

of the judgment and certificate conditional upon the moveable property being made available in execution upon the judgment. The application of the judgment-debtor is only to be were any portion of a judgment debt remains unsatisfied after the sale of the moveable property. It seems therefore clear that the Court should be satisfied that such moveable property of the judgment-debtor as is within its jurisdiction, has been sold in execution, *before* granting the copy of the judgment and the certificate required for enforcing any portion of the judgment by execution against the debtor's immoveable property.

1863.
February 2.
R. C. No. 5
of 1863.

ORIGINAL JURISDICTION. (a)

Crown Cases Reserved.

THE QUEEN on the prosecution of the MADRAS RAILWAY
COMPANY *against* MALONY.

THE QUEEN on the prosecution of the MADRAS RAILWAY
COMPANY *against* JONES.

The drunkenness of a guard or underguard in charge of a railway-train or any part thereof is an offence included in sec. 35 of Act XVIII of 1862 ; but the High Court has no jurisdiction to try a prisoner charged with such offence where he was removed from his post at a place outside the local limits, although the train thereupon proceeded with him to Madras.

THE prisoner Malony was indicted under the 27th section of the Indian Railway Act, and tried before Bittleston, J., by whom the following case was stated :

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“ James Malony was tried before me at a Criminal Session of the High Court holden on the 6th and four following days of January 1863, upon an indictment which charged that he on the 1st January at Madras, being a servant of the Madras Railway Company, was in a state of intoxication whilst actually employed upon the Madras Railway in discharge of his duty as a guard in a passengers' train, such duty being one, the negligent performance of which would be likely to endanger the safety of persons travelling on such railway.

(a) Present : Scotland, C. J. and Bittleston, J.

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“ It was proved that the prisoner was a guard in the service of the Madras Railway Company, and that on the 1st January he was the head-guard in charge of a passenger-train from Coimbatore to Madras, that on the arrival of the train at the Arkonam Junction-station about 6 o'clock in the evening of that day, the prisoner was found in the break-van in a state of almost helpless intoxication, that he was removed from the train by the Station-master, and detained at that station until the following morning, another guard being sent in charge of the train on its further journey to Madras.

“ It was also proved that the head-guard in charge has the general controul of the whole train, starts it when everything is ready, and has charge of the front break ; and that serious accidents might result either from his not applying the break when necessary or starting the train before everything was ready.

“ The Arkonam Junction-station is not within the local limits of the ordinary original jurisdiction of the High Court ; and the prisoner was proved not to be an European, but nothing further was known by any of the witnesses as to his birth or parentage.

“ He was committed for trial to the High Court by a Police Magistrate and Justice of the Peace for the town of Madras,

“ The jury found the prisoner guilty of the offence charged ; but upon reference to Act XVIII of 1854, sections 27 and 30, Act XVIII of 1859, sections 1 and 2, Act XVIII of 1862, section 35, and to clauses 21 and 22 of the Letters Patent constituting the High Court, I doubted whether I had jurisdiction to try the case, and reserved that question for the opinion of the High Court.

“ In the meantime I ordered that the prisoner should be released on entering into his own recognizance in rupees 500, with two sureties in the same amount, for his appearance on 3rd February next to receive judgment if called upon.”

In *The Queen on the prosecution of the Madras Railway Company v. Jones*, Bittleston, J. also stated a similar case, which arose out of an indictment under the 27th sec.-

tion of the Indian Railway Act. The prisoner here, one Jones, we tried before his lordship at the first Criminal Sessions for 1863. It was proved that he was an under-guard in the service of the Madras Railway Company, and that on the 1st of January 1863 he was employed in that capacity on a passenger-train from Coimbatore to Madras. Upon the arrival of the train at the Arkonam Junction-station, about 6 o'clock P. M., he was drunk, violent and unsteady. To prevent his going on with the train, he was put in charge of a peon ; but, as the train was starting, he broke away, jumped into it, and so was taken on to Madras. Two of the passengers who gave evidence of his intoxication at Arkonam stated that when the train reached the Perambore station, the prisoner assisted in giving out the luggage, and then appeared to be steady and sober. It was proved that the under-guard has charge of one of the breaks, and that though the head-guard is answerable for starting the train, he is obliged to depend upon his under-guard for ascertaining that everything is secure in the part of the train which is under the more immediate observation of the latter. It was also proved that serious accidents might result from the negligent performance of the under-guard's duties.

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Jones was stated by one of the witnesses to be an East Indian, and there was no other evidence of the prisoner's parentage or place of birth.

No counsel appeared for either of the prisoners, and the judgment of the Court was delivered by

SCOTLAND, C. J. :—The Act No. XVIII of 1862 was passed for the further improvement of the administration of criminal justice by simplifying and facilitating the mode of procedure; and the object of the 35th section is to remove doubts and inconveniences as regards the exact locality in which offences alleged to have occurred on a journey or voyage, have been actually committed or completed. That section enacts .
“ If any person shall be accused of any offence alleged to have been committed on a journey or on any voyage in British India, such person may be dealt with, tried and punished by any of Her Majesty's Supreme Courts of Judicature, if any part of the journey or voyage shall have been performed within the local limits of the jurisdiction of such Court.

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The question which the Court has now to decide is, whether the section clearly gives jurisdiction to the High Court to try and convict the parties charged in either of the cases reserved for consideration ; and we are of opinion that the section does not admit properly of such a construction. It is not improbable that the offence of drunkenness whilst on duty was not one of the offences contemplated when the section was framed : but the general language of the section is certainly sufficient to include such offence. Then the section applies if the offence of which the person is accused is "alleged to have been committed on a journey or on any voyage." Now the words "on a journey or on any voyage" must, we think, be read as if the provision had been whilst a journey or voyage or any part of it is being performed by a ship or carriage, without particular reference to the terminus, and so read together with the language of the rest of the section, the proper construction and effect of the enactment, is, that if a person is accused of an offence committed whilst a journey or voyage *is going on* he may be tried if any of that part of the journey or voyage during which the offence of which the person accused is alleged to have been committed is within the local limits of the Court's jurisdiction. Here the offence was committed by the party accused and was alleged to have been committed on the journey between Coimbatore and Arkonam, and the one prisoner was actually detained at Arkonam, and the other was put in charge of the peon to prevent his going further on the journey, but broke away and got into the train in his then intoxicated state, so that it cannot, we think, be said that any part of the journey on or during which this offence is alleged to have been committed by the accused, was performed within the local limits of the Court's jurisdiction. The journey on which the offence is alleged to have been committed ended, so far as regards the party accused and the offence, at Arkonam.

The very general terms of the section give rise certainly to some doubts and difficulty, and the considerations of convenience and inconvenience as regards the prosecution of offences committed on a journey, which have naturally occurred to us, do not so preponderate either way, as to assist materially in its construction. But looking to what

must have been the object and intention of the enactment and giving the ordinary meaning to the language of the section, we think our present construction is the proper and reasonable one. 1863.
February

The Court, therefore, we are of opinion, had no jurisdiction to try the offences charged in these cases, and the convictions must be quashed and the prisoners discharged.

Convictions quashed

APPELLATE JURISDICTION. (a)

Civil Petition No. 287 of 1862.

PARAVARTANI *against* AMBALAVANA PILLAI.

Ex parte PARAVARTANI.

When a Hindu widow instituted a suit in respect of rights inherited by her from her deceased husband and then adopted son :—*Held* that under section 73 of the Code of Civil Procedure the adopted son might be made a co-plaintiff.

THE Original Suit (No. 7 of 1857) was brought by a Hindu widow in the Civil Court of Madura to establish certain rights in respect of the Rameçvara Devasthanam. The plaintiff was Rani Zamindári of Rámnád : she had inherited the Zamindári from her deceased husband, and in right thereof she claimed to be dharmakartá of the devasthanam in question. After the institution of the suit she adopted one Mutorámalinga Cetupati, and this petition was presented by her and the adopted son praying that the suit might be continued by the adopted son ; or that he might be added as a supplemental co-plaintiff : but that if the Court should not grant either of the above applications, then that the suit might be continued in the name of the plaintiff and as it then stood instituted.

Branson, for the petitioner.

Norton (*Mayne* and *Saadgopacharlu* with him) for the counter-petitioners : Parties coming into existence after the commencement of the suit cannot apply to be admitted.

(a) Present : Strange and Frere, J. J.

1863.
February 7.
C. P. No. 287
of 1862.