M.R.O. 1—88,000—16-11-27.

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No. 1064 Press Mis.

Dated 4. 7. 19 1866

6/7

Not to be folded or roughly handled

Proceedings of the Madras Government, Judicial Department.

4th July 1866.

No. 29. Read the following Proceedings of Government in the Public Works Department, dated 26th June 1866, No. 2013.

Communicating the observations of the Government of India on the amendment of Act XVIII of 1854, relating to Railways. (Vide Proceedings, Public Works Department, dated 26th June 1866, Nos. 613 & 614.)

No. 30. ORDER THEREON, 4th July 1866, No. 1041.

To be recorded.

(Signed) J. D. SIM,
Acting Chief Secretary.

Exd. J. Tulloch.

No. 613. Read the following Proceedings of the Government of India, in the Public Works Department, (Railway), dated Simla, 19th May 1866, No. 476 R:—

Amendment of Act XVIII. of 1854, *relating to Railways in India.*

Read the following papers:—

From Government, Madras, No. 1,243, dated 20th April 1866, with enclosure.
" " Punjab, " 79, " 24th March " "

Read again:—

Public Works Department Resolution Nos. 704-14R, dated 19th August 1865.
" " " " " 848-56½R, " 28th September "
" " " " " 31-40R, " 9th January 1866.

OBSERVATIONS.—The Resolution of the Government of Madras, No. 459 of 28th March 1866, summarises the points considered worthy of notice by that Government, but only two of them call for remark in this Department.

2. *First.*—On Section 33.—The Governor General in Council is of opinion that the idea of having gates *both* across the road and Railway, will not meet the object sought. Moreover, there can be no use in them. What must be meant is, that the gates shall be so made that when the road is thrown open, they shall fence in the crossing on both sides, so that cattle shall not be able to stray on the line of Railway, and this is specified in both the Bill and the present Act, the Clause of which latter (XIX.) only differs from the Clause 33 of the Bill, in limiting the provision of gates to public carriage roads. This limitation it is proposed to do away with, and should this Clause of the Bill pass into law as drafted, Railway Companies will be bound to provide for crossings on all roads in a similar manner.

3. But it would seem that the Magistrate of Salem, on whose remarks this part of the Resolution of the Government of Madras is based, refers to accommodation gates. These must be worked by those for whose convenience they are made, and the Railway Company would probably look upon it as a hardship if compelled to provide, in such cases, gates of the kind required to be set up at level-crossings, while, if provided, they would probably prove a fertile source of danger from being left open across the line. The Governor General in Council does not see that the Bill can be altered in the way suggested, or that accommodation gates can be dealt with in any other manner than is proposed in Clause 24. The risk of cattle straying on the line, through accommodation gates being negligently left open, must be accepted.

4. *Secondly.*—With reference to the 3rd paragraph of the Resolution of the Government of Madras, the law might provide that, when the under openings are in the outset determined by the Local Government to be required for the passage of cattle, &c., as well as for drainage purposes, the duty of keeping them in a proper state for such traffic, when not passing water, should be put on the Railway Company. This could be easily done by flooring them.

5. It is, however, to be observed that the Indian Law does not provide for any crossings except on the level, nor does the Bill propose to do so. Such under openings would be "accommodation works" in a sense, and the attention of the Legislative Department has been drawn to the Clauses of the English law affecting them, in the 3rd paragraph of this Department Resolution No. 31, dated 9th January 1866.

6. The other points noticed by the Madras Government may be considered in the Legislative branch of the Home Department.

7. The Punjab Government approves the various amendments proposed in the Law, and also the draft rules for investigating accidents, and forwards copy of the views of the Judicial Commissioner on the subject.

8. The omission noticed regarding the power of the Police has been already referred to the Home Department, in Public Works Department, Nos. 100 and 116R of 27th January and 1st February 1866.

9. The Judicial Commissioner suggests the taking of cattle to the pound, as the Madras Government does, and would make the owners of cattle straying on the line amenable to the jurisdiction of subordinate Magistrates. The question of cattle straying has been already referred to the Legislative Department with Public Works Department Resolution Nos. 31—40R of 9th January 1866.

10. The proposed addition to the rules for investigating accidents will be considered in this Department when the time comes for disposing of the matter.

ORDER.—Ordered, that these observations, with copies of the papers now read, be communicated to the Legislative Branch of the Home Department for consideration, and to the Local Governments and Administrations, noted in the margin, for information.

Madras.	Chief Commissioners, Oudh, and Central Provinces.
Bombay.	Resident, Hyderabad.
Bengal.	Commissioner, Mysore.
N. W. P.	
Punjab.	

(Signed) G. W. KELLNER,
For Secy. to the Govt. of India.

From the Secretary to the Government of Fort Saint George, in the Public Works Department, to the Secretary to the Government of India, Public Works Department, dated 20th April 1866, No. 1,213.

With reference to the Orders of the Government of India, under date the 28th September 1865, No. 848—856 R, I am directed by His Excellency the Governor in Council to forward a copy of Proceedings, in the Judicial Department, marginally noted, containing the views of this Government on certain points in the Draft Bill to amend Act XVIII. of 1854, relating to Railways in India.

No. 459, dated 28th March 1866.

Proceedings of the Madras Government, Judicial Department, dated 28th March 1866.

Read again the Proceedings of Government, in the Public Works Department, dated 25th October 1865, No. 3,201.

Read also the following papers :—

From the Inspector General of Police, to the Chief Secretary to the Government of Fort Saint George, dated 2nd March 1866, No. 347.

I venture to suggest the following alterations in the Draft Indian Railway Bill :—

Section 22.—For "Police Station" put "Village Pound." There are no pounds at Police Stations nor Pound-keepers. Police Stations are generally so distant—10 and 15 miles apart—that strays cannot be driven to them. There is a pound (or pound may be placed) in every village, of which the Potail is the Pound-keeper. There the owners can more readily redeem their cattle than if they are driven to a distant Police Station.

Section 56.—There should be a penalty for unnecessary delay in producing a person arrested without warrant before a Magistrate, say, within 24 hours.

Section 71.—Heads of District Police have no judicial powers. There are no such Officers as Police Ameens. The words should be Subordinate Magistrates of first and second Classes.

From the Magistrate of Trichinopoly, to the Chief Secretary to the Government of Fort Saint George, dated 27th November 1865, No. 49.

1. I do myself the honor to report that I have carefully perused the correspondence forwarded to me with Government Order, Judicial Department, No. 1,567, dated the 2nd of November, relating to the proposed Bill to amend Act XVIII. of 1854.

2. There are but 7 or 8 miles of open line within the limits of this District, so I have had but little practical experience in the working of the Railway Act. I think, however, that, for the ends of justice and the safety of the public, the suggested amendments are called for.

3. I consider the proposition to introduce a clause in the Act, giving Railway Companies power to enact Bye-laws and Regulations, under certain restrictions, might be most advantageously adopted.

4. Further than this I have no observations to make.

From the Collector of Tanjore, to the Chief Secretary to the Government of Fort Saint George, dated 16th November 1865, No. 1,288.

With reference to the Order in the Judicial Department, dated 2nd November 1865, No. 1,567, I have the honor to state that I have no remarks to make on the suggestions in regard to the proposed Draft Bill to amend Act XVIII. of 1854.

From the Magistrate of Kurnool, to the Secretary to the Government of Fort Saint George, dated 27th November 1865, No. 45.

1. With reference to Government Order, dated 2nd November 1865, No. 1,567, referring, for observations, certain papers on the proposed Draft Bill for amending Act XVIII. of 1854, relating to Railways in India, I have the honor to state that the construction of the Railway has not as yet commenced in this District, and I have, therefore, had no personal experience of the working of the Railway Act.

2. I am aware, however, from observation elsewhere, that unfinished portions of the line open for conveyance of Railway materials, and, by the politeness of the Railway Officials, made frequently available for travellers, are not worked with the caution exhibited on the portions of the line open to the public ; and the proposition of the Madras Government that such portions of the line should be brought under the provisions of the Act appears to me a most necessary measure.

From the Magistrate of Malabar, to the Chief Secretary to the Government of Fort Saint George, dated 27th November 1865, No. 149.

Adverting to the Order of Government, Judicial Department, dated 2nd instant, No. 1,567, I have the honor to remark that I have no special observations to offer with regard to their proposed Railway Law Amendment Bill.

From the Magistrate of Coimbatore, to the Secretary to the Government of Fort Saint George, dated 14th November 1865, No. 136.

In reply to the Order of Government, Judicial Department, dated 2nd November 1865, No. 1,567, I beg to inform you that all material points in regard to the Draft Bill to amend Railway Act XVIII. of 1854, having already been touched on in the Proceedings which accompany the Order under reply, I have no further suggestions to offer on the subject.

From the Magistrate of Salem, to the Chief Secretary to the Government of Fort Saint George, dated 6th January 1866, No. 1.

1. I have the honor to acknowledge receipt of Government Order, dated 2nd November 1865, No. 1,567, forwarding copies of Proceedings and of Order, under date 16th September No. 2,726, to the Magistrate of each District through which the Madras and Great Southern India Railways pass, for any observations they may have to make in regard to the proposed Draft Bill to amend Act XVIII. of 1854.

2. There are two points on which I have a few observations to offer.

3. The first point is the bad and dangerous state in which tunnels under the Railway are frequently left. These tunnels are very often the only means of access the villagers have to their

fields, and, from the depth of the bottom (or flooring) of these tunnels being below the level of the adjoining ground, water to the depth of several feet is pretty constantly to be found in them, and thus the passage becomes dangerous especially for children.

4. Most of these tunnels have originally been intended for the passage of water only, but from many of their foot-paths having been closed, the ryots are compelled to use them as pathways; and where tunnels are used in this way, I think the Railway Company ought to be compelled to keep them in a safe state. The cost would be very trifling, and the convenience to the public very great.

5. The second point I wish to remark on is the unsatisfactory way in which level crossings near villages are managed.

6. A short time ago I applied to the Manager of the Madras Railway to have double gates put up at a level crossing at the village of Katoopoothoor; but he declined chiefly on the ground of expense.

7. There have been frequent disputes between these villagers and the Railway employés which have chiefly arisen from several of their foot-paths having been stopped up by the bad state of the tunnels, and, also, from the straying of cattle on to the Railway, in consequence of their being no gates to shut across the line when cattle are passing.

8. I think it ought to be made compulsory on the Railway Company to have double-gates, and a gate-keeper at every level crossing, especially when in the close vicinity of a considerable village.

9. In Section 19 of the present Railway Act, the term *carriage road* is used now at many of the level crossings; where large numbers of cattle cross at least twice a day, there are no carriages of any kind used, and these roads cannot, therefore, be called carriage roads; but, as I pointed out in a letter to Mr. Elwin, there is more need of precautionary measures, where large droves of cattle are constantly crossing, than when bandies or other carriages cross, the former being much more apt to stray on the line than the latter.

10. It is of the utmost importance that no cause of irritation and ill-feeling between the villagers and the Railway employés should exist, and, if the above suggestions are acted on, I think two of the chief sources will be at once removed.

No. 459, dated 28th March 1866.

ORDER THEREON BY THE GOVERNMENT OF FORT SAINT GEORGE.

Resolved that the foregoing papers be communicated to the Public Works Department, with reference to the Proceedings in that Department, dated 25th October last, No. 3,201.

2. The following are the only points on which the Railway Bill appears to call for remark in the Judicial Department.

The Governor in Council thinks that the definition of the term Magistrate as used in this Act is open to exception. There is no such Officer provided for in the Code of Criminal Procedure as a Magistrate of the first class. The following definition seems preferable:—"Magistrate includes any person invested with the powers of a Magistrate, as defined in Section 16 of the Code of Criminal Procedure or a Justice of the Peace." It also includes "a Magistrate of Police in the Presidency Towns of Calcutta, Madras, and Bombay." The definition of a conviction seems unnecessary, and wanting in clearness:—the Governor in Council would omit it,

In Section 22 the words "Village Pound" should be substituted for "Police Station," as there are no Pounds attached to Police Stations in this Presidency.

Section 33.—The words "or both" after the words "across the Railway," towards the end of this Section, would meet the suggestion made by the Magistrate of Salem in the 8th paragraph of his letter, which is deserving of consideration.

Section 56.—A penalty should be provided for unnecessary delay in producing a person arrested without warrant before a Magistrate beyond 24 hours.

Section 57.—The words "to the Officer in charge of" should be inserted in this Section before the words "Police Station."

Section 58.—The words "a servant" should be inserted after "Officer" in the first line of this Section.

Section 68.—The Governor in Council sees no necessity for the insertion of this Section. The cases to be dealt with under the Act are not likely to be numerous, and there is no apparent reason why each case should not be tried by the Magistrate before whom it is brought, provided the amended definition of the term Magistrate proposed in these proceedings be adopted. The Governor in Council would add that the expression "powers of a Covenanted Assistant" has no meaning; for the powers of these Officers vary at the discretion of the Local Government.

"Joint Magistrates, or persons lawfully exercising the powers of a Magistrate, or by any Assistant to a Magistrate, or Deputy Magistrate."

Section 70.—The words entered in the margin may be omitted from this Section.

Section 71.—"Heads of District Police" have no Judicial powers, and there are no longer such Officers as "Police Ameens" in this Presidency. Should it be thought necessary to retain this Section, the class of Police Officers referred to in the Bill would be represented by the words "Subordinate Magistrate of the second class;" but adverting to the definition of the term Magistrate now proposed, the Section might, in the opinion of the Governor in Council, be omitted.

3. With reference to the suggestion made by the Magistrate of Salem in the 4th paragraph of his letter, the Governor in Council does not perceive how the preservation of the tunnels, in the manner proposed, can be provided for in the Act. The tunnels are not intended to be used as foot-paths, and, in the monsoon, it would often be impossible to keep them dry.

From the Officiating Under Secretary to Government of Punjab, in the Public Works Department, Railway Branch, to the Secretary to the Government of India, Public Works Department, dated 24th March 1866, No. 79.

1. I have the honor to acknowledge the receipt of your several communications relating to the amendment of Act XVIII. of 1854, and forwarding Draft Rules for the guidance of all concerned in the investigation of Railway accidents, and, in the first place, to apologise for the delay which has occurred in replying to those communications from the case having been by mistake mislaid.

2. His Honor the Lieutenant-Governor desires me to express the entire concurrence of this Government in the proposed amendment of the Act, and also in the rules about Railway accidents. Immediately on receipt of the communications above alluded to, the Judicial Commissioner was asked for his opinion on the subject, and a copy of that Officer's reply is hereto appended for the information of the Supreme Government.

From the Judicial Commissioner of Punjab, to the Under Secretary to Government of Punjab, in the Public Works Department, Railway Branch, dated 19th December 1865, No. 3,669.

1. I have the honor to acknowledge your No. 433 of 1st instant, relative to the investigation of Railway accidents, and to observe, with reference to the rules proposed for the guidance of Officers concerned in such investigations, that they seem generally suitable. I am disposed to think, however, that the Police should be by law empowered on reasonable suspicion that there has been any infringement of the Railway Act, and without any complaint to institute an enquiry with a view to bringing the offenders before a Magistrate. It would be well also to supplement the rule which imposes on the Railway Company the duty of prosecuting, by providing that it shall be the duty of every subordinate of the Railway Company, who is aware of any breach of the Railway Act, to give information of the same to the Agent, either direct or through a prescribed channel, whenever he has reason to believe that the Agent may not otherwise obtain the information.

2. The opportunity should be taken also of providing a remedy, if possible, for the difficulty experienced at present in dealing with cases of cattle straying on the line as noticed in your No. 1,073 of 8th instant. The Railway employés should be directed to take the stray cattle to the nearest pound established under Act III. of 1857, instead of, as at present, to the nearest Police Station, and cases in which the owners of animals straying on the line are prosecuted, should be triable by *Subordinate Magistrates*, so that if it is deemed expedient hereafter to invest any of the Railway Officers with Magisterial powers for the purpose of dealing with these cases, an appeal may lie from their orders.

3. With reference to paragraphs 4 and 5 of your letter, I beg to state that I concur generally with Mr. Thornton's remarks on the power which the Police at present possess of enquiring into Railway accidents. I have issued instructions on this subject to the Magisterial authorities

as directed by the Lieutenant-Governor, and I now forward a copy of these instructions for His Honor's information.

4. The enclosures of your letter are herewith returned.

From the Judicial Commissioner of Punjab, to the Commissioners of Lahore, Mooltan, and Umritsur Division, dated 19th December 1865, No. 3,610—2.

1. As some misapprehension appears at present to exist in regard to the power of Magisterial or Police Officers to enquire into the circumstances attending the occurrence of Railway accidents, I have been requested by His Honor the Lieutenant-Governor to issue instructions, in accordance with the present state of the law on the subject.

2. You will observe that the Railway Act XVIII. of 1854 contains no provision, authorizing Magistrates or Police Officers to enquire officially into such accidents, and the provisions of the Criminal Procedure Code authorize official action only when the accident is attended with fatal results, or when a complaint has been made to the Magistrate that an offence has been committed, or when an offence, without any complaint, comes to the Magistrate's knowledge.

3. If the accident be attended with loss of life, it is the duty of the Police, under Section 161, Criminal Procedure Code, to make immediate enquiry, and report the apparent cause of death.

4. If a complaint be made that an offence punishable under the Railway Act, or other law, has been committed, the Magistrate will, of course, enquire into it under the ordinary rules.

5. If an offence punishable, under the Railway Act or other law, come to the knowledge of the Magistrate, he may, under Section 68, Criminal Procedure Code, without any complaint, take cognizance of it, and proceed against the person known, or suspected to have committed the offence. If he does not know or suspect the person who has committed the offence, he may still, under Section 133, Criminal Procedure Code, direct enquiry to be made into the offence by a Police Officer.

6. You will observe that these provisions, except in the case of an accident attended with loss of life, only authorize the Magistrate to take official action when an offence comes to his knowledge, and the mere fact that a Railway accident has occurred is not of itself sufficient to justify the interference of the Magistrate, for it may have occurred quite independently of any offence having been committed.

7. But it will often be possible for the Police or the Magistrate without making an official enquiry, or exercising their official authority, to obtain information regarding accidents occurring on the Railway, and, if from the information thus acquired, it appears to the Magistrate that an offence has been committed, he may, without any complaint having been made, proceed under the provision noticed above, and make enquiry into the offence. It is, perhaps, unnecessary to remark that no measures unauthorized by law should be resorted to for obtaining such information.

8. A Bill for amending the Railway Act is now under the consideration of the Legislative Council, but until it pass into law, Magisterial and Police Officers should be guided by these instructions.

No. 614. ORDER THEREON, 26th June 1866, No. 2,013.

RAILWAY, No. 54.

Communicated to the Judicial Department and the Acting Consulting Engineer for Railways, with reference to the Proceedings of Government in this Department, No. 1,242, under date the 20th April 1866.

(True Extract.)

Colonel, R. E.,
Secretary to Government.

To the Judicial Department.
" Acting Consulting Engineer for Railways.

Exd. S. T. Augustin.

Misc. No 111 — April 1886.
Pro: 28th March 1886 Ct No 2275
294.

Judicial 1886 Despt

No 16

Pros Copy P.W. Dept
No 2073

Rec'd 26
Rep 28 } April 86

Letter 10 July.

No 1386.

Comm's the observations of the Govt of Servia with to Amendment of Act 1874 1877 relating to Railways.
4th July 1886 No 1041.
Recorded

29. 30.