

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

22-23	G.O. No.	1752	Press
			~~Mis.~~
	Dated	4 — 11 —	1887

415

Not to be folded or roughly handled

*Proceedings of the Madras Government, Judicial Department,
4th November 1867.*

No. 22. Read the following Proceedings of Government in the Public Works Department, dated 30th October 1867, No. 3363.

Communicating papers from Govern-
ment of India, regarding publishing
in the *Gazette* the rules for the manage-
ment of the Railways in this Presi-
dency. } (Vide Proceedings, Public Works De-
partment, dated 30th October 1867,
Nos. 645 & 646).

No. 23. ORDER THEREON, 4th November 1867, No. 1752.

To be recorded.

(Signed) R. S. ELLIS,
Chief Secretary.

Exd. J. Tulloch.

11

*Proceedings of the Madras Government, Public Works Department,
30th October 1867.*

No. 645. Read the following letter from the Secretary to the Government of India, Public Works Department, (Railway,) to the Secretary to the Government of Madras, (Railway Branch,) dated Simla, 10th October 1867, No. 890 R :—

1. In consequence of certain recent cases of failure in the prosecution of servants of Railway Companies for breaches of the Rules and Regulations framed under the provisions of Section 29 of Act XVIII of 1854, a reference was made to the Advocate General by the Government of Bengal, a copy of whose opinion as to the course that should be adopted to render the Rules and Regulations of Railway Companies binding and effective, accompanies.

2. The publication in the "Gazette of India" of the Rules and Regulations approved by the Governor General in Council for other Railway Companies in the manner recommended in the case of the East Indian Railway Company would appear to be desirable, and I am accordingly to request that a copy of the Rules in force as prepared or approved by the Company concerned may be furnished for the Railways under the Government of Madras for this purpose.

From T. H. COWIE, Esq., Advocate General, to the Officiating Secretary to the Government of Bengal, Public Works Department, Railway Branch, dated the 24th September 1867.

1. Since receipt of your letter No. 1,641 G. of the 3rd instant, I have made enquiries as to the particulars of the Railway prosecution to which you refer.

2. So far as I can learn, the newspaper report of the case (which you may have seen) is not correct, nor was the Engine Driver Sims "acquitted on the technical plea that there was no proof that the rules and regulations given for the guidance of the Railway Company's servants have been either made by the Company or allowed by Government." What really occurred was, that one of the printed copies of the rules was produced, and it was shown that the prisoner gave his written receipt for a copy. As the printed book purports to be the "General Rules and Regulations," &c., (see the heading,) Mr. Justice Phear did not stop the case, but left it to the jury with an expression of his opinion that there was evidence not only that the rules had been made by the Company, but that they had been allowed by Government. Thereupon the jury (for reasons best known to themselves) acquitted the prisoner; and, if there was any failure of justice, it was by reason of a verdict against the evidence.

3. There was another recent case on the appellate side before Justices L. Jackson and Hobhouse, in which the same objection as to want of proof of the Rules was raised; but the Court set aside the conviction (and very rightly) on the merits. I refer to the case of *Flood* reported in the *Englishman* of 17th current.

4. I have thought it right to give these explanations, but the fact remains that there is the ruling of one Judge (Mr. Justice Markby) in a case tried before him last year, in which he directed an acquittal on the ground that there was no sufficient proof of the allowance by Government of the rules. Production and proof of the letter of Government of India of 18th August 1854 would not of itself be sufficient, as there would be the necessity of proving what were the particular Rules to which the letter refers; and there might be a good deal of practical difficulty in doing this. And the production and proof of the original letter in the Mofussil Courts would be very inconvenient. And I cannot say I think that the existing printed book, printed as it purports to be by a private printer, and not by Government, was rightly admitted in evidence by Mr. Justice Phear. The proper course will be to re-publish the rules in the *Gazette of India* and *Calcutta Gazette*, with a heading to the following effect :—

*Proceedings of the Madras Government, Public Works Department,
30th October 1867.*

"The following Rules and Regulations for the conduct of their Officers and servants were made by the East Indian Railway Company under Section 29 of Act XVIII. of 1854, and were, on the 18th August 1854, allowed by the Governor General of India in Council. They are now re-published as so allowed by order of the Government for the information of all persons concerned." And at the end of the Rules add "By order of the Government of India or ("Government of Bengal") A. B., Secretary to the Government, &c., Public Works Department." Then, in all future cases, it will only be necessary to prove (which the Railway Company can easily do) that the person charged had a copy of the rules and to produce the printed *Gazette*.

5. I return the book of rules you sent me.

No. 646. ORDER THEREON, 30th October 1867, No. 3,363.

RAILWAY, No. 34.

Communicated to the Consulting Engineer for Railways, who will furnish a copy of the Rules required by the Government of India.

(True Extract.)



Colonel, R. E.,

Secretary to Government.

To the Consulting Engineer for Railways.
,, Judicial Department.

Exd. S. T. Augustin.

Autograph

London 1889 M.H.

Rev. Genl. P. H. M.H.
No 3363

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No 2319

Communications for the
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