

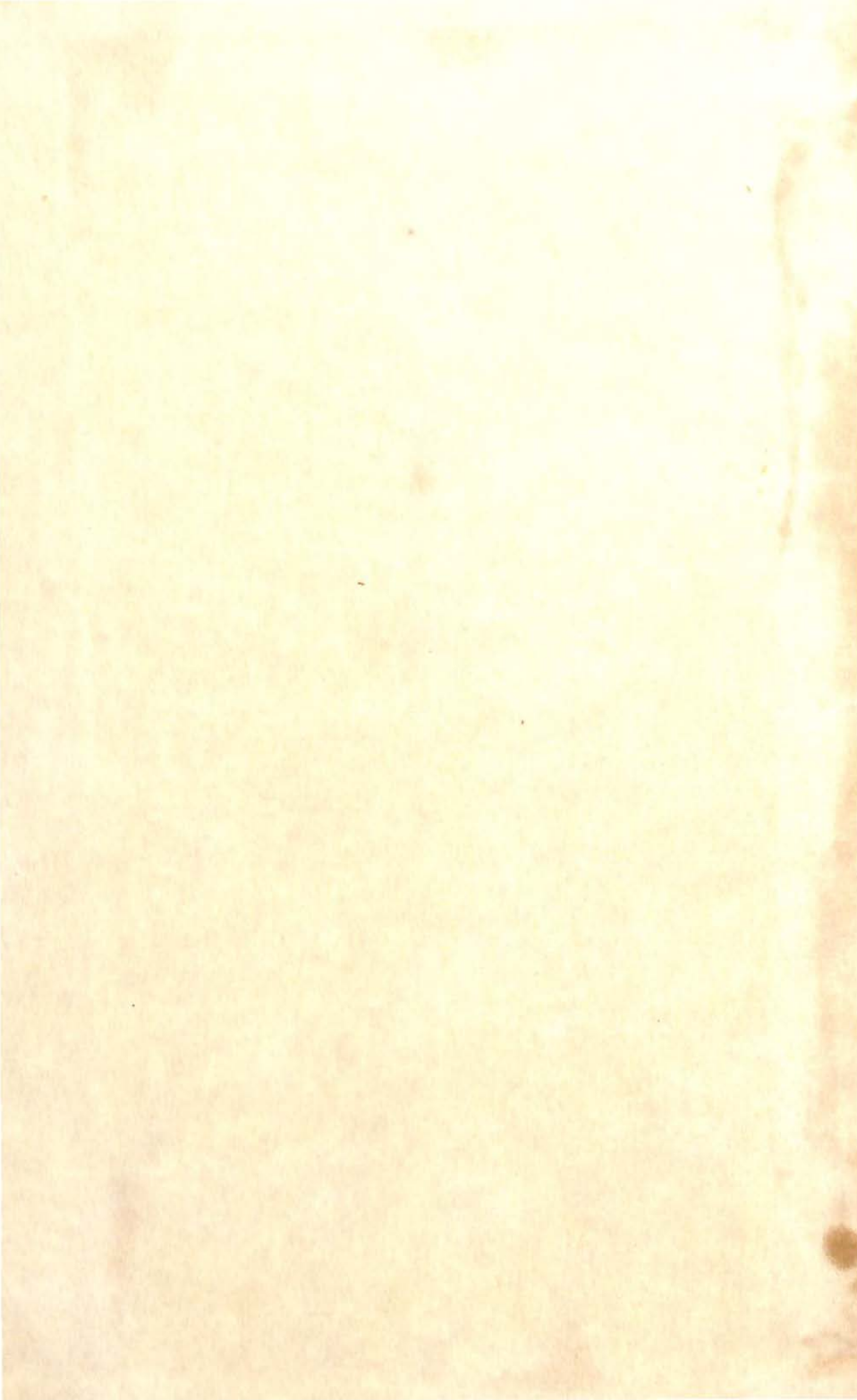
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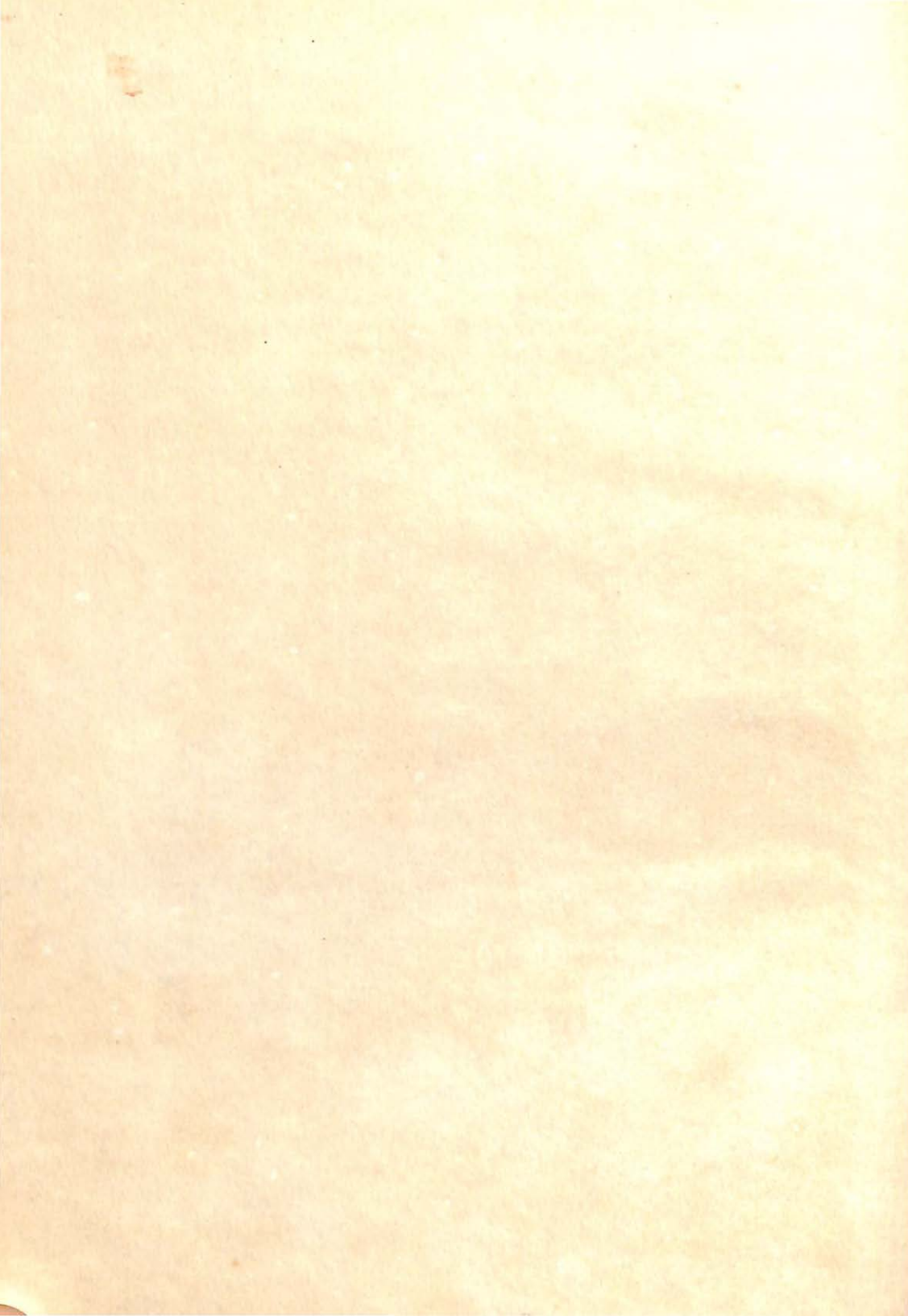
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H 702

*From Inspector General of Police, Punjab, to Assistant Inspector General Railway Police,—No. 3330, dated 10th December 1870.*

SIR,—I have the honor, in continuation of my No. 2500 of the 8th September, to forward the enclosed copy of the Government Advocate's opinion relative to the law of venue in offences against the Railway Act.

POLICE.  
Venue in offences against Railway Act.

2. In informing you, in my previous letter, that the special jurisdiction created by Act XVIII of 1854 was still law, I merely followed the precedent given in the case of the Queen v. Suroop Chunder defendant (7 S. W. R., Cr. R. 29) as read with the seventh explanatory remark to the schedule enacted by Act VIII of 1869.

3. As the opinion is one of great value to all police officers this correspondence will appear in the "Selections," and copies will be forwarded to you in due course.

*From Captain P. Harris, Assistant Inspector General, Railway Police, to Lieutenant Colonel Younghusband, C. S. I., Officiating Inspector General of Police, Punjab,—No. 642 dated 2nd September 1870.*

The Cantonment Magistrate of Amballa has ruled that all cases of defrauding the Railway Company by men attempting to travel by rail without tickets, are triable in the district from which the offender started and not where the fraud was discovered. As this would entail a great deal of unnecessary extra trouble I should be glad to have your opinion on the subject.

*From the Inspector General of Police Punjab, to H. Plowden, Esquire, Barrister-at-law, Government Advocate Punjab—No. 2499, dated*

SIR,—I have the honor to forward for the favor of your opinion a copy of Captain Harris' No. 642, of the 2nd September 1870, intimating that the Cantonment Magistrate of Ambala has held that, cases of defrauding the Railway Company, by travelling

POLICE.  
Venue in offences against the Railway Act; and in those punishable with imprisonment.

The 26th section enacts "that except where provided in this Act, every offence shall be enquired in the district in which the offence was committed."

This and the succeeding sections down to Section 27 are intended to contain the law of venue in Criminal Code when the Code came into force.

I am of opinion that to the lawful exercise of jurisdiction under the Code, it is essential that the offence should have the local limits of the Magistrate's jurisdiction, expressly provided by the Code.

It further appears to me that whatever jurisdiction was exercised after the Code came into force, although originally under the provisions of local or special laws of which they originally gave them jurisdiction, their jurisdiction of jurisdiction having been re-conferred by the Code, is exercised under the provisions of the Code.

Comparing Section 21 with Section 26, the latter section must be taken to extend to offences under special and local laws as well as offences against which there is in this Code no definition of the word offence and it must further be noted that there is not in this Code (analogous to that in the Penal Code, Section 5) any definition laid down in special or local laws so as to impede the operation of Section 26 in regard to the provisions contained in them.

Lastly, the words "except when otherwise provided in this Act," cannot be read as though they were followed by "or by any other law for the time being in force" as in the Code.

Now, as the object of the Code is to simplify the procedure of the Mofussil Courts of Criminal Judicature, and most important topic dealt with in the Code, and the scope of the Code to lay down a uniform rule as to the exercise of jurisdiction, and as necessary to the lawful exercise of jurisdiction, and as Section 26 is clear and precise, I am of opinion that the Code does not over-rule any provisions as to the exercise of jurisdiction by the Courts without regard to the locality of the offence contained in previous enactments, and are inconsistent with the provisions of this Code on the subject of locality affecting jurisdiction.

But though Section 30 of the Railway Act may be thus rendered inoperative to confer jurisdiction when the offence is not committed within the local jurisdiction of the Magistrate before whom the offender is brought, it will be found, in looking at Section 3 of the Railway Act and at the venue Sections of the Code, that Magistrates other than those having jurisdiction at the starting place of the offending passenger can lawfully exercise jurisdiction over the offence which gave rise to this reference.

By Section 3 "any person who shall defraud a Railway Company "by travelling upon a Railway without having previously paid his fare "shall be liable to a fine not exceeding fifty Rs. for each offence."

It is a necessary ingredient of this offence that the passenger should travel, and so long as he continues to travel without a ticket with intent to defraud, he continues to commit the offence specified.

The offence is therefore committed in each district through which the passenger so travels, and consequently under Section 26 of the Criminal Procedure Code is triable in any district through which the offender so travelled. The Railway Company are entitled to say that the offence is completed when the traveller has gone one mile, or when he completes his journey, or at any intermediate stage: the further he goes the more he defrauds them by travelling without having previously paid his fare.

On the first question therefore I arrive at the same conclusion with you, though on different grounds, *viz*: that the opinion of the Cantonment Magistrate of Umballa is incorrect.

On the second question I am of opinion that the Code of Criminal Procedure with all its provisions applies to Criminal Courts dealing with offences against Sections 25, 26, 27, and 28 of the Railway Act. Section 37 does not profess to point out by what authority an alleged offender is to be dealt with, but the procedure in regard to their apprehension and subsequent thereon.

It must depend upon the circumstances of each case, whether Section 30 of the Code is applicable or not in conferring jurisdiction upon any given Magistrate otherwise qualified to investigate a charge under any of these sections of the Railway Act.







