

APPELLATE CRIMINAL.

*Before Sir Arthur J. H. Collins, Kt., Chief Justice, and
Mr. Justice Shephard.*

QUEEN-EMPRESS

1897.
January 14.

v.

SUBRAMANIA AYYAR.*

*Railway Act—Act IX of 1890, s. 113—Excess charge and fare recoverable as a fine
—Magistrate not competent to impose imprisonment in default—Fine—Imprisonment.*

Section 113, subsection (4), (1) of the Indian Railway Act (IX of 1890), which directs that, on failure to pay on demand excess charge and fare when due, the amount shall, on application, be recovered by a Magistrate as if it were a fine, does not authorise the Magistrate to impose imprisonment in default. The excess charge and fare referred to in the section [is not a fine, though it may be recovered as such.

CASE reported for the orders of the High Court under section 438 of the Code of Criminal Procedure by A. E. C. Stuart, District Magistrate of South Arcot.

The case was stated as follows: "A passenger named Subramania Ayyar was found in a third-class Railway carriage of the South Indian Railway train, No. 14, at the Chidambaram Railway Station on the night of the 12th July last. The Station master forwarded the passenger to the Station-house Officer of the place with a letter requesting the latter to collect the Railway fare from the passenger and send the amount to him. The Station-house Officer sent the passenger with the letter of the Stationmaster to the Stationary Sub-Magistrate of Chidambaram. The Sub-Magistrate took up the case under section 113 of the Railway Act 9 of 1890, and examined the passenger who represented that he had purchased a ticket at Mayavaram for Chidambaram, and that on his way he was robbed of his bag containing money and the ticket, and that he knew nobody who would stand surety for him at Chidambaram where he was a stranger. The Sub-Magistrate believed the passenger, and having obtained his alleged address released him on his own bond for Rs. 20

* Criminal Revision Case No. 537 of 1896.

QUEEN-
EMPRESS
v.
SUBRAMANIA
AIYAR.

“ conditional on his appearance at Chidambaram on 18th July
 “ 1896. The passenger, however, failed to appear again. A
 “ distress warrant was issued by the Sub-Magistrate to collect the
 “ amount due, but the warrant was returned with an endorsement
 “ that the passenger was not to be found in the place mentioned.
 “ The Sub-Magistrate reported the facts to the authorities of the
 “ South Indian Railway Company, who represented to me that the
 “ Sub-Magistrate’s procedure was irregular. When the Sub-
 “ Magistrate was called upon to explain, he seeks to justify his
 “ procedure by saying that sections 64 to 67 of the Indian Penal
 “ Code do not apply to the cases contemplated by section 113 of
 “ the Railway Act, and that he had no power to award imprison-
 “ ment in default of payment of the amount. His view of the
 “ case is apparently supported by the rulings of the Bombay High
 “ Court in *Queen-Empress v. Kutrapa*(1). That ruling appears to
 “ have been arrived at by their Lordships with some hesitation, and
 “ as the point is one of considerable general importance, it seems
 “ desirable that an authoritative ruling of the Madras High Court
 “ for the guidance of the Magistracy of this Presidency should be
 “ obtained. Should it be definitely settled that imprisonment
 “ cannot be awarded in default of the payment of the excess charge
 “ and fare though the law expressly enacts that this sum shall be
 “ recovered ‘as if it were a fine imposed,’ the commission of frauds
 “ upon Railway Companies, as in the present case, will be greatly
 “ facilitated.”

The Public Prosecutor (Mr. Powell) for the Crown.

Rama Rau for the accused.

ORDER.—We agree with the decision in the Bombay case, *Queen-Empress v. Kutrapa*(1). We decline to interfere.

(1) I.L.R., 18 Bom., 440.