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MADRAS RECORD OFFICE.

Government of Madras.

Financial DEPARTMENT.

G.O. No.	166	Press / Mis.
		222. 223
Dated	28-1-	1875.

21/22

Not to be folded or roughly handled

Tramways.

No. 222. Read the following letter from Lieutenant-Colonel C. S. HEARN, Inspector-General of Police, to the Hon. D. F. CARMICHAEL, Acting Chief Secretary to Government, Fort St George, dated Madras, 5th January 1875, No. 32 :—

I have the honor to forward a letter from Colonel Swanston, late Acting Commissioner of Police for the Town of Madras, regarding a difficulty which appears to have arisen in carrying out the Order of Government, No. 1855-A, dated 29th October 1874, regarding Tramway Carriages. The copy of an opinion by the Advocate-General is also enclosed.

2. The Advocate-General appears to consider that Clauses I. and III., Section 50, Act VIII. of 1867, do not suffice to legalize the action of the Commissioner of Police under paragraph 3 of the Government Order above quoted. He recommends that a special Act should be passed to regulate Tramway Traffic.

3. I enclose, herewith, a copy of the Bombay Tramways Act No. I. of 1874. The Municipality of Madras have not taken the precaution to secure their own interests and those of the public by a similar legislative enactment, and any Act now passed with reference to the existing tramways must I imagine be of a different character to the Bombay Act in many of its provisions. As regards the regulation of the Tramway Traffic, Section 24 of the Bombay Act hardly seems to cover the conditions which the Government in their recent Order have wished to impose. No additional powers are conferred on the Police by this Act, except that Section 28 of the Act extends the general authority of the Commissioner of Police to regulate traffic to the tramways.

4. As the matter now stands it may perhaps be deemed advisable to await the extension of the revised Code of Criminal Procedure to Presidency Towns (a Bill for this purpose being now, I believe, under the consideration of the Legislative Council of India), and then in revising the present Police Act to add thereto such provisions as may seem necessary for the control of Tramway Traffic, and also perhaps of hack carriages.

—

From Lieutenant-Colonel W. O. SWANSTON, Acting Commissioner of Police, to Lieutenant-Colonel C. S. HEARN, Inspector-General of Police, Madras, dated Madras, 30th November 1874, No. 859.

In forwarding the enclosed Proceedings of Government for your perusal, I have the honor to inform you that I placed myself in communication with the Government Solicitor, in order to obtain the opinion of the Advocate-General as to the powers held by the Commissioner of Police for controlling traffic in the town of Madras. The Advocate-General has laid it down that the Commissioner of Police has no power to regulate traffic ; the only power he at present possesses in this way is the regulating processions.

2. With regard to the power given to the Commissioner of Police to make bye-laws under Madras Act III. of 1862, the Advocate-General has given it as his opinion that even were that Act in force (which it is not, for the said Act was passed to give the Commissioner of Police certain powers to make bye-laws with reference to Acts XIII. of 1856 and XLVIII. of 1860, which have both been repealed by Act VIII. of 1867) it does not give power for making bye-laws for the purpose of governing traffic, and that therefore it would be advisable that the Government be moved to pass a short Act, either giving the Commissioner of Police power to make bye-laws for the controlling of

traffic, or to pass a special Act empowering the Government or the Municipality to issue bye-laws for the regulation of the Tramway Traffic, as has been done in Bombay. For till such an enactment is passed here there will be difficulty in dealing under the old law with a state of things for which the law was not intended to provide. I would therefore beg that you will endorse my request that some such Act be passed.

OPINION.

In order that Section 188 of the Indian Penal Code may be applicable, it is necessary that the order in question should be one "promulgated by a public servant lawfully empowered to promulgate such order." It does not appear that the order now under reference was of this description. Nothing in Act XXIV. of 1859 or Act VIII. of 1867 (M.) justifies the Police in promulgating such an order, or the Government in authorizing the Police to do so. I am of opinion therefore that a prosecution under Section 188 of the Indian Penal Code could not be supported.

2. The proper course is to pass an Act empowering the Government or the Municipality to issue bye-laws for the regulation of the Tramway Traffic. This has been done in Bombay; and till a similar enactment is passed here there will be difficulty in dealing under the old law with a state of things for which that law was not intended to provide.

26th November 1874. (Signed) H. S. CUNNINGHAM,
Advocate-General.

No. 223. ORDER THEREON, 28th January 1875, No. 166.

The question of regulating Tramway Traffic by legislative enactment will be considered in the Legislative Department.

2. In the meantime, the Commissioner of Police will confine himself to *recommending* the adoption of such precautionary measures as may seem necessary for the public safety, and he will also inform those concerned that prosecutions will be strictly enforced by Government in the event of any accident occurring which can be satisfactorily traced to the neglect of any reasonable precaution, either on the part of the drivers of the carriages, or the Directors or Managers of the Company.

3. The President of the Municipality will submit without any further delay the report called for in G.O., dated 29th October 1874, No. 1855-A.

(True Extract.)

Acting Chief Secretary.

To the Legislative Department, with G.O., No. 1855-A.
,, Inspector-General of Police.
,, President of the Municipal Commission, Madras.

Exd. J. Wright.

Govt. of {1875} Bombay

FINANCIAL.

To THE LEGISLATIVE DEPARTMENT,

&c., &c.,

Dated January, 28th.

Read.

Ent.

G.O., 28th January 1875, No. 166.

JANUARY.
Nos 22223.

Madras Municipality—The question of regulating Tramway Traffic by legislative enactment referred to the Legislative Department for consideration, and the Commissioner of Police meanwhile directed to recommend such precautionary measures as may seem necessary for the public safety.

5

BOMBAY.

ACT No. I. OF 1874.

An Act to authorize the making and to regulate the working of Street Tramways in Bombay.

[*Received the assent of the Governor of Bombay on the* 11*th April* 1874, *and of the Governor General on the* 6*th May* 1874, *and published by the Governor of Bombay on the* 15*th May* 1874.]

Whereas the Corporation of the Justices of the Peace for the City of Bombay by an Agreement dated the 12th day of March 1873 for the considerations therein expressed granted to William French Stearns and George Alvah Kittredge and their Assigns the right to construct and maintain and to use a Tramway or Tramways in Bombay upon the terms and in the manner mentioned in the said Agreement, a copy whereof is set forth in the Schedule to this Act, and the said Agreement had on the third day of March 1873 received the sanction of the Governor of Bombay in Council; and whereas the said W. F. Stearns and G. A. Kittredge are desirous of being empowered to lay down and maintain the several Street Tramways in the said Agreement and in this Act particularly described and also such other Tramways between such other places in Bombay and by such other routes as may hereafter be approved; and whereas the objects of this Act cannot be attained without the authority of the Legislature; It is hereby enacted as follows:—

Preamble.

Short Title.

I. This Act may be cited for all purposes as "The Bombay Tramways Act, 1874."

Interpretation.

II. The following words and expressions in this Act shall have the meaning hereby assigned to them, unless there be something in the subject or context repugnant to such construction:—

The expression "the said Corporation" shall mean the Municipal Corporation of the City of Bombay constituted by Act III. of 1872 or any other Act passed by the Governor of Bombay in Council.

1 s t

The

The expression "The Municipal Commissioner" shall mean the Municipal Commissioner for the City of Bombay appointed under the provisions of the said Act III. of 1872 or any subsequent Municipal Act, or any person officiating in the said office.

The expression the "Tramways" or the "undertaking" shall mean the Tramways and works and undertaking by this Act authorized, or any part thereof.

The word "Road" shall mean the way of any street, road, thoroughfare, passage or place along or across which any Tramway authorized by this Act is intended to be laid, and includes the surface pavement soil and sub-soil of a street and any bridge forming part of a street.

Routes on which Tramways are to be maintained.

III. Subject to the provisions of this Act, and subject to the said Agreement of the 12th of March 1873 so far as the same is not inconsistent with anything in this Act, the said W. F. Stearns and G. A. Kittredge, their Executors, Administrators and Assigns (hereinafter called the said Grantees), may make and maintain in the City of Bombay a Tramway or Tramways with single or double tracks and with all necessary sidings, turn-outs, connections and tracks to and from their stables on the following routes :—

From a point near the Grant Buildings, Colaba, by Hornby Row and the Cruickshank Road to the Money School a double track : Provided that this Tramway shall not be carried or maintained across the Bombay, Baroda, and Central India Railway or any siding which may at any time be constructed from the Cotton Green to the Apollo Bay Reclamation so as to obstruct the said Railway or any such siding.

From a point of junction with the above Tramway near the junction of Bazaar Gate Street and Hornby Row to a point near the Crawford Market a double track.

From the Money School to a point near Pydhonee Well along the Kalbadavie Road and the Coppersmiths' Bazaar, Mombadavie, a single track.

From the Crawford Market along Syed Abdool Rahman Street to a point of junction with the foregoing Tramway near the Pydhonee Well a single track : Provided, however, that in case after the expiration of one year from the date when this track shall have been constructed it shall be considered by Government to be necessary or expedient that the same shall be removed, the Grantees shall immediately after they shall have received an order from Government in that behalf at their own expense remove the said track and all their plant and materials from the said street

street, and restore and make good the road and pavement and remove all rubbish occasioned by the said track or the removal thereof, and the said Grantees shall not be entitled to or claim any compensation in respect of such removal.

And may also make and maintain a Tramway along the following route when approved by the Municipal Commissioner :

From the said point near Pydhonee Well along the Parell Road to a point near the Byculla Railway Station, a single or double track as may be approved of by the Municipal Commissioner for the said City and sanctioned by Government.

And may also make and maintain Tramways between such other places in the said City and by such other routes as may hereafter be approved of by the Municipal Commissioner for the said City and sanctioned by Government.

Notice in *Government Gazette* of new Tramway.

IV. In the event of any other Tramway or Tramways on other routes in the said City being from time to time approved by the said Commissioner and sanctioned by Government and undertaken by the said Grantees, notice thereof specifying the routes so approved shall thereupon be given in the *Bombay Government Gazette*, under the signature of a Secretary to Government, and upon the publication of any such notice all the provisions of this Act shall apply to the Tramway or Tramways in such notice specified, and all works and things connected with or incidental thereto as if the same route or routes had been particularly described in Section III. of this Act.

Form in which Tramways are to be maintained.

V. Every Tramway shall be constructed and maintained in such form and manner and upon such gradient and with such gauge and rails as the said Municipal Commissioner shall approve, and shall be laid and maintained in such manner that the uppermost surface of the rail shall be on a level with the immediately adjacent surface of the road, and shall not be opened for public traffic until the same has been inspected and certified to be fit for such traffic by the Municipal Commissioner.

Construction of carriages.

VI. The carriages intended to run upon the said rails shall be furnished with a break which can be worked at each end of the carriage, and shall be of a construction approved by the Municipal Commissioner. No carriage used on any Tramway authorized under this Act shall extend beyond the outer edge of the wheels of such carriage more than fourteen inches on each side.

VII.

VII. The Grantees may use on their Tramways carriages with flange wheels, or wheels suitable only to run on a grooved rail, and, subject to the provisions of this Act, the Grantees shall have the exclusive use of their Tramways for carriages with flange wheels or other wheels suitable only to run on a grooved rail.

The Grantees may use Tramway carriages with flange wheels.

VIII. Nothing in this Act or in any bye-law made under this Act shall take away or abridge the right of the public to pass along or across every or any part of any road along or across which any Tramway is laid, whether on or off the Tramway, with carriages not having flange wheels or wheels suitable only to run on a grooved rail.

Reservation of right of public to use roads.

IX. The carriages of the Grantees on the tracks of the said Tramways shall, unless with the consent of the said Municipal Commissioner and the sanction of Government, be worked with horse power or other animal power only, and the maximum rate of speed on the said Tramway shall be eight miles per hour.

Carriages to be worked with animal power.

X. The Grantees from time to time, for the purpose of making, forming, laying down, maintaining and renewing any Tramway duly authorized, or any part or parts thereof respectively, may open and break up any road, subject to the following regulations :—

Power to break up streets, &c.

1. They shall give to the Municipal Commissioner, or to the Executive Engineer of the said Corporation, notice of their intention, specifying the time at which they will begin to do so, and the portion of road proposed to be opened or broken up, such notice to be given seven days at least before the commencement of the work, except in cases of emergency arising from defects in any of the rails or other work, and then so soon as is possible after the beginning of the work or the necessity for the same shall have arisen :

2. They shall not open, or break up, or alter the level of any road, except under the superintendence and to the reasonable satisfaction of the Municipal Commissioner or Executive Engineer, unless the said Municipal Commissioner or Executive Engineer refuses or neglects to give such superintendence at the time specified in the notice, or discontinues the same during the work :

3. They shall not, without the consent of the Municipal Commissioner, open or break up at any one time a greater length than one hundred yards of any road which does not exceed a quarter of a mile in length; and in the case

case of any road exceeding a quarter of a mile in length the Grantees shall leave an interval of at least a quarter of a mile between any two places at which they may open or break up the road, and they shall not open or break up at any such place a greater length than one hundred yards.

XI. When the Grantees have opened or broken up any portion of any road, they shall be under the following further obligations, namely :—

Completion of works and reinstatement of road.

1. They shall, with all convenient speed, and in all cases within four weeks at the most (unless the Municipal Commissioner otherwise consents in writing), complete the work on account of which they opened or broke up the same, and (subject to the formation, maintenance, or renewal of the Tramway) fill in the ground, and make good the surface, and to the satisfaction of the Municipal Commissioner restore the portion of the road to as good condition as that in which it was before it was opened or broken up, and clear away all surplus paving or metalling material or rubbish occasioned thereby :

2. They shall in the meantime cause the place where the road is opened or broken up to be fenced and watched, and to be properly lighted at night.

XII. The Grantees shall, at their own expense, at all times maintain and keep in good condition and repair, in such manner as the Municipal Commissioner shall direct, and to his satisfaction, so much of any road whereon any Tramway belonging to them is laid as lies between the rails of the Tramway and (where two Tramways are laid by the Grantees in any road at a distance of not more than four feet from each other) the portion of the road between the Tramways, and in every case so much of the road as extends eighteen inches beyond the rails of and on each side of any such Tramway. And in consideration of such maintenance of parts of roads and of the yearly rent in the said Agreement mentioned to be paid by the Grantees the horses and carriages and other vehicles of the said Grantees shall be exempt from Municipal taxation.

Repair of part of road where Tramway is laid.

XIII. If the Grantees aforesaid fail to comply in any respect with the provisions of Sections V., VI., IX., X., XI. and XII. of this Act they shall for every such offence (without prejudice to the enforcement of specific performance of the requirements of this Act or to any other remedy against them) upon complaint of the Municipal Commissioner be liable to a penalty not exceeding two hundred Rupees and to a further penalty not exceeding fifty Rupees for each day during which any such failure continues after the first day on which such penalty is incurred.

Penalty for failure by Grantees to comply with provisions of Act.

XIV.

XIV. If any unnecessary delay or omission shall take place on the part of the said Grantees in complying with any order which may be made on them by Government for the removal of the said track authorised to be constructed along Syed Abdool Rahman Street as hereinbefore mentioned or of any other track the construction of which may have been sanctioned, subject to similar provisions, or otherwise in acting in accordance with the proviso hereinbefore contained regarding that track or in the performance of any of the works specified in Sections X. and XI. of this Act or in filling in the ground or reinstating and making good the road or pavement so opened or broken up or in carrying away the rubbish occasioned thereby, or if they neglect to cause the place where such road has been broken up to be guarded and lighted, or neglect to maintain or keep in repair the portion of the roads which shall be occupied by their tracks, the Municipal Commissioner may cause the work so delayed or omitted to be executed at the expense of the said Grantees, and the Certificate in writing of the said Municipal Commissioner as to the expense so incurred shall be conclusive, and the said Grantees shall not be at liberty to dispute the same in any Court of Law.

Work may be executed by Municipal Commissioner at cost of Grantees if they delay or omit to perform it.

XV. Nothing in this Act shall be construed to prevent the said Municipal Commissioner or the Corporation, or the Bombay Gas Company, Limited, in the exercise of the powers conferred upon them under Act V. of 1863 of the Governor of Bombay in Council, from taking up any of the roads traversed by the said Tramway for the purposes for which he or they may now lawfully take up the same: Provided always that (1) they shall cause as little detriment or inconvenience to the Grantees as circumstances admit:

Reservation of power over roads.

(2.) Before they commence any work whereby the traffic on the Tramway will be interrupted, they shall (except in cases of urgency, in which cases no notice shall be necessary) give to the Grantees notice of their intention to commence such work, specifying the time at which they will begin to do so, such notice to be given eighteen hours at least before the commencement of the work:

(3.) They shall not be liable to pay to the Grantees any compensation for injury done to the Tramway by the execution of such work, or for loss of traffic occasioned thereby, or for the reasonable exercise of the powers so vested in them as aforesaid.

XVI. The Grantees may demand and take for every passenger travelling upon any of the Tramways, or any part or parts thereof respectively, or for the carriage of goods by such Tramways, such fares or charges as they may fix from

Grantees may demand fees or charges.

from time to time: Provided that the rates of fares, on at least one-half of the carriages available for passengers which shall daily run on the said tracks, shall for any distance not exceeding three miles not exceed three annas, and for any greater distance shall be at the rate of three annas for every three miles or any portion thereof.

XVII. A printed list in English, Marathi and Guzerathi of all the fares and charges authorized by this Act to be taken, and a printed copy in the same languages, of all bye-laws in force as hereinafter mentioned, shall be exhibited in a conspicuous place inside each of the carriages used by the Grantees upon any of their Tramways.

Printed list of fares, &c., to be placed in carriages.

XVIII. The fares and charges by this Act authorized shall be paid to such persons at such places upon or near to the Tramways and in such manner and under such regulations as the Grantees shall by notice, to be annexed to the list of fares, appoint.

Fares to whom to be be paid.

XIX. If any person wilfully obstructs any person acting under the authority of the Grantees in the lawful exercise of their powers in setting out or making, laying down, repairing or renewing a Tramway, or injures or destroys any mark made for the purpose of setting out the line of the Tramway, he shall for every offence be liable to a penalty not exceeding fifty rupees, and shall also be liable to pay such damages as may be awarded in respect of such injury by any competent Court.

Penalty for obstructing Grantees in the exercise of their power.

XX. If any person without lawful excuse (the proof whereof shall lie on him) wilfully does any of the following things, namely:—

Penalty for interfering with Tramways.

Interferes with, removes, or alters any part of a Tramway of the Grantees or of the works connected therewith:

Does or causes to be done anything in such a manner as to obstruct any carriage using the Tramways:

Or knowingly aids or assists in the doing of such thing; he shall for every such offence be liable (in addition to any proceedings by way of criminal charge or otherwise to which he may be subject) to a penalty not exceeding one hundred rupees.

XXI. If any person travelling or having travelled in any carriage of the Grantees avoids or attempts to avoid payment of his fare, or if any person having paid his fare for a certain distance knowingly and wilfully proceeds in any such

Penalty for avoiding payment of proper fare.

such carriage beyond such distance and does not pay the additional fare for the additional distance, or attempts to avoid payment thereof, or if any person knowingly and wilfully refuses or neglects, on arriving at the point to which he has paid his fare, to quit such carriage, every such person shall for every such offence be liable to a penalty not exceeding ten Rupees.

Servant of Grantees may arrest persons avoiding payment of fare.

XXII. It shall be lawful for any servant of the Grantees, and all persons called in by him for his assistance, to arrest and take to the nearest Police Station any person who shall be discovered either in or after committing or attempting to commit any such offence as in the next preceding section mentioned, and whose name and residence is refused by him and is unknown to such servant or person, and the Police Officer in charge of the said Police Station, on receiving a complaint that an offence under this Act has been committed, shall adopt such legal measures as may be necessary to cause the said person to be taken before a Magistrate with the least possible delay.

Carriage of dangerous or offensive goods.

XXIII. No person shall be entitled to carry or to require to be carried on any Tramway any goods which may be of a dangerous or offensive nature, and if any person send by any Tramway any such goods without distinctly marking their nature on the outside of the package containing the same, or otherwise giving notice in writing to the book-keeper or other servant of the Grantees with whom the same are left at the time of such sending, he shall be liable to a penalty not exceeding Rs. fifty for every such offence, and it shall be lawful for the Grantees to refuse to take any parcel that they may suspect to contain goods of a dangerous or offensive nature, or require the same to be opened to ascertain the fact.

Bye-laws by Municipal Commissioner.

XXIV. The Municipal Commissioner may, from time to time, make regulations as to the following matters:—

The rate of speed to be observed in travelling upon the Tramway:

The distances at which carriages using the Tramway shall be allowed to follow one after the other:

The stopping of carriages using the Tramway:

The hours during which such carriages carrying goods shall run on the Tramway:

The traffic on the road in which the Tramway is laid.

The Grantees may make certain regulations.

The Grantees may from time to time make regulations—

For

For preventing the commission of any nuisance in or upon any carriage, or in or against any premises belonging to them:

For regulating the travelling in or upon any carriage belonging to them.

And for better enforcing the observance of all or any of such regulations it shall be lawful for such Municipal Commissioner and Grantees respectively, subject to confirmation thereof by the Governor of Bombay in Council to be signified under the hand of a Secretary to the said Governor in Council, to make bye-laws for all or any of the aforesaid purposes, and from time to time repeal or alter such bye-laws, and make new bye-laws, provided that such bye-laws be not repugnant to the provisions of this Act or of any law for the time being in force in the City of Bombay.

Notice of the making of any bye-law under the provisions of this Act shall be published by the Municipal Commissioner in the *Bombay Government Gazette*.

Penalty for breach of bye-laws.

XXV. Any person offending against any bye-law made under the provisions of the next preceding section shall forfeit for every offence any sum not exceeding twenty-five Rupees to be imposed in such bye-laws as a penalty for such offence.

Penalties how to be recovered.

XXVI. All fares, penalties, forfeitures and charges under this Act or under any bye-law made in pursuance of this Act may be recovered and enforced before a Police Magistrate of Bombay by a summary proceeding; and in default of payment of such fare, penalty, forfeiture or charge the same may be levied under the warrant of such Magistrate by distress and sale of the goods of such offender, with all such powers for the issuing of such warrant and upon the return thereof as are exercised by a Magistrate of Police under Act XIII. of 1856 or any other Act for regulating the Police of the Town of Bombay in force for the time being.

Grantees to be responsible for all damages.

XXVII. The Grantees shall be answerable for all accidents, damages, and injuries happening through their act or default, or through the act or default of any person in their employment by reason or in consequence of any of their works or carriages, and shall save harmless the Municipal Corporation of the City of Bombay and their Officers and servants from all damages and costs in respect of such accidents, damages, and injuries.

Power for the Municipal Commissioner and Police to regulate traffic on roads.

XXVIII. Nothing in this Act shall limit the powers of the Municipal Commissioner or the Police to regulate the passage of any traffic along, or across any road along, or across which any Tramways are laid down, and such Municipal Commissioner or Police may exercise their authority

rity as well on as off the Tramway, and with respect as well to the traffic of the Grantees as to the traffic of other persons.

Municipal Commissioner may remove Tramway if working discontinued for 6 months.

XXIX. If at any time after the opening of any Tramway for traffic the Grantees shall discontinue the working of such Tramway or any part thereof for the space of six calendar months (such discontinuance not being occasioned by circumstances beyond the control of the Grantees, for which purpose the want of sufficient funds shall not be considered a circumstance beyond their control) it shall be lawful for the said Municipal Commissioner without any previous notice to the Grantees to remove the Tramway or any part of the Tramway so discontinued, and the Grantees shall pay to the said Corporation the cost of such removal and the making good of the streets, roads or bridges consequent on such removal, and the certificate of the said Municipal Commissioner as to such cost shall be conclusive evidence as between the said Corporation and the said Grantees.

Municipal Corporation to have right of purchasing Tramways after 21 years.

XXX. The said Municipal Corporation of the City of Bombay shall have the right of purchasing the said Tramways with the plant, stores, rolling-stock and everything connected therewith after the expiration of twenty-one years from the 12th day of March 1873 upon declaring its intention so to do within six months after the expiration of the said twenty-one years and shall have a renewed right of purchase at the end of every seven years after the expiration of the said twenty-one years upon similar notice being given; the amount to be paid in the event of such purchase shall be the actual *bonâ fide* value (exclusive of any compensation for goodwill, premium, or compulsory sale or other consideration whatsoever) of the Tramways and of the works and materials connected therewith and of the lands and buildings and all other the property of the Grantees, such value in case the parties do not agree to be decided by arbitration as provided by the said Agreement of the 12th day of March 1873; and as compensation for the good-will, premium, or compulsory sale and other consideration, the Grantees shall be paid an amount equal to twenty-one years' purchase calculated on the average profits of the previous three years next preceding the purchase, 4 per cent. per annum on the *bonâ fide* value mentioned above being first deducted from such profits.

Grantees may sell their rights and powers to other persons.

XXXI. At any time the Grantees may sell the undertaking to any person, persons, Corporation or Company (subject nevertheless to the provisions of the said Agreement or such of them as shall be then subsisting) and when any such sale has been made all the rights, powers, authorities

authorities, obligations and liabilities of the Grantees under the said Agreement and this Act shall be transferred to, vested in and may be exercised by and shall attach to the person, persons, Corporation or Company to whom the same has been sold in like manner as if such person, persons, Corporation or Company had been authorized to construct the Tramways of the Grantees then already constructed and thereafter to be constructed instead of the Grantees.

SCHEDULE.

ARTICLES OF AGREEMENT made this Twelfth day of March One Thousand Eight Hundred and Seventy-three, between the JUSTICES OF THE PEACE FOR THE CITY OF BOMBAY, incorporated under Act II. of 1865 of the Legislative Council of Bombay, hereinafter called the said Justices, of the one part; and WILLIAM FRENCH STEARNS and GEORGE ALVAH KITTREDGE, hereinafter called the Grantees, of the other part.

Whereas the said Justices have agreed to grant to the said WILLIAM FRENCH STEARNS and GEORGE ALVAH KITTREDGE the right to construct, maintain, and use a Tramway in Bombay upon the terms and conditions hereinafter contained: NOW THESE PRESENTS, WITNESS that, in consideration of the covenants and agreements hereinafter contained, and on the part of the said Justices to be performed, the said Grantees, for themselves, their heirs, executors, and administrators, do, and each of them for himself, his heirs executors, and administrators, doth covenant with the said Justices, and their successors, so far as the covenants and agreements hereinafter contained are, or ought to be, performed by the said Grantees and their assigns; and the said Justices, for and in consideration of the covenants and agreements hereinafter contained, and on the part of the said Grantees and their assigns to be performed, do hereby covenant with the said Grantees and their assigns, so far as the covenants and agreements hereinafter contained are, or ought to be, performed by the said Justices and their successors, in manner following; THAT IS TO SAY:—

1. The said Justices grant to the said WILLIAM FRENCH STEARNS and GEORGE ALVAH KITTREDGE, and their assigns, the right to construct, maintain, and use a Tramway or Tramways, with single or double tracks, and with all necessary sidings, turn-outs, connections, and tracks, to and from the stables of the Grantees or their assigns on the following routes, and between such other places and by such other routes as may be hereafter approved of by the Municipal Commissioner for the City of Bombay.

The

The Tramways referred to, and now authorized for immediate construction, are :—

From a point near the Grant Buildings, Colaba, to the Money School, A DOUBLE TRACK.

PROVIDED that this Tramway will not be carried across the B. B. and C. I. Railway, or any sidings which it may now be contemplated to construct from the Cotton Green to the Apollo Bay Reclamation, without the express permission of Government.

From a point of junction with the above Tramway near the junction of Church-gate Street and Rampart Row to a point near the Crawford Market, A DOUBLE TRACK.

From the Money School to a point near Pydhonee Well, along the Kalbadavie Road and the Coppersmiths' Bazar, Mombadavie, A SINGLE TRACK.

From the Crawford Market along Syed Abdool Rahman Street to a point of junction with the foregoing Tramway near the Pydhonee Well, A SINGLE TRACK : Provided, however, that, in case after the expiration of one year from the date when this track shall have been constructed, it shall be considered by Government to be necessary or expedient that the same shall be removed, the Grantees shall, immediately after they shall have received an order from Government in that behalf, at their own expense remove the said track, and all their plant and materials, from the said street and restore and make good the road and pavement, and remove all rubbish occasioned by the said track or the removal thereof, and the said Grantees shall not be entitled to or claim any compensation in respect of such removal.

And also the following when approved by the Municipal Commissioner:—

From the said point near Pydhonee Well along the Parell Road to a point near the Byculla Railway Station.

2. The said Tramway shall be constructed and maintained in such form and manner, and upon such gradient and with such gauge, as the Municipal Commissioner may approve ; and the cars and carriages intended to run on the said rails shall be such as are approved of by the said Commissioner.

3. The cars and carriages of the Grantees or their assigns on the tracks of the said Tramway shall, unless with the consent of the said Commissioner, be worked with horse power, or other animal power, only; and the said Commissioner shall have power at all times to make such regulations, as to the rate of speed and mode of use of the said tracks, as the convenience and safety of the public using the streets may require.

4. The said Grantees or their assigns shall have power, from time to time, to fix the rates of fares for carrying persons and goods in the cars or carriages to be run on the said Tramways, provided that the rates of fares, on at least one-half of the cars or carriages available for passengers which daily run on the said tracks, shall for any distance not over three miles not exceed three annas, and be for any greater distance in the same proportion.

5. The said Grantees or their assigns may, for the purpose of constructing and maintaining such Tramways, under such superintendence as is hereinafter specified, open and break up the soil and pavement of the several streets and bridges in the Town and Island of Bombay, and thereon lay sleepers and rails, and from time to time repair, alter or remove the same; and may, for the purposes aforesaid, remove and use all earth and materials in such streets and bridges ; and the said Grantees and their assigns may, in and on such streets and bridges do all other acts which they shall from time to time deem necessary for constructing and maintaining street Tramways in the said Town and Island of Bombay, doing as little damage as may be in the execution of the powers hereby granted, and making compensation for any damage which may be done in the execution of such powers.

6. Before the said Grantees or their assigns proceed to open or break up any street or bridge other than those referred to in Clause 1, they shall obtain the approval in writing of the said Commissioner to the tracks of the said Tramway being laid down on the said street or bridge ; and shall give to the said Commissioner or the Executive Engineer, or other Municipal officer, notice in writing of their intention to open or break up the same, not less than three clear days before beginning such work, except in cases of emergency arising from defects in any of the rails or other work, and then so soon as is possible after the beginning of the work or the necessity for the same shall have arisen.

7. No such street or bridge shall, except in the cases of emergency aforesaid, be opened or broken up except under the superintendence of the said Commissioner or of his officer, and according to such plans as shall be approved of by him or them: Provided always that, if the said Commissioner or his officer fail to attend at the time fixed for the opening of any such street or bridge after having had such notice of the said Grantees' or their assigns' intention as aforesaid, or shall not propose any plan for breaking up or opening the same, or shall refuse or neglect to superintend the operation, the said Grantees or their assigns may perform the work specified in such notice without the superintendence of such officer.

8. When the said Grantees or their assigns open or break up the road or pavement of any street or bridge, they shall, with all convenient speed, complete the work for which the same shall be broken up, and fill in the ground, and

and make good the road or pavement so opened or broken up, and carry away the rubbish occasioned thereby, and deposit the same for the use of the Commissioner at such place as the Executive Engineer of the said Municipality shall direct; and shall, at all times whilst any such road or pavement shall be so opened or broken up, cause the same to be guarded, and shall cause a light, sufficient for the warning of passengers, to be set up and maintained against or near such road or pavement where the same shall be open or broken up, every night during which the same shall be continued open or broken up.

9. If the said Grantees or their assigns open or break up any street or bridge without giving such notice as hereinbefore mentioned, or in a manner different from that which shall have been approved of or determined as aforesaid, except in the cases in which the said Grantees or their assigns are hereby authorized to perform such work without any superintendence or notice; or if the said Grantees or their assigns shall make any unnecessary delay in completing any such work, or in filling in the ground, or reinstating and making good, so far as is consistent with the existence of the said Tramway, the road or pavement so opened or broken up, or in carrying away the rubbish occasioned thereby; or if they neglect to cause the place, where such road or pavement has been broken up, to be guarded and lighted—they shall forfeit to the said Justices a sum not exceeding fifty Rupees for every such offence, and they shall forfeit an additional sum not exceeding fifty Rupees for each day during which any such delay or neglect as aforesaid shall continue after they shall have received notice thereof.

10. The said Grantees or their assigns shall maintain and keep in repair such portion of the streets and bridges in the Town and Island of Bombay as shall be occupied by their tracks, including therein not only the space between the tracks, but eighteen inches on either side thereof, and in consideration of such maintenance of streets and bridges and of the yearly rent hereinafter mentioned to be paid by the Grantees, the horses and carriages and other vehicles of the said Grantees shall be exempt from Municipal taxation.

11. If any unnecessary delay or omission shall take place by the said Grantees or their assigns in complying with any order which may be made on them by Government for the removal of the said track proposed to be constructed along Syed Abdool Rahman Street as hereinbefore mentioned, or otherwise in acting in accordance with the proviso hereinbefore contained regarding that track, or in the performance of any of the works specified in Clause 8 of these presents, or in filling in the ground, or reinstating and making good the road or pavement so opened or broken up, or in carrying away the rubbish occasioned thereby; or if they neglect to cause the place, where such road or pavement has been broken up, to be guarded and lighted, or neglect to maintain and keep in repair the portion of the roads or bridge, which

Government of Bombay.

LEGISLATIVE DEPARTMENT.

The Bombay Tramways Act, 1874.

[*Received the assent of His Excellency the Governor on the* 11*th April* 1874, *and of the Governor General on the* 6*th May* 1874, *and published by the Governor of Bombay on the* 15*th May* 1874.]

Price Five Annas.

PRINTED AT THE GOVERNMENT CENTRAL PRESS, BOMBAY.

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which shall be occupied by their tracks—the said Commissioner may cause the work, so delayed or omitted, to be executed, and the expense of executing the same shall be repaid to him by the said Grantees or their assigns, and the certificate in writing of the Commissioner as to the expense so incurred shall be conclusive, and the said Grantees shall not be at liberty to dispute the same.

12. The said Grantees or their assigns shall be liable for any loss or injuries that any person may sustain by reason of any defect or want of repair in any of the plant or other property of the said Grantees, or of any carelessness, neglect, or misconduct of their agents or servants in the management, construction, or use of the said tracks or Tramways; and in case any recovery shall be had against the said Commissioner or the said Justices by reason of such defect, or other matter aforesaid, the said Grantees or their assigns shall be liable to pay to the said Commissioner or the said Justices, as the case may be, any sums thus recovered against him or them, together with all costs and reasonable expenditure incurred by the said Commissioner or the said Justices in the defence of any such suit or suits in which such recovery shall be had.

13. Nothing in this Agreement shall be construed to prevent the said Commissioner from taking up any of the public streets or roads traversed by the said Tramway for the purposes for which he may now lawfully take up the same.

14. If at any time, after the opening of any Tramway for traffic, the Grantees shall discontinue the working of such Tramway, or any part thereof, for the space of six calendar months (such discontinuance not being occasioned by circumstances beyond the control of the Grantees), it shall be lawful for the Commissioner, without any previous notice to the Grantees, to remove the Tramway, or part of the Tramway, so discontinued, and the Grantees shall pay to the Commissioner the cost of such removal and of the making good of the street; and the certificate of the Commissioner as to such cost shall be conclusive.

15. The provisions of this Agreement shall remain and be in force for a term not less than 21 years from the date thereof. The Corporation shall have the right of purchasing the said Tramways, with the plant, stores, rolling stock, and everything connected therewith, after the expiration of the said 21 years, upon declaring its intention so to do within six months after the expiration of the said 21 years, and shall have a renewed right of purchase at the end of every seven years after the expiration of the said 21 years upon similar notice being given: the amount to be paid in the event of such purchase shall be actual *bonâ fide* value, exclusive of any compensation for goodwill, premium, compulsory sale, or other consideration whatsoever of the Tramways, and of the work and materials connected therewith, and of the

the lands and buildings and all other the property of the Grantees, such value, in case the parties do not agree, to be decided by arbitration as hereinafter provided; and for the goodwill, premium, compulsory sale, and other consideration of the business of the Grantees, an amount equal to 21 years' purchase, calculated on the average profits of the previous three years, 4 per cent. per annum on the above value as paid being first deducted from such profits.

16. The provisions hereinbefore contained shall, so far as applicable, apply to all Tramways to be constructed by the said Grantees or their assigns by any route or routes to be hereafter fixed by the Commissioner or under Clause 1 of these presents, and to the works connected with, or incidental to, such Tramways, it being agreed that, in the event of the Municipality failing to declare its intention, as above provided, to purchase the property of the said Grantees, the terms of this contract shall continue in force.

17. The said Grantees or their assigns will, if required by the said Commissioner, before opening and breaking up the soil and pavement of any street or bridge under Clause 5 of these presents, deposit with the Bank of Bombay, in the name of the said Commissioner, the sum of Rs. 5,000, or, in their option, promissory notes of the Government of India of the nominal value of Rs. 5,000, and the same will remain so deposited until the completion by the said Grantees or their assigns of the abovementioned lines of Tramway herein sanctioned for immediate construction. All interest accruing on the said sum or the said notes shall be credited to the said Grantees or their assigns, and, subject as next hereinafter mentioned, be paid to them as the same accrues due. The said Commissioner shall be entitled to deduct all fines recovered by him out of the sum so deposited, or the interest accruing on the said sum or notes, or out of the proceeds of sale of a portion of the said notes, on completion of the said Tramways as specified in Clause 1 of this Agreement.

18. In consideration of the concession herein granted, the said Grantees undertake, on behalf of themselves and their assigns, that they will pay to the Municipal Corporation of Bombay a yearly rent of Rs. 3,000 per mile of double track and Rs. 2,000 per mile of single track, payable half-yearly; the date on which such rent on each line of Tramways shall begin to accrue shall be the date on which such line of Tramways is opened for public traffic.

19. It is agreed that no sidings, turn-outs, or tracks necessary to connect the traffic lines with the stables, carriage sheds, factories, or other property or properties of the Grantees, shall be included in the mileage on which rent is to be paid; such sidings, turn-outs, and necessary connecting tracks being free of rent.

20. The sleepers, rails, materials, implements, and other erections placed

placed and erected by the said Grantees on the streets or roads under the powers hereby granted, shall be and remain the property of the said Grantees, and the said Grantees shall have the exclusive use of their Tramway or Tramways for carriages with flanged wheels, or other wheels suitable only to run on the prescribed rail.

21. The Grantees shall have the exclusive right of laying and using Tramways within the limits of the Bombay Municipality on the terms herein stated; but in the event of the Grantees refusing to lay down any line which the Municipal Commissioner may consider necessary, he shall be at liberty to grant the right of laying and using such line to any other party.

22. Unless the said Grantees shall have commenced the work of laying down the said Tramways within twelve months from the date of the execution of these presents, the Municipal Commissioner shall be at liberty to cease and determine this contract, and to enter into arrangements with any other person or persons for the construction of Tramways, it being agreed, however, that these presents are subject to the sanction of Government, and that, in the event of their being executed prior to such sanction being given, the said twelve months shall date from the day on which notice of such sanction is given to the said Grantees: Provided also that any delay in commencing the work beyond twelve months shall not have been due to any cause beyond the control of the Grantees.

23. If any doubt, difference, or dispute shall arise between the Grantees, their heirs, executors, or administrators, and the said Justices or their successors, touching the construction of these presents or anything herein contained, or touching or concerning any other matter or thing relating to these presents, then, and in every such case, such doubt, difference, or dispute shall be referred to the arbitration of three indifferent persons, one to be from time to time chosen by the said Grantees and another by the said Justices within one calendar month after either of them shall have made to the other a requisition to that effect, and the third to be named by the two persons from time to time first chosen; and the decision of such arbitrators if they agree, or of such umpire if they disagree, shall be final; and in case either party shall neglect or refuse to appoint an arbitrator within the specified time, the arbitrator appointed by the other party shall make a final decision alone.

IN WITNESS whereof the said Municipal Commissioner, for and on behalf of the said Justices, has hereunto set his name and caused the seal of the said Justices to be affixed hereunto, and the said WILLIAM FRENCH STEARNS and GEORGE ALVAH KITTREDGE have hereunto set their hands and seal the day and year hereinbefore written.

SPECIFICATION.

RAIL.—To be similar in upper surface section to the sample submitted herewith, being similar to the rail now in general use in London and Liverpool.

GAUGE.—To be 4 feet 8½ inches.

CARRIAGE.—Similar to those in use in England and America, to be furnished with a break which can be worked at both ends of the carriage, capable of stopping the carriage within its own length.

As it has been suggested that some doubt may arise as to the meaning of the latter part of Section 15 of the Articles of Agreement between the JUSTICES OF THE PEACE FOR THE TOWN AND ISLAND OF BOMBAY and Messrs. STEARNS and KITTREDGE, we, the undersigned, append the following illustration of the mode in which that Section is to be construed:—

Suppose the *bonâ fide* value fixed by arbitration of the Grantees' stock is ... ...Rs. 10,00,000
4 per centum on this sum is ... ... ,, 40,000
And suppose that the average annual profits, for three years, of the Grantees are ... ...Rs. 1,00,000
Rs. 40,000 being deducted from Rs. 1,00,000=Rs. 60,000—
Rs. 60,000 × 21 years=Rs. 12,60,000.
And the sum to be paid as purchase-money to the Grantees will be—
Stock value... ... ...=Rs. 10,00,000
Compensation for good-will= ,, 12,60,000

Rs.....22,60,000

(Signed) W. G. PEDDER, C.S.,
Municipal Commissioner.

(Signed) GEO. A. KITTREDGE,
For self and W. F. Stearns.

1875 Sept 6

Encl: No 3.

Ina letter from the Inspr Genl of Police dated Madras 5 January 1875 No 32.

Copy of the Bombay Tramways act No 1 of 1874.

In Pub Dept 6 Sept 1875

No. 32

Chief Office of the Inspector General of Police,
Madras, 5th January 1875.

From

The Inspector General of Police.

To

The Offg. Chief Secretary
to Government
Fort Saint George.

Sir,

Enclosures 3.

I have the honor to forward a letter from Colonel Swanston late Actg Commissioner of Police for the Town of Madras regarding a difficulty which appears to have arisen in carrying out the Order of Government No 1855 A dated 29th October 1874 regarding Tramway carriages. The Copy of an opinion by the Advocate General is also enclosed.

2. The Advocate General appears to consider that Clauses I and III Section 50 Act VIII of 1867 do not suffice to legalize the action of the Commissioner of Police under

under Para 3 of the G.O above quoted- He recommends that a special Act should be passed to regulate Tramway Traffic.

3. I enclose herewith a copy of the Bombay Tramways Act No 1 of 1874 - The municipality of Madras have not taken the precaution to secure their own interests and those of the public by a similar legislative enactment, and any Act now passed with reference to the existing Tramways must I imagine be of a different character to the Bombay Act in many of its provisions - As regards the regulation of the Tramway traffic, Section 24 of the Bombay Act hardly seems to cover the conditions which the Government in their recent Order have wished to impose. No additional powers are conferred on the Police by this Act except that Section XXVIII of the Act excludes the General authority of the Commissioner of Police to regulate traffic to the Tramways -

4. As the matter now stands it may perhaps be deemed advisable to await the extension of the revised Code of Criminal Procedure to Presidency Towns (a Bill for this purpose being now I believe under the consideration of the Legislative Council of India) and then in revising the present Police Act to add thereto such provisions as may seem necessary for the control of Tramway traffic and also perhaps of hack carriages.

I have the honor to be
Sir
Your most obedt. servt.
C Adams
Inspector General of Police.

therefore

Police Commissioner's Office,

Madras, 30 November 1876

No. 859

FROM

THE COMMISSIONER OF POLICE,

MADRAS.

TO The Inspector General of Police
Madras

SIR,

In forwarding the enclosed proceedings of Government for your perusal I have the honor to inform you that I placed myself in communication with the Government Solicitor in order to obtain the opinion of the Advocate General as to the powers held by the Commissioner of Police for controlling traffic in the Town of Madras. The Advocate General has laid it down that the Commissioner of Police has no power to regulate traffic; the only power he at present possesses in this way is the regulating processions.

With regard to the power given to the Commissioner of Police to make bye-laws under Madras Act III of 1882 the Advocate General has given it as his opinion that even were that Act in force (which it is not for the Act was passed to give the Commissioner of Police certain powers to make bye-laws with reference to Act 13 of 1856 & 48 of 1860 which have both been repealed by Act VIII of 1867) it does not give power for making bye-laws for the purpose of governing traffic and that therefore

29th Dec 1876 Rec'd 2-2-77

From

The Inspector General
of Police.

To

The Ag. Chief Secy
to Govt
Fort St. Geo:

Dept.

Dated 5th January 1876
Ref. G.O. —
No. 32

Submits a letter from
Coll Lumsden late A.C.
Commr of Police regarding
a difficulty he has met in
carrying out the Order
of Govt relative to Tramway
Carriages

therefore it would be advisable that the
Government be moved to pass a short act
either giving the Commissioner of Police power
to make bye-laws for the Controlling of traffic
or to pass a special act empowering the Government
or the Municipality to issue bye-laws for the
regulation of the Tramway traffic; as has been
done in Bombay. For till such an enactment
is passed here there will be diffiulty in dealing
under the old law with a state of things for
which the law was not intended to provide.
I would therefore beg that you will endorse
my request that some such act be passed.

I have the honor to be
Sir
Your most obedient Servant

H. Livingston
Ag Commissioner of Police

CB

Opinion

In order that section 188 of the Indian Penal Code may be applicable, it is necessary that the Order in question should be one "promulgated by a public servant lawfully empowered to promulgate such order". It does not appear that the Order now under reference was of this description. Nothing in Act XXIV of 1859 or Act VIII of 1867 (16) justifies the Police in promulgating such an Order or the Government in authorizing the Police to do so. I am of opinion therefore that a prosecution under S. 188 of the I.P.C. could not be supported.

The proper course is to pass an Act empowering the Government or the Municipality to issue byelaws for the Regulation of the Tramway Traffic. This has been done in Bombay; and till a similar enactment is passed here there will be difficulty in dealing under the old law with a state of things for which that law was not intended to provide.

(Signed) H. S. Cunningham
Advr. Genl
26. 11. 74.

(True Copy)
(Sgd) H. G. Prichard
Government Solicitor

(True Copy of a Copy)
Illegible
Inspr Genl of Police.

1875 Sept
Cuel No 1
Inclosing from the Acting Sr Asst of Police dated 5 January 1875 No 32
From Colly Secretary to Govt to Govt of Police
Dated 30 Novr 1874 No 3859
Regarding the powers held by the Court of Police for controlling traffic in the Town of Madras

Enclosure No 2
to letter from the Asst
Secretary to Govt
Genl & Police dated
Madras 5 January 1875
No 32.

Copy of minute of Mr
addressed

Tramways

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Financial Department

PROCEEDINGS of the MADRAS GOVERNMENT.

Read the following letter from the
Inspector General of Police,
dated 5th January 1875, No 32.

Order thereon, 28 January 75 - No 166

The question of
regulating Tramway Traffic
by legislative enactment
will be considered in
the Legislative Department.

2. In the meantime, the
Commissioner of Police will
confine himself to recommending
the adoption of such precau-
tionary measures as may
seem necessary for the public
safety, and he will also
inform those concerned that
prosecutions will be strictly
enforced

enforced by Government in the event of any accident occurring which can be satisfactorily traced to the neglect of any reasonable precaution, either on the part of the drivers of the carriages, or the Directors or Managers of the Company.

3. The President of the Municipality will submit without any further delay the report called for in G.O. dated 29th October 1874, No 1855 A.

JL
24/1

To the Legislation Dept. - with G.O. No 1855
The Inspector Genl of Police.
" - President, Mun. Comrs.
Madras.

Desp
1/12/75

Govt. of {187 } Madras.

Fin. G
Pol.

To

Dated 28 January 1875; No. 166
Recd.

Nos. 222-3

Madras Govt. - Re questions regarding Banning Traffic by Sea
Enactment referred to the Legal Dept for Consd.n & the Coast Police
Commissioner directed to procure
Subsidiary Act Regulations as may
be necessary for the public
safety.

C 21/1.