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MADRAS RECORD OFFICE.

Government of Madras.

Public works **DEPARTMENT.**

G.O. No. 194 Press Mis.

372-73

Dated 17- 1 1870.

Not to be folded or roughly handled

Proceedings of the Madras Government, Public Works Department, 17th January 1870.

No. 372. Read the following Proceedings of the Madras Government in the Judicial Department :—

Communicating opinion of the Advocate-General as to the procedure to be followed in cases falling within Section 3 of the Railway Act XVIII. of 1854 } (Here enter 16th December 1869, No. 1,994.)

No. 373. ORDER THEREON, 17th January 1870, No. 194.

RAILWAY, No. 48.

COMMUNICATED to the Consulting Engineer for Railways in continuation of G. O., No. 3,600, of the 10th November 1869.

(True Extract.)

Colonel, R.E.,

Secretary to Government.

Proceedings of the Madras Government, Judicial Department,
16th December 1869.

Read again Proceedings of Government, dated 29th October 1869, No. 1723

Read also the following papers —

No. 113. From the Magistrate of Trichinopoly, to the Chief Secretary to Government, Fort Saint George, dated Trichinopoly, 15th November 1869, No. 62

I have the honour to forward the remarks, called for in Government Proceedings, dated 29th October 1869, No 1723, upon the Acting Deputy Consulting Engineer's letter enclosing Mr. Logan's correspondence regarding over-riding on railways

2. I can add but little to what I have already told the Railway authorities, and in fact what I said was merely a reiteration of the Railway Act sections. The offence of over riding is cognizable by Section 3 of the above enactment, and thus the offender not being liable under Section 37 of the same Act to be arrested without warrant, the charge naturally falls under clause 3rd, Section 10 of the Schedule B of Stamp Act, (XXVI of 1867,) thus a complaint of this nature must be made on the stamped-paper Again, the Criminal Procedure Amendment Act in its final Schedule classes the offence at issue as not arrestable without warrant, there is apparently, therefore, no doubt in the matter, and the stamp is legally necessary notwithstanding the Acting Agent's stating that he "maintains" otherwise.

3 I beg to enclose Major Swanston's remarks as regards the procedure of the Police on these occasions Under Section 21* it would clearly seem that the Police are prohibited from arresting in the cases in question, unless "the name and address of the person shall be unknown" Under this view of the section the constables accordingly acted. Major Swanston now seems desirous of stretching a point, and of detaining the accused in custody without warrant· this I consider illegal except in those cases where the Police have "reason to believe that the offender will abscond."

* Railway Act

4. I am always only too ready to aid the Railway authorities, but cannot stretch enactments to meet local difficulties. Should the Government, however, think that my view is wrong as regards the requirement of stamped-paper, of course an authoritative ruling can soon set me right.

From Major W O SWANSTON, Deputy Inspector-General of Police in charge of Trichinopoly District, to the Magistrate of Trichinopoly, dated Trichinopoly, 8th November 1869, No 327

With reference to the Proceedings of Government, dated 29th October 1869, and the Order thereon, I have the honour to inform you that I am of opinion that the action of the Police with regard to the matter complained of by the Agent of the Great Southern of India Railway seems to have been quite correct in so far as they abstained from arresting or prosecuting people who have been guilty of an offence under Section 3, Act XVIII. of 1854, but I think that they ought, under Section 24 of the said Act, to have detained any one who had been arrested by the Railway authorities for the offence of over-riding, and placed them before the Magistrate having jurisdiction, unless the party arrested was personally known to the Police, or could produce sufficient bail for his appearance before the Magistrate

2 I do not go into the matter as to whether the Magistrate ought or ought not to take up such cases with or without a stamped complaint being laid before them, as that is no business of mine, but I am of opinion that, as the law now stands, the Police cannot arrest without a warrant

any one guilty of an offence under Section 3, Act XVIII. of 1854, and that, therefore, they are debarred, under the Code of Criminal Procedure, from inquiring into or prosecuting such cases without the orders of the Magistrate be first obtained so to do

Section 37 of the Railway Act lays down the offences under the Act for which the Police may arrest without a warrant

3 Should it meet with your approval, I will direct the Police to receive charge of all individuals who may be arrested and handed over to them by the Railway authorities, and to place them before the Magistrate within *twenty-four* hours according to law, leaving it to the Railway authorities to prosecute or not as they like Of course if the parties so handed over to the Police are known to them, or can give satisfactory bail for their appearance when wanted, they will be at once released by the Police, and the Railway authorities must move for a summons from the Magistrate.

Referred for the opinion of the Advocate-General on the question raised in these papers as to the procedure to be followed in cases of "over-riding" under Act XVIII. of 1854.

FORT SAINT GEORGE,
25th November 1869.

(Signed) R. S ELLIS,
Chief Secretary.

No. 114. From the Government Solicitor, to the Chief Secretary to Government, Fort Saint George, dated Madras, 2nd December 1869, No. 662.

Dated 25th Nov 1869, and made on letter from the Magistrate of Trichinopoly to Govt, dated 15th Nov 1869, No 62

I have the honour to acknowledge the receipt of the Order of Government noted in the margin, together with its enclosures, requesting the Advocate-General's opinion as to the mode of procedure in cases of over-riding on railways under Act XVIII. of 1854.

2. I submitted the matter for the consideration of the Advocate-General, and have also conferred with him thereon, and

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

OPINION.

When a person "over-rides" he is liable under Section 3 of Act XVIII. of 1854 to a fine.

2. By Section 24 when the name and address of such person is unknown, or they have reason to apprehend that the offender will abscond, the Officers or servants of the Railway may themselves apprehend such offender without warrant, or may call upon any Police Officer or other person to assist them in so doing; and in such cases the offender is to be detained till he can be placed before a Magistrate according to law, or give sufficient security for appearance, or be otherwise duly discharged by law.

3. The Police cannot take the initiative; but their assistance having been called for by the Officers or servants of the Railway Company they are bound to act as above Nor do I think that it would be proper for the Police, when once such an offender was in their custody, to release him without placing him before a Magistrate or taking security from him, on the ground that his name and address were known

to them. As I read the section, if the name and address of the offender are unknown to the Railway Officers and servants, it is for them to act, and the Police are merely the subsidiary agency for carrying out the Act of the Railway Officers or servants. If the Police subsequently released the offender without the consent of the Railway authorities on the ground that his name and address were known to them, though not to the Officers of the Railway Company, they would do so on their own responsibility.

4. I think that a stamp is not demandable on a complaint laid under Section 3 of the Railway Act.

5. The offender, according to Section 24, may be arrested without warrant. Clause 3rd of Section 10 of Schedule B. of Act XXVI. of 1867 requires a stamp of one rupee only on complaints preferred to a Criminal Court, regarding any offence *other* than such as the Police may arrest for without warrant; in other words, only in respect to offences with respect to which a warrant is requisite.

6. The Magistrate of Trichinopoly appears to me to have fallen into an error on this point, by having overlooked the fact that "over-riding" under Section 3 of the Railway Act being punishable by fine, the offence is one for which the offender may be arrested without warrant by the Officers and servants of the Railway under Section 24, with the assistance, if necessary, of the Police.

7. It will be necessary to observe whether the forthcoming "Court Fees' Bill" makes any difference in respect to fees in criminal cases affecting this question.

(Signed) J B. NORTON,
Advocate-General.

30th November 1869.

No. 115. ORDER THEREON, 16th December 1869, No. 1994.

The Governor in Council directs that the opinion of the Advocate-General above recorded, as to the procedure to be followed in cases falling within Section 3 of the Railway Act XVIII. of 1854, be communicated to the several Magistrates of Districts, and to the Inspector-General of Police.

(True Extract)

A Dalyell
Actg Secy. to Govt.

To the Magistrate of with Proceedings, No. 1723.
" Inspector-General of Police.
" Session Judge of with Proceedings, No. 1723.
" Public Works Department.

Proceedings of Government, Judicial Department, dated 29th October 1869

Read the following letter from the Acting Deputy Consulting Engineer for Railways to the Secretary to Government, Public Works Department, Fort Saint George, dated Madras, 28th September 1869, No. 315.

Railway Department]

I have the honour to forward a letter, dated 17th September 1869, No. 3100, from the Acting Agent of the Great Southern of India Railway, complaining that, in consequence of the views taken by the Police authorities in Trichinopoly of the reading of certain sections of the Railway Act XVIII. of 1854, several persons who have defrauded the Railway Company have lately evaded justice.

2. Mr. Logan has so fully explained the matter, and cited cases in point, that it is unnecessary for me to add anything to what he has written, and I now request that you will be good enough to move the Government to pass an Order defining authoritatively the course to be followed in future, when cases occur such as have been described by the Agent.

From the Agent of the Great Southern of India Railway, to the Consulting Engineer for Railways, Madras, dated Negapatam, 17th September 1869, No 3100

In writing my letter, No. 3079, of the 27th ultimo, concerning the system of Police on this Railway, I stated that we had found the system adopted to work well I ought to have named one exception.

2 In the District of Trichinopoly the Magistrates and Police refuse to take up cases unless accompanied by a stamped prosecution paper. I addressed the District Magistrate and the Superintendent of Police on the subject, and thought that eventually we had got over the difficulty. A case has, however, been reported in which the Sub Magistrate of Trichinopoly has again refused to take up a charge, and I have the honour to request that you will be good enough to have the matter referred for final orders

3 We have had a good many cases of evident intention to defraud the Company by "over-riding," *i e*, taking a ticket to a station on the line, and passing on to a more distant one, on the chance of escaping further payment Out of several cases of this kind I will detail, as briefly as possible, the following

4 On the 20th July last, the Station Master of Trichinopoly handed over three men to the Police under a charge of "over-riding" to Trichinopoly with intent to defraud one man with a third-class ticket from Salem to Caroor only, and the two others with tickets from Cuttalay to Ellambanore These men were caught attempting to leave the station and evade being excessed

5 The Officer in charge of the Police Station sent back the prisoners with the following Memorandum —

"8-30 P M, *2nd July* 1869

"The Officer in charge of Police Station, Fort

"The Clerk in charge of the Great Southern of India Railway, Trichinopoly.

"With reference to your Memorandum, No 915, of this date, arresting three persons for "attempting to defraud the Railway Company, I beg to state that, as a Police Officer, I cannot "exercise more power than the law allows me. I have taken their names and address, and I send "them back again to you

"*Vide* Sections 21, 25, 26, 27, and 28 of Act XVIII of 1854 —These are the only Sections "that the Police can interfere with."

6 The Assistant Traffic Manager reported the matter to me, and I directed that, according to the view of the law held by the Trichinopoly Magisterial and Police authorities, a stamped prosecution paper should be taken out against the three men accused. This was done, and the result has been as I anticipated The Police appear simply to have taken the names and addresses given by the men, without taking any security that these were *bonâ fide*, as directed in Section 24 of Act XVIII, and the Sub-Magistrate of Trichinopoly intimated on the 26th ultimo that the summons issued had been returned, the persons summoned not being found

7 On the 9th and 10th ultimo, other and similar cases occurred at Trichinopoly, and were likewise refused to be attended to by the Police The case on the 9th was refused by the Police Inspector, and that on the 10th by the Constables attending at the station, who stated that they were acting under orders

8 This state of matters appears to have emboldened persons to attempt to defraud the Railway Company. The District Magistrate and the Superintendent of Police have both been applied to, on more than one occasion, without further result than that the Magistrate has declared that the stamp is not necessary for prosecution under *Section* 21 of the Act

9 In terms of the Stamp Acts (see margin) a stamped application to prosecute is necessary only for an offence "other than an offence for which Police Officers may arrest without warrant"

X of 1862 and XVIII of 1865, Schedule B

Act XVIII of 1854 empowers the apprehension and detention without a warrant, or written authority, of such offenders as we have had to deal with, by any Officer or servant "of the Company, or any Police Officer or other person whom such Officer or servant may call to his aid," consequently, I maintain that no stamp-paper is required, and we have, through the mistaken action of the Trichinopoly authorities, been greatly impeded in bringing punishment to the door of fraudulent travellers Even in the case in which we followed the course they (the authorities) prescribed, the offenders escaped as I have already described.

10 I shall, therefore, feel obliged by your having the matter brought up for an authoritative definition of the course to be pursued in such matters in future.

Order, 29th October 1869, *No.* 1723

Ordered that copies of the foregoing letter, together with its enclosure, be forwarded to the Magistrate of Trichinopoly and to the Superintendent of Police at that station, for the early submission of any remarks they may have to offer thereon.

2. Pending the receipt of the remarks referred to, the Magistrate of Trichinopoly will be requested—should he on consideration of the Acting Agent Mr. Logan's complaint see no reason to modify the view he is stated to have taken of the law—to issue such orders to the Sub-Magistrates on the Great Southern of India Railway within the Trichinopoly District as will insure immediate inquiry being made by them into cases of over-riding

3 The Superintendent of Police at Trichinopoly will also be requested to issue similar instructions to the Police Officers, should he, after the perusal of Mr. Logan's complaint, see reason to modify the views held by him regarding the provisions of the Railway Act

(True Extract)

R. A. DALYELL,
Actg. Secy to Govt.

Exd J. Wright

No 194

Communicates Letter
requiring Engineer for
Railways in continu-
-ation of Letter No 3600
of the 10th November 69

The last Letter for
Railways

Dept 19/1/70

Fort St George
17 January 1870

No 194 - 17 January 1870

Letter on Border

Cue 41

Govt. of {1870} Madras.

PUBLIC WORKS.

The Consulting Engineer for Railways

Date Rec'd.

G. O. 17 Jany 1870, No. 194.

Nos. 372-373

Same Govt. Proc. Cue 40 & 41 Communicating the opinion of the Advocate General, and directing the following to be issued in cases falling within Section 3 of Railway Act XVIII of 1854 - Cue 3 Bd. of Comm.