor to return the correspondence received under your docket, No. 157, of 14th instant, together with a copy of the decision in Calendar case No. 220 of 1866 of this Court, under the Railway Act.

2. In forwarding this copy of the Calendar, for submission to Government, I request you will do me the favor, at the same time, to transmit this letter, with a view to its being laid before Government along with the other correspondence in this case.

3. The remark quoted in paragraph 2 of the letter from the Superintendent of Police to the Chief Engineer, Great Southern of India Railway Company, was made on the "Police Charge Sheet", in the column 21, as given in the margin. This remark was meant to direct the attention of the Police authorities to the deficiency of evidence produced by the Police—that, although so many persons were said to be in the first 11 uncovered trucks, the only two witnesses should have been produced from the very last carriage in the Train!

"Remarks by the Magistrate on the conduct of the Police and the nature of the case. If not proved, what further operation ascribed by the Magistrate." Charge Sheet when transmitted to the Superintendent."

21.

The evidences produced were on the Engine, in rear of the Train of *eleven waggons*, although the front open waggons had men in them, who might probably have proved the jerk to the Train, if such happened.

10th October 1866.

4. This remark had no bearing on the evidence of the two witnesses produced.

5. I am not in a position to say if the Superintendent of Police acted quite correctly in using that remark "extra Departmentally"; but the Deputy Inspector General of Police informs me that he should not have done so. The Inspector General of Police may be able to form an opinion whether such a use of a Magistrate's remarks, if legitimate, is likely to further or frustrate the end for which the remarks are sought—that is, I believe, to stimulate the Police to increased efficiency—by operating as an inducement or deterrent to comment.

6. In paragraph 4 of his letter, the Superintendent of Police appears to have misconstrued that remark into a "decision", or probably he meant a reason for the decision—and thus to have misled the Chief Engineer.

7. The evidence produced did not appear to me sufficiently conclusive to place the lad on his defence—thus presuming his guilt; hence, he was discharged. Had the act of placing the stone on the rail been established, the result, of course, would have been different.

8. The heavy punishment provided for offences of the kind points out the gravity of so endangering the public safety; to this I am fully alive, but, at the same time, it is necessary that the accusation be fully established.

9. Although the case is not open to appeal, the Law provides for the review of all cases both by the Magistrate and the Session Court; and when this case comes before the Session Judge, he will be in a position to decide if the proceedings of the Court were justified by the Law of Evidence.

Extract from Calendar of persons tried by the Acting Cantonment Magistrate of Trichinopoly.

No. of the case.	Name and description of the accused.	Copy of the charge or substance of the complaint.	Name of Complainant.	Names of witnesses for the prosecution.	Names of witnesses for the defence.	Statement of the evidence and grounds of conviction.	Finding and sentence.	Date offence.	Date of complaint.	Date of apprehension or appearance.	Date of commencing trial.	Date of sentence.	Explanation of delay.
220	Shaick Ebram, Cooly, a lad of about 14 years of age.	The defendant is accused by the Police of placing stones on the Railway, to the danger of Passengers —an offence punishable under Act XVIII of 1854, Section 25.	Regina.	Shaick Abdool Cawder, Police Constable, No. 576. 1 Mr. Thomas Timmis. ... ... 2 Mr. W. H. S. Loutit. 3		The Magistrate has taken the evidence for the prosecution, and finding that no offence has been proved against the accused person, Shaick Ebram, directs, under Section 250 of the Code of Criminal Procedure, that he be discharged.		4th October 1866.	5th Do.	5th Do.	6th Do.	10th Do.	

(A true Extract).

(Signed) R. BROWN,
Acting Cantonment Magistrate.

To the Secretary to Government, Department Public Works, Fort Saint George.

Transferred to the Judicial Department, with the notes of Sir T. Pycroft and the Honorable H. D. Phillips.

FORT SAINT GEORGE, (Signed) C. A. ORR, Colonel, R. E.,
27th November 1866. *Secretary to Government, P. W. D.*

No. 63. ORDER THEREON, 12th December 1866, No. 1929.

The Governor in Council directs that the Magistrate of Trichinopoly will call for, and submit to Government, the Proceedings of the Acting Cantonment Magistrate in the case referred to in the foregoing papers, including the original notes of evidence. Should these notes not show the reasons which induced the Cantonment Magistrate to discredit, as he seems to have done, the testimony of the two witnesses for the prosecution, the Magistrate will obtain from Major Brown a statement of the grounds on which he discharged the prisoner, in the face of the evidence

adduced. Mr. Banbury will also explain how the case came to be tried by the Acting Cantonment Magistrate, *i. e.*, whether the offence charged was committed within Cantonment limits.

(True Extract).

Chief Secretary.

To the Magistrate of Trichinopoly.

Exd. J. H. Burns.