compartments, and that it is an unreasonable preference to allow Anglo-Indians access, not only to the compartments reserved for them, but also to the rest of the train to which ordinary passengers are restricted. These considerations must in the absence of any other suggested test be dealt with in the light of common experience ; and they do not seem to me to correspond with any intention on the part of the Railway to give a preference. They cannot, it is to be observed, be connected with the distinct question whether the accommodation provided for ordinary passengers was in the accused's train, or is usually, sufficient or as generous as such passengers would desire. Then, firstly, the alleged inconvenience to other passengers is not necessarily the consequence of one compartment being reserved ; nor, if it were not reserved, would it necessarily be available to provide them with increased accommodation. And secondly, there is no reason for supposing that Anglo-Indians contrary to their own convenience use the unreserved portion of a train in preference to that reserved for them to an extent, which affords a grievance of any substance. Special treatment of a class need not involve a preference in its favour or more than, in the words of PIGGOTT, J., in *Emperor* v. *Brijbasi Lal*(1) already referred to, "provision by the Railway for the accommodation and convenience of its passengers generally, taking a broad view of its practical effect ;" and it has not been shown how any other consideration is in question here. It is in fact, as WALSH, J., said in his fuller judgment, "merely a case of providing for the general convenience of the travelling public, which has been left by the Legislature in India, as it has always been left by the Legislature in England . . . to the discretion of experienced Railway

(1)(1920) I.L.R., 42 All., 327.

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Administrators;" and we must accept the exercise of that discretion as legitimate in the present case, in which the contrary has not been shewn. In my opinion therefore the argument based on section 42 (2) must be rejected.

No ground having been shown for interference in Revision, I would dismiss the Petition.

KRISHNAN, J. KRISHNAN, J.—With all respect for my learned brother, I regret I am unable to concur with him in this case; for I have come to the conclusion that the accused are entitled to be acquitted on the short ground that the third-class compartment in question is not proved to have been properly reserved for Europeans and Anglo-Indians as the prosecution alleged. It is conceded by the Station Master of Mettupalaiyam, prosecution witness 1, that the label that was on the carriage door was not the usual printed label issued by the Railway Company similar to Exhibit I, but was only a piece of paper on which was written "reserved for Europeans and Anglo-Indians"; it did not bear his signature or initials. The initials on it "A.V.D." were, he says, those of his ticket examiner. He also admitted in cross-examination, and other witnesses corroborated it, that there was no rule authorizing him to delegate the power of signing the label to the ticket examiner.

At the time this incident happened the rule was that the Station Master should sign or initial the reserve label as shown by the form of the card in Rule 172 (*a*) of the Traffic Working Orders then in force and by Exhibit I that is produced. The rule was changed in January this year so as to enable the senior ticket examiner to sign the label at stations where there are ticket examiners (see Rule 260 of the new rules); and Mēttupālaiyam Station is one of those stations. But this change of rule does not affect the present case as the incident in

question took place in May 1920. It is thus clear that the compartment in question did not bear a proper label reserving it for Europeans and Anglo-Indians.

The question then is are the accused liable to be punished under section 109, Indian Railways Act, for entering such a compartment and refusing to leave it when asked. I will assume in deciding it that the section applies to a case of reservation for a class of persons like Anglo-Indians and is not confined to cases of reservation for specific individuals. It seems to me that before a person can be punished under the section it must be shown that the compartment was properly reserved according to the railway rules. The Traffic Working Orders may not be issued to the public but the travelling public know what is done every day when compartments are reserved and I think a passenger, who knew the rule in force, was entitled to disregard a reserved label put upon a compartment unless it was properly authenticated by the initials or signature of the Station Master. The Station Master himself has to observe the formalities required by the rules before he can properly reserve a compartment, as his own authority to do so is given to him by the Railway Administration subject to the rules. It is said that because the Station Master himself in the present case told the accused that the compartment had been reserved they should have accepted his word for it. I am not satisfied that the accused were bound to accept his oral statement and act on it. In fact, as mentioned in the judgment of the appellate Magistrate's last paragraph, the accused objected that the slip attached to the compartment was not an "authorized document" and requested the railway officials to put an "authorized" one, but that was not done. I am not prepared to say in these circumstances that the accused were committing an offence under

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section 109 in continuing to remain in the compartment. Whether they have transgressed any other rule or section we need not consider.

It is true the lower Courts have found that the compartment was reserved but I am unable to treat their finding as one of fact and accept it; as they have not considered the question from the point of view I have adopted. I would reverse the conviction and direct the fines if paid to be refunded.

In the view I take it is not necessary to discuss the other questions dealt with by my learned brother and I express no opinion about them.

By Court.—As we differ, the case must be laid before the Chief Justice for orders as to its further disposal.

The case coming on for hearing before AYLING, Officiating Chief Justice, His Lordship made the following ORDER:

AYLING, OFFG. C.J.

AYLING, OFFG. C.J.—The facts of this case and questions arising for decision have been fully set out in the judgment of my brother OLDFIELD: and it is unnecessary for me to recapitulate them. The case comes before me in consequence of a difference of opinion between the learned judges as to whether in this particular case, assuming the Railway Company to be legally entitled to reserve a third-class compartment for the use of Europeans and Anglo-Indians, the reservation had been properly effected so as to render the action of the petitioners punishable under section 109 of the Railways Act.

The questions involved in the Railway Company's general power of reservation have been exhaustively discussed by OLDFIELD, J., whose conclusion is identical with that arrived at by a Bench of the Allahabad High

Court in *Emperor v. Brijbasi Lal*(1) though in one respect, the scope of section 42 of the Railways Act, he has taken a different view. KRISHNAN, J., has expressed no opinion on this part of the case: and I am not altogether clear, whether with reference to the terms of section 429, Criminal Procedure Code, I am called upon to deal with it. I have however heard the matter fully argued by Mr. S. Srinivasa Ayyangar and by Mr. Ethiraj, who appeared for the Public Prosecutor: and as a result, I entirely agree with the conclusions arrived at by OLDFIELD, J., and feel it unnecessary to add anything to his reasoning.

Coming to the point of difference, it is really a very small one. There is no doubt that the usual method of reserving a compartment is by the affixment on both sides thereof of a printed card signed or initialled by the Station Master in a space provided for the purpose. In the present case two slips of paper were affixed bearing the words "reserved for Europeans and Anglo-Indians" and initialled by the ticket examiner. It is explained that this was due to the stock of cards having run out. The argument put forward for the petitioners is that this irregularity invalidates the reservation of the compartment, so that their action in ignoring it amounts to no offence.

I have not been referred to any rule from which I could say that a compartment can only be legally reserved by a label or notice signed or initialled by the Station Master. The only code of rules referred to is the Company's Traffic Working Orders, which are clearly intended for the guidance of the Company's servants, rather than for the information of the public. But even in this I find nothing to the effect indicated. Rule 174,

(1) (1920) I.L.R., 42 All., 327.

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which authorizes the reservation of third-class accommodation for Europeans and Anglo-Indians, says nothing as to the official by whose orders the accommodation is to be effected. It runs:

"One third-class compartment only may be reserved by the long distance main-line trains and by the principal connecting trains on the branches and labelled as follows: 'For Europeans and Anglo-Indians.' Guards and Station Masters should see that even when there are no Europeans or Anglo-Indians travelling others are not allowed to occupy the compartment."

So far as this is concerned, the affixment of the paper labels spoken to in evidence would meet the requirements of the rule. The only other rule quoted is rule 172 (*a*) which runs thus:

"When accommodation in any train is reserved, the Station Master who has to arrange for the accommodation will label the carriage or compartment on both sides and enter the number of the carriage or compartment and the class of accommodation provided in the Vehicle Way-bill with the stations from and to which they are so reserved, and the guard will be responsible for seeing that the accommodation is reserved accordingly."

Now, it may perhaps be deduced from this that the reservation has been effected by orders of the Station Master only—but I can find nothing more. The direction that he should label the carriage or compartment, of course, does not imply that he must do so with his own hands or sign the label. The form given in the example to the rule refers not to the label, but to the entry in the Vehicle Way-bill, and in this connexion, my learned brother KRISHNAN, if I may say so with respect, appears to have been under a slight misapprehension. It is in evidence and apparently not disputed, that the labels were affixed to this carriage under the orders of the Station Master; and that on being referred to he informed the petitioners that this was so. The most that can be said is that the reservation was not effected by

the affixment of the usual printed card—not that it was in contravention of the Company's rules.

I may add, though it is hardly material, that it is clear from first petitioner's own statement that this was not the essence of their objection: he says he objected to the unauthorized form of the label and requested the railway officials "to put an authorized document (i.e., label) so that we could then test the right of reservation if necessary." In other words the petitioners were prepared to remain in the compartment even if a printed label signed by the Station Master had been affixed, so as to test the Company's general right of reservation. This was, in fact, their object, as they frankly admit. They knew the reservation was under the Station Master's orders and they were anxious to have the irregularity, such as it was, remedied, so that there could be no chance of the Court, before which the resultant case would come, failing to determine the larger question.

In my opinion, it cannot be said that the procedure adopted in this case was such as to invalidate the reservation.

There are no grounds for interference and the Revision Petition must be dismissed.

M.H.H.