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MADRAS RECORD OFFICE

Government of Madras

Public Works DEPARTMENT

G.O. No. 3094

B.P. No.

677-678

Press

Mts.

Dated

30-10-1874

195

Not to be folded or roughly handled

*Proceedings of the Madras Government, Public Works Department,
30th October 1874.*

No. 677. Read the following endorsement of the Consulting Engineer for Railways, dated Madras, 1st October 1874, No. 587:—

From W. S. BETTS, Esq., Agent of the South Indian Railway, to Lieutenant-Colonel J. H. M. SHAW-STEWART, R.E., Consulting Engineer for Railways, dated Negapatam, 29th September 1874, No. 125.

On the evening of the 1st ultimo, James Roach, Driver in charge of the engine working No. 3 passenger train, was found, on the arrival of the train at Trichinopoly station, to be in a state of intoxication.

2. He was suspended from duty, and taken as soon as possible to the Court of the Acting District Magistrate at Trichinopoly, before whom he was charged with the offence referred to.

3. The Magistrate however, upon hearing the evidence, found that Driver Roach had not been in a state of intoxication on the occasion in question.

4. I have obtained from the Court and send to you herewith a copy of the depositions given by the witnesses in this case, together with a copy of the Magistrate's remarks thereon.

5. You will observe that the Magistrate states he has "some doubt as to the meaning of the expression 'state of intoxication,' and that he thereby gave the driver the benefit of the doubt," although he (the Magistrate) believed the statement given by the Locomotive Foreman, that Driver Roach was unfit to take charge of a train, was substantially correct.

6. The driver has been dismissed from the Company's service, but as I consider dismissal alone inadequate punishment for so grave an offence, I do not think I should be justified in passing this case without bringing it to the notice of Government, or without endeavouring to obtain some definite ruling with regard to what constitutes intoxication, or as to what degree of drunkenness may be permitted to a driver in charge of a passenger train without his being charged with the offence under Clause 27 of the Railway Act.

7. The Foreman, who was the first witness, proves the driver was "not fit to take charge of a train."

8. The second witness (an engine driver) states "from the way prisoner walked he seemed to be in liquor."

9. The third witness (the station master) considered the prisoner "from the way he spoke" to have been drinking.

10. The fourth witness states that Roach went to the refreshment-room, immediately after the train arrived, to ask for brandy, which was refused. "He had been drinking."

11. The fifth witness says, "he did appear to have been drinking as far as I could judge."

12. The sixth witness could not say Roach was drunk; "he was steady." This fireman was not on duty with Roach. As the train came into the Trichinopoly station, Jackson jumped upon the engine and rode up to the platform with it. On his return to his bungalow, he told the driver under whom he worked that Roach was "tight," or under the influence of liquor. I may mention here that after this witness had given a contrary statement before the Magistrate, I questioned him as to this seeming inconsistency. He answered that when a man was not

*Proceedings of the Madras Government, Public Works Department,
30th October 1874.*

drunk, he must be sober. He considered a man to be drunk when he was unable to stand.

13. The guard of the train, who was the last witness called, states he observed Roach "staggering a little" on the Trichinopoly platform, and he considers "he was under the influence of liquor."

14. Foreman Lennox, in concluding his evidence with the statement that the driver was not too drunk to put his engine away, clearly adds that he was with him all the time the engine was being moved, and he was "looking after him." The Foreman would not have allowed him to do this work without close observation.

SUBMITTED for the consideration of Government, with a request that His Excellency in Council will be pleased to express an opinion as to the extent to which the engine driver in charge of a passenger train may be permitted to be under the influence of liquor without rendering himself liable to conviction under Section 27 of Act XVIII. of 1854.

2. The section in question is as follows:—

"Any officer or servant of such Railway Company who shall be in a state of intoxication, whilst actually employed upon the railway, or any of the works connected therewith in the discharge of any duty, and any officer or servant of such Company who negligently shall omit to perform his duty, or shall perform the same in an improper manner, shall be liable to a fine not exceeding 50 Rupees; and if the duty in any of the cases in this section abovementioned be such that the omission or negligent performance thereof would be likely to endanger the safety of any person travelling or being upon such railway, such officer or servant shall, on conviction before a Magistrate, be liable to imprisonment, with or without hard labor, for a term not exceeding one year, or to fine, or to both."

(Signed) J. H. M. SHAW-STEWART, Lieut.-Colonel, R.E.,
Consulting Engineer for Railways.

No. 678. ORDER THEREON, 30th October 1874, No. 3,094.

RAILWAY, No. 98.

It is not competent to Government to decide the question raised by the Consulting Engineer for Railways,

which is a question for the decision of a judicial tribunal.
(True Extract.)

Colonel, R.E.,

Secretary to Government.

To the Consulting Engineer for Railways.
" Judicial Department, with two Enclosures to be returned.
Ed. S. T. Austin,
Spare Copies

Trichinopoly Gillah
For the Court of the District Magistrate
Calendar No. 99 of 1874
Deposition of 1st witness for Prosecution
Name... John Lennox
Father's Name... Andrew
Village and Taluk Trichinopoly -
Caste...
Calling... Local Fireman
Religion... Protestant
Age... 34
Solemnly affirmed in accordance with the
provisions of Act V of 1840.

I charge the prisoner Roach with being
drunk whilst in the performance of his
duty as acting Driver on the South of India
Railway on the 1st instant. He was driving
the evening train from Negapatam to Trichinopoly
which reaches Trichinopoly at 6-40. It
is mixed train of goods & passengers -
I saw the prisoner at my office at the
station that evening at about 6-50 p.m.
about 10 minutes after the train came in.

He was not very drunk and could walk about, but I did not think he was fit to take charge of a train. I have no evidence to show where he got drunk, but evidence of some kind is coming from Regapataw. By prisoner - I was in my office when the train came in.

Prisoner did take his engine across the pit to clear the fire out.

Prisoner did deliver a letter from Regapataw to me. I told him he smelt of drink and questioned him as to the state he was in, and he said he had had nothing to drink all day.

When he came in first, before he delivered the letter he asked for a pole, and his engine I told him certainly not as the order is, that no engine driver is to leave his engine until it is at rest in the siding. From the way he spoke and his account I thought he had been drinking, and followed him to his engine. His whistle

was sounded twice and more than is usual, but then put his engine away and I didn't refuse to allow him to put the engine away; I was with him all the time. I did not think he was too drunk to put his engine away without danger & I was looking after him.

Signed J. Lennox.

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

This 5th day of August 1874

Signed J. B. Pennington
Ag Dist Magr.

Trichinopoly. Gillab
 In the Court of the District Magistrate
 Calendar No. 99 of 1874
 Deposition of 2^d witness for Prosecution
 Name: Robert Inacher
 Father's Name: James
 Village and Taluk Trichinopoly Fort
 Coote
 Calling: Engine Driven.
 Religion: Protestant
 Age: 26

solemnly affirmed in accordance with the
 provisions of Act V of 1840 -

On Saturday the 1st I received a note
 from Mr. Loco Foreman (1st witness)
 to go over to the office in the station - and
 went soon after: before the Nagapattinam
 train arrived. I was engaged with the
 Lennox when it came in, was talking
 to him when the Nagapattinam engine came
 over the ashpit near the office & stood
 there - The prisoner left his engine there
 & came to the office and asked Mr. Lennox
 to permit him to allow the prisoner to

put the engine into the siding. Mr Lennox
told me, certainly not - whereupon the
prisoner turned away and didn't seem
to walk very steadily whereupon Mr Lennox
remarked 'what is the matter with that
man?' and asked me, if I thought he was
drunk - I made no reply - Mr Lennox
said he would go and see what was the
matter with him - Immediately after ^{Mr} Lennox
~~went~~ ^{went} into the office again Mr Roach
returned with ~~a letter~~ ^{a letter} - I took it into the
office & I know nothing more. From
the way prisoner walked he seemed to be
in liquor but I did not notice very much,
and I did not smell the smell of liquor.

By prisoner - Prisoner was about 20 yards distant
from me when I saw him walking - There was
nothing for him to strike against. I saw him
walking about 10 yards.

Signed / R - J - Inacher
This deposition was read over to the witness
in English & acknowledged by him to be correct.
This 5th day of August 1874.
Signed / J B O'Connell
Mag Dist Magte

76
Trichinopoly Mills
In the Court of the District Magistrate
Calendar No 99 of 1874
Deposition of 3^d witness for Prosecution.
Name ... Charles Bishop
Father's Name Charles Thomas George
Village and Taluk Trichinopoly
Caste ...
Calling Station Master
Religion ... Protestant
Age ... 53 ...
Solemnly affirmed in accordance with the
provisions of Act.

As the evening train from Nagapattanam came
in on Saturday evening the prisoner &
Roach and Fireman Jackson got off
the engine & went to the women's ~~closet~~
to answer the calls of nature - I called
to them that that was the women's place
& they soon came out again - Soon afterwards
Mr Roach spoke to me on a matter of
business & from the way he spoke I

thought he had been having a glass
I could not swear that he was drunk
He did not speak quite rationally.
By Prisoner - I have heard him talk before,
and he was not speaking in his usual
manner.

Signed / Charles Bishop.

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

This 6th day of August 1874

Signed / J. B. Pennington
Ag Dist Magt

92
Trichinopoly Zillah
In the Court of the District Magistrate
Calendar No 99 of 1874
Deposition of 4th witness for prosecution
Name ... Arulanaidam
Father's Name ... Bedapodam
Village and Taluk Trichinopoly
Caste ... Pariah
Calling - Matey at Refreshment Room
Religion ... Roman Catholic
Age ... does not know (17)
Solemnly affirmed in accordance with the
provisions of Act V of 1840

Some time after the Megapattam train
came in - about 7 o'clock 5 or 6 days
ago, the prisoner came and asked
for 2 glasses of brandy - I told him
^{I would not}
I would not give it without my Master's
permission whereupon he abused me
and went away -

He had been drinking - but the
reason I didn't give him brandy
was that I had not the keys -

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

This 6th day of August 1874.

(Signed) J. B. Pennington
Magistrate

Trichinopoly Gillah

In the Court of the District Magistrate
Calandar No. 99 of 1874

Deposition of 5th witness for Prosecution

Name Rungasami aiyangar

Father's name Ramasami

Village and Taluk Trichinopoly
Caste Brahmin

Calling Storekeeper in Railway

Religion Vishnu

Age 30

Solemnly affirmed in accordance with
the provisions of Act.

As soon as prisoner left the engine
on Saturday at about 7 p.m. - he
came to the office for water, when Mr.
Lennox asked him if he was drunk:
to which he said he had tasted a little.

His appearance led Mr. Lennox
to think he was drunk, and he
did appear to have been drinking
as far as I could judge.

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

This 6th day of August 1874

signed J. B. Pennington
Ag Dist Magistrate

17311

Trichinopoly Gillah
In the Court of the District Magistrate
Calendar No. 99 of 1874
Deposition of 6th witness for Prosecution
Name James Jackson
Father's name Williams
Village and Taluk Negapatam
Caste
Calling Freeman
Religion Protestant
Age 22

Solemnly affirmed in accordance with
the provisions of Act V of 1845

I got off the engine with the prisoner Roach on Saturday evening. I can't say he was drunk: he was steady and I did not notice that he had been drinking.

I heard next day that Mr. Lennox had reported me as well as Roach. I went to speak to him about it. I never said that Roach was drunk - but that I thought he was exceedingly

the speed in coming into the station -
^{still} I should think that he was exceeding
the speed, but I never said he had
been drinking.

It never occurred to me that he had
been drinking till I heard the rumour.

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

This 6th day of August 1874.

(signed) J. B. Pennington
Ag. Dist. Magte

Trichinopoly Yillah

In the Court of the District Magistrate

Calandar N^o 99 of 1874.

Statement of the Prisoner.

Name ... James Roach

Father's name ... Patrick D.

Village and Talug - Trichinopoly
laste

calling ... Driver.

Religion ... Roman Catholic

Age ... 32

Question - You have now heard the evidence
for the Prosecution, and the charges that
has been read and explained to you, do
you wish to say any thing?

Answer... I was not drunk; I plead not
guilty I have witnesses to prove that
I was not drunk - The names of the
witness is.

1- Guard Dennis - His evidence is
quite sufficient for me - I have nothing
more to say. (signed) J. Roach

This contains accurately the whole of the

statement made by the accused & was
read over to him and acknowledged by him
to be correct.

This 6th day of August 1874

(signed) J. B. Pennington
Jy Dist Magle

174

Trichinopoly Zillah
In the Court of the District Magle
Calendar No. 99 of 1874

Deposition of 1st witness for Defence

Name: John David Dennis

Father's Name: Benjamin

Village and Taluk: Trichinopoly

Caste

Calling

Guard

Religion

Protestant

Age

24

Solemnly affirmed in accordance with the
provisions of Act.

I have been guard for six years on the
S. E. Railway - I came with the Regapatam
train on Saturday night with Roach
the prisoner as driver.

I noticed when the engine was taking
water at Tanjore that he smelt of
liquor - he was sensible not drunk
and appeared steady - he was sitting
on the engine.

I saw him again at Trichinopoly

on the platform - I saw him pass
by us I was attending to the luggage:
he was staggering a little - I can't
say that he was drunk but he was
under the influence of liquor.

The train came all right, but I
can't swear that he was driving it all
the time - No complaint was made along
the line that he was drunk.

He might have got liquor on the
road without my knowing.
By prisoner. I was standing on the ground
near the engine, and had to get up
to speak to the prisoner, so I smelt his
breath - I can't say whether he had
time to get liquor at Tanjore or not.
He was engaged in shunting and
in taking water whilst we stopped
at Tanjore - I did see prisoner
put out his hand at every station

1911
asking for the signal to start.

Signed / J. D. Dennis

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

This 7th day of August 1874

Signed / F. B. Pennington
Ag. Dist. Magistrate

F.B. Pennington Esq. Acting District Magistrate of Trichinopoly.

7 Statement of the evidence and grounds of conviction.	8 Finding and Sentence	9 Date of					14 Explanation of delay
		10 offences	11 Complaint	12 discharge on bail	13 commencing trial	14 sentence	
On this case the prisoner is charged with being in a state of intoxication whilst driving the evening train from Nagapattinam to Trichinopoly. Evidence is not sufficient as to his... I have no doubt as to his... I saw him by the... Pennox, the loco... the prisoner was... I did not think that prisoner sounded coming out the station but that he came in improper not being too drunk to do that. the expression 'state of intoxication'; but supposing	The Court finds that the Prisoner James Roach is not guilty of the offences specified in the charge, viz., that he was in a state of intoxication whilst in charge of a passenger train and that he has thereby committed an offence punishable under section 27 of Act XVIII of 1854 and the Court directs that the said Prisoner James Roach be discharged under section 215 of do - do.	11 th August 1874	3 rd August 1874	3 rd August 1874	5 th August 1874	7 th August 1874	

Signed F.B. Pennington
Acting District Magistrate

Statement of Persons tried before

1 No. of the case	2 Name and description of the accused	3 Copy of the charge or substance of the Complaint	4 Name of Complainant	5 Names of witnesses for the prosecution	6 Names of witnesses for the defence, if any
99 of 1874	James Roach engine driver	That you James Roach the prisoner on or about the 1st day of August 1874 on the line between Nagapattinam and Trichinopoly were in a state of intoxication whilst in charge of a train and thereby committed an offence punishable under section 27 of Act XVIII of 1854 and within my cognizance,	Regina	6 - James Jackson. 1 - John Lennox 2 - Robert Dracher 3 - Charles Bishop 4 - Arulandam 5 - Pungasani ayyangar	John David Dennis. 2... I

Foreman, is substantially correct; and he says not very drunk, and could walk about; but 'he was fit to take charge of a train' - He adds his whistle twice and more than is usual on times and was allowed to 'put his engine away' 3. I have some doubt as to the meaning of

altogether unimpaired condition, but the description of Complainant, a

No. 125

South Indian
GREAT SOUTHERN OF INDIA RAILWAY.

AGENT'S OFFICE,

NEGAPATAM, 29 September 1874

From

THE AGENT,

South Indian
Great Southern of India Railway,

To

The Consulting Engineer
for Railways
Madras

SIR,

On the evening of the 1st ultimo, James
Roeck, driver in charge of the engine working
No 3 Passenger train was found, on the arrival
of the train at Trichinopoly station, to be in
a state of intoxication.

He was suspended from duty, and
taken as soon as possible to the Court of the
Deputy District Magistrate at Trichinopoly,
before whom he was charged with the
offence referred to.

The Magistrate however, upon
hearing the evidence, found that Driver Roeck
had not been in a state of intoxication
on the occasion in question.

I have obtained from the Court,
and send to you herewith, a copy of the deposition
given by the witnesses in this case, together
with a copy of the Magistrate's remarks thereon.
You will observe that the Magistrate
states he has 'some doubt as to the meaning
'of the expression 'state of intoxication' and
that

Copy to be sent to the
Agent for No 3 24-8-74

Copy to be sent to the
Agent for No 3 31-8-74

Copy to be sent to the
Agent for No 3 18-9-74

W. L. L. L. L.
Agent for No 3

Copy to be sent to the
Agent for No 3

It is to be the same as state of drunkenness - He was slightly the worse for
the fact that he had not rendered himself
as to whether it is dangerous for a driver
as a doubt is that is sufficient to bring
him out of the doubt.
5. However he little doubt that the
Agent after he arrived at Trichinopoly, and
for local for enquiry if evidence is forth

that he thereby gave the Driver the benefit of
"the doubt"; although he / the Magistrate / believed
the statement given by the Locomotive Foreman
that Driver Roach was unfit to take charge of
a train was substantially correct.

The Driver has been dismissed from
the Company's service, but as I consider dismissal
alone inadequate punishment for so grave
an offence, I do not think I should be justified
in passing this case without bringing it to
the notice of Government; or without endeavouring
to obtain some definite ruling with regard to
what constitutes intoxication, or as to what
degree of drunkenness may be permitted to
a driver in charge of a passenger train,
without his being charged with the offence
under Clause 27 of the Railway Act.

The Foreman, who was the first
witness, proves the driver was "not fit to
take charge of a train."

The second witness / an engine
driver / states "from the way prisoners
walked, he seemed to be in liquor."

The third witness (the Station Master)
considered the prisoners "from the way he
spoke" to have been drinking.

The fourth witness states that
Roach went to the Refreshment room imme-
diately after the train arrived to ask for
brandy, which was refused. "He had been
drinking"

The fifth witness says "he did appear to have been drinking as far as I could judge."

The sixth witness could not say. Roach was drunk "he was steady". This fireman was not on duty with Roach. As the train came into the Trichinopoly station, Jackson jumped upon the engine and rode up to the platform with it. On his return to his bungalow, he told the driver under whom he worked that Roach was "tight", or under the influence of liquor. I may mention here that after his witness had given a contrary statement before the Magistrate I questioned him as to this seeming inconsistency. He answered that when a man was not drunk, he must be sober. He considered a man to be drunk when he was unable to stand.

The guard of the train, who was the last witness called, states he observed Roach "staggering a little" on the Trichinopoly platform, and he considers "he was under the influence of liquor."

Foreman Senoo, in concluding his evidence with the statement that the Driver was not too drunk to put his engine away, clearly adds that he was with him all the time the engine was being moved, and he was "looking" after him. The Foreman would

758
would not have allowed him to do this work
without close observation.

I have the honor to be
Sir,

Your most obedient servant
William B. Bell
Agent

N. 584

Submitted for the consideration of Government, with a request that His Excellency in Council will be pleased to express an opinion as to the extent to which the engine-drivers in charge of a passenger train may be permitted to be under the influence of liquor, without rendering himself liable to conviction under section XXVII of Act XVIII of 1854.

The section in question is as follows:-

"Any Officer or servant of such Railway Company who shall be guilty of drunkenness in a state of breach of duty by intoxication, whilst actually employed upon the Railway, or any of the works connected therewith."

From the Agent

J. J. Railway

to the Council of the
Great Southern of India Railway
dated 29 September 1864
Recd 1. 10. 64

W. 10/12/5

Mr 6/10/1/74

Regarding the
interference of driver
in charge of the engine
working the passenger
train.

To

THE AGENT,

From

No.

Great Southern of India Railway,

NEGAPATTAM,

AGENTS OFFICE,

GREAT SOUTHERN OF INDIA RAILWAY.

To The Secretary to Government
Public Works Department
Fort Saint George.

"therewith in the discharge of any
"duty, and any officer or servant
"of such company who negligently
"shall omit to perform his duty,
"or shall perform the same in an
"improper manner, shall be liable
"to a fine not exceeding fifty
"rupees, and if the duty in any
"of the cases in this Section above-
"mentioned be such, that the
"omission or negligent performance
"thereof would be likely to endanger
"the safety of any person travelling
"or being upon such Railway, such
"officer or servant shall, on con-
"viction before a Magistrate be
"liable to imprisonment, with or
"without hard labour, for a
"term not exceeding one year,
"or to fine, or to both".

Madras
1st October
1874
Mantelmont
Lieut. Col. R. D.
Comd. Engineer for Railways T.

354
P.H.C. R.

Pro: of the Madras Govt

Read the following:

From the Comptroller
for Ryo } H. E. No. 587 of 1st Oct 1874
3094

It is not compe-
tent to Government
to decide the question
raised by the law.
- culting Engineers for
Railways, which is
a question for the
decision of a judi-
- al tribunal.

W. M.

Ans.

Comptroller for Ryo.
" J. S. de parat (with two letters returned)
S. Capins de parat 6/11/74. 4. P. S. de parat 10/11/74
for A. 11 3195-12-1-74

Ch. by

from August 28. 1874.
The request that comes
definite may be placed
on the same state of
indication.

Revised 23 Oct 1874.
E. 3. V. No. 587
No. 3094-30-10-74
Revised letter

to the key to look.
Q. 11. 2. 1874
for 1 Oct. 1874

The Comptroller
for Railways

P. W. 1874. 1874.
No. 587 of 1st Oct 1874
No. 6181
Railway Department

377
S. H. B.

Proceedings of the Grand Jury!
Read the following:

From the Judge of the Court
for Ryo: } (H. C. No. 587 of 1st Oct 1874)

His Excellency the
Governor in Council
must decline the
attempt to define
more particularly
the expression referred
to. Section XXVII of
Act XVIII of 1864 is
clear enough to guide
any Magistrate capa-
ble of forming a
consistent opinion.
The inconsistency of
the judgment complained
of.

It is merely say.
It is not competent to
define the term "bunker"
more precisely
the conclusion of the Dep.
is a matter of fact for the
decision of the Court.
S. H. B.

1/11

677-1/78

Recd 14/10/76, Rtd 15/10/76

3/18

6/18

of, in which the acting
District Magistrate
states in one place
that he has no doubt
that the prisoner was
correctly described as
not very drunk
but not fit to take
charge of a train;
and in another that
he was slightly the
worse for liquor but
quite capable of man-
-aging his train

will be considered
in the Judicial Department

Admiral letter says you
will come of this. The records
of Courts martial show how dif-
ficult it is to decide when
the crime line is passed &
the sentence in this case is
very stiff.

Amn

Wm H

Ed. Hall

C. E. Hall

6181

Govt. of Madras.

PUBLIC WORKS.



To the Consulting Engineer for
Railways

Dated

Recd.

Encl. /

G. O. 30th Oct. No. 3094

Not by 8

Prosecution of an Engine
Driver - S. India Ry.

Intimating that
the question as to the
definition of the term
"state of intoxication"
is one for the decision
of a judicial tribunal.