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IADRAS RECORD OFFICE.

Government of Madras.

Public works DEPARTMENT.

G.O. No. 2726	Press
371-372	Mis.
Dated 15-9-	1865.

Not to be folded or roughly handled

No. 371. Read the following Extract from the Proceedings of the Right Honorable the Governor General of India in Council, Public Works Department, (Railway), dated Simla, the 19th August 1865, No. 706 R.

Proposed Bill to amend Act XVIII. of 1854.

Read the following papers :—

From the Govt. of Bombay, No. 246, dated 21st March 1857.	} P. W. D. Cons. 1st May 1857, Nos. 197 & 199.
To do. do. No. 2,100, dated 1st May 1857.	
From do. do. No. 1,526, dated 27th December 1861.	
From Advocate General, dated 30th January 1862, with draft Bill.	
To Government of Bombay, No. 835, dated 3rd March 1862.	
To do. Madras, No. 836, do.	
To do. Bengal, No. 837, do.	
To do. N. W. P., No. 838, do.	
To do. Punjab, No. 839, do.	
From do. Punjab, No. 79, dated 28th March 1862.	
From do. Madras, No. 186, dated 7th April 1862.	
From do. N. W. P., No. 186, dated 9th June 1862.	
From do. Bombay, No. 1,320, dated 31st October 1862.	

OBSERVATIONS.—Act XVIII. of 1854 was amended by Act LII. of 1860. The expediency of further amending this Act (*relating to Railways in India*) was suggested to the Governor General in Council in 1862 by the Government of India. A draft Bill was accordingly drawn up by the Advocate General to the Government of India, and circulated to the several Local Governments for an expression of opinion. Replies have been received from all, with the exception of the Bengal Government, though its attention has from time to time been drawn to the omission. It therefore becomes necessary to act without the opinion of that Government. An explanation however should be required, and the Lieutenant Governor should be requested, if His Honor has any opinion to offer, to submit it at once.

2. The following appear to be the main points calling for notice :—

3. The preamble of the existing Act limits its application to Railways under the superintendence and control of the Secretary of State in Council (East India Company). It is desirable that it shall now be made applicable to all Railways in India used for the public conveyance of goods and passengers of every description, including Tramways worked by steam.

4. The preamble also should be made applicable to portions of lines passing through foreign Territory, if it is not so already. As it stands at present it applies to "any Railway Company ... in any part of the Territories in the possession and under the Government of the said Company." In the cases where the land has been ceded by Native States in full sovereignty, there is no doubt as to the sufficiency of the preamble, but all the land required in foreign Territory will not be so ceded. Administrative jurisdiction at least has however in all cases been conceded within the limits of the land made over, or promised for Railways. The preamble might run "in any part of the Territories through which a Railway may run, whether the land is a portion of British Territory or simply made over to the British Government by a Foreign State for administrative purposes."

5. It has been again suggested by the Bombay Government that opium should be added to the list of articles in Section 10 of the Act, for loss or damage of which the Railway Company is not answerable, unless their nature and value is declared, and special rates paid for their carriage. The Government, North-Western Provinces, has made the same suggestion. This was the subject of correspondence with the Bombay Government in 1857, when the Government of India, rather than alter the Act, authorized a fixed additional charge of one Rupee and eight Annas per cent. on all opium carried by rail, this arrangement not being considered inconsistent with the provisions of Section 11.

6. Section 11 makes the Railway Companies liable for loss or injury to goods not specified in Section 10,—“when it shall have been caused by gross negligence or misconduct on the part of their agents or servants.” The Bombay Government observes that it would be very difficult to prove this, for it would also be necessary to prove which servant was negligent, and the qualifying word “gross” leaves it all as a matter of opinion. It is suggested that loss or injury should be held sufficient proof of negligence somewhere, and that the Company be made liable.

7. The Government, North-Western Provinces, also quotes Sections 9, 10, 11, and 26, which define the liability of Railways for injury to goods or passengers carried, and proposes a graduated scale of fines to be inflicted on the Company for every accident, the amount depending on the nature of the accident; and also a system of assurance against loss by accidents to passengers or animals, due to carelessness or misconduct, to be effected by a slight addition to the rates of fare. The latter, however, appears to be at variance with Section 11 of the Act, and on the subject of fines generally some remarks will be made below.

8. The Government, North-Western Provinces, suggests that Sections 25 and 28 do not apply to abettors in the offences referred to.

9. The foregoing changes in Act XVIII. of 1854, are suggested in addition to those contemplated by the Draft Bill. With regard to the latter the following suggestions are made:—

10. The Government, North-Western Provinces, suggests a verbal alteration in Section 4, to enable Magistrates to fine for neglect on the part of the Railway Company to entertain gate-keepers.

11. Section 6. This Section provides that any summons issued in connexion with any neglect, &c., of the Railway Company in the matter of gates, may be served either by leaving the same at the Railway Station nearest the place where the failure or omission shall have occurred, at which an Officer of the Railway Company, not under the degree of a District Engineer, shall ordinarily reside, or by leaving the same at the Head Office of the Railway Company, or by serving the same on the principal Agent or Manager of the Company in India.

12. The Government, North-Western Provinces, would make a verbal alteration in this Section; but the Bombay Government suggests that the Magistrate and the Public should not be required to ascertain whether the person at the nearest station be of a certain rank, and what that rank is in the Railway system, and that it should therefore be left at the nearest Railway Station without reference to the

degree of the Officer residing there. It would rest with the Railway Company to take care that the summons is forwarded to a higher Officer, if necessary.

13. The Government, North-Western Provinces, suggests that Section 7 should be so altered as to include the cases of persons found dead in carriages. Such cases are of frequent occurrence in the North-West Division of the East Indian Railway, but they are not confined to the carriages, and the Section might be amended to include cases occurring at the stations and on the premises of the Company.

14. The Madras Government proposes that some provision be made for the punishment of offences or omissions committed, in respect to accidents happening on such unfinished portions of lines as, though open for the conveyance of Railway materials, are not open to public traffic. The North-Western Government would include in Section 9 such accidents as may also occur “in the construction and maintenance of the line,” and it seems desirable that the Sections 7 to 12 should not be limited to accidents on lines open to public traffic only.

15. Section 12 provides that any summons issued in connexion with neglect to report accidents, may be served on the Railway Company by leaving it at the Head Office, or by serving it on the principal Agent or Manager. The Bombay Government objects to its service on the principal Agent or Manager, and recommends that a list should be published in the *Gazette*, declaring at what offices summonses may be left; this point might be considered in connection with what is said on the subject in paragraph 12 (*Suprà*). The North-Western Government proposes a mere verbal alteration here.

16. Section 14. When a Railway Company is fined, it shall be lawful for the Local Government, if it shall think fit, to set off and retain the amount out of any money (guaranteed interest excepted) payable to the Railway Company. The Government of Bombay would leave the option with the Railway Company how the fine is to be paid. In case of failure to pay, of course the Local Government would set off the amount.

17. Besides the foregoing alterations proposed in the existing and proposed Acts, the Bombay Government suggests that the following additional provisions should be made in any new Bill that may be passed:—

18. There is nothing to prevent Railways being used for the conveyance of goods and passengers, before the line is formally declared open for public traffic. This, it is proposed, should be provided for, as well as for the closure of the line if it should at any time thereafter become unsafe.

19. It is further suggested that unsafe quarries and ballast pits excavated by the Railway Company, should be required to be fenced or filled in to the satisfaction of the Magistrate.

20. The Governor General in Council makes the following observations on the subject of fines in connection with loss or negligence on Railways, for consideration in the Home (Legislative) Department, in connection with the foregoing and the “Carrier’s Act of 1865”:—

21. There are two sorts of occasions on which pecuniary forfeitures seem reasonable as consequences of acts of Railway Officers. First to compensate persons

*Proceedings of the Madras Government, Public Works Department,
16th September 1865.*

employing the Railway for damage done by the Railway servants. In this case it is necessary to take the compensation from the profits of the concern, and the question of *personal* misconduct must be left to the Company to dispose of.

22. The second sort of pecuniary forfeitures are those consequent on individual neglect. In all these cases, it appears to the Governor General in Council that the *finer*, as they must be called, should be paid by the *Railway Officers* concerned, and not out of the Company's Revenues.

23. For all offences therefore, for which the law now fines the Company, the Magistrate should be obliged to determine who should pay the fine, and words should be introduced to imply that where fines can be levied under the Act, the Magistrate may at his discretion distribute the sum over the individuals who, on the evidence, seem to be the responsible persons for the neglect punished.

24. It would be necessary to guard against the necessity for bringing home the *actual commission* of the offence to any specific individual in inflicting a fine, as otherwise the law would be almost inoperative. It must be assumed that the person charged with the performance of a duty is the person who, in case of non-performance, has caused the neglect of it, unless he can shift the onus to some one else. In every case therefore, as a last resource, the Magistrate could fine the Agent who is responsible for everything.

25. A clause should also be added providing a penalty against making a disturbance or committing a breach of the peace, or assaulting passengers and *Railway Officers*, or otherwise doing anything tending to obstruct or inconvenience the passengers or *Railway Officers*. The law, as it now stands (Section 7), only provides for acts of indecency, as was decided by the Magistrate at Kurrachee in a late case of an Officer letting off crackers on the Railway premises.

26. To the clauses also defining the duties of the Company should be added one providing that the carriages should have affixed to them, both inside and outside, and both in English and in the Vernacular language of the District, a notice showing how many passengers they are allowed to carry, and making Station Masters and Guards responsible for taking more than the lawful number. In the event of such an offence being proved before a Magistrate, the Station Master of any station where overcrowding was ascertained, should be regarded as responsible, unless he could show that the offender was some one else. The provision of proper lamps in all passenger carriages at night time might also be required. Light is essential to the safety as well as the comfort and convenience of the passengers.

27. It would perhaps be desirable to introduce a clause giving Railway Companies power to enact bye-laws and regulations, similar to Sections 45 and 46 of Act XXII. of 1863. If this be done, the points noticed in the last two paragraphs may be left to be provided for by them.

ORDER.—Ordered that the foregoing observations be forwarded, with the papers on which they are based, to the Legislative Branch of the Home Department for consideration, in view to the introduction of a Bill into the Council of the Governor General, to meet the objects specified.

*Proceedings of the Madras Government, Public Works Department;
16th September 1865.*

Madras.
Bombay.
Bengal.
North-Western Provinces.
Punjab.
Chief Commissioner, Oudh.
Chief Commissioner, Central Provinces.
Resident, Hyderabad.
Commissioner, Mysore.

Ordered, also, that a copy be forwarded to the Foreign Department for information, with reference to paragraph 4.

Ordered, also, that copies be forwarded for information to the Local Governments and Administrations marginally noted.

(Signed) C. H. DICKENS, Lieut.-Col., R. A.,
Secretary to the Government of India, P. W. D.

To the Secretary to the Government of Madras, Railway Department.

No. 372.

ORDER THEREON, 15th September 1865, No. 2,726.

RAILWAY, No. 47.

Communicated to the Consulting Engineer for Railways, with reference to Colonel O'Connell's letter No. 53, dated 22nd March 1862.

(True Extract.)

(Signed) J. H. M. SHAW STEWART, Major, R. E.,
Under Secretary to Govt. of Madras.

To the Consulting Engineer for Railways.

Exd. T. O'Connor.

27

No. 406A

EXTRACT FROM THE PROCEEDINGS OF THE RIGHT HON'BLE THE
GOVERNOR GENERAL OF INDIA IN COUNCIL.

Railway.

PUBLIC WORKS DEPARTMENT;
Simla, the 19th August 1865.

Proposed Bill to amend Act XVIII. of 1854.

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To Government of Bombay, No. 835, dated 3rd March 1862.	
To do. Madras, No. 836, do.	
To do. Bengal, No. 837, do.	
To do. N. W. P., No. 838, do.	
To do. Punjab, No. 839, do.	
From do. Punjab, No. 79, dated 28th March 1862.	
From do. Madras, No. 186, dated 7th April 1862.	
From do. N. W. P., No. 186, dated 9th June 1862.	
From do. Bombay, No. 1320, dated 31st October 1862.	

OBSERVATIONS.—Act XVIII. of 1854 was amended by Act LII. of 1860. The expediency of further amending this Act (*relating to Railways in India*) was suggested to the Governor General in Council in 1862 by the Government of Bombay. A draft Bill was accordingly drawn up by the Advocate General to the Government of India, and circulated to the several Local Governments for an expression of opinion. Replies have been received from all, with the exception of the Bengal Government, though its attention has from time to time been drawn to the omission. It therefore becomes necessary to act without the opinion of that Government. An explanation however should be required, and the Lieutenant Governor should be requested, if His Honor has any opinion to offer, to submit it at once.

2. The following appear to be the main points calling for notice:—
3. The preamble of the existing Act limits its application to Railways under the superintendence and control of the Secretary of State in Council (East India Company). It is desirable that it shall now be made applicable to all Railways in India used for the public conveyance of goods and passengers of every description, including tramways worked by steam.

4. The preamble also should be made applicable to portions of lines passing through foreign Territory, if it is not so already. As it stands at present it applies to "any Railway Company ... in any part of the Territories in the possession and under the Government of the said Company." In the cases where the land has been ceded by Native States in full sovereignty, there is no doubt as to the sufficiency of the preamble, but all the land required in foreign Territory will not be so ceded. Administrative jurisdiction at least has however in all cases been conceded within the limits of the land made over, or promised for Railways. The preamble might run "in any part of the Territories through which a Railway may run, whether the land is a portion of British Territory or simply made over to the British Government by a Foreign State for administrative purposes."

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Madras.
Bombay.
Bengal.
North-Western Provinces.
Panjab.
Chief Commissioner, Oudh.
Chief Commissioner, Central Provinces.
Resident, Hyderabad.
Commissioner, Mysore.

W. D. D. Lieut.-Col., R. A.
Secretary to the Govt. of India, P. W. D.

To
The Secy to the Govt of Madras
Railway Department

Recd. 1861 made 1861
1 April 1861

1861
1861
1861

Railway
Resolution

From
The Secy. to the Govt. of India
in the Public Works Dept.

Dated 19th August 1861.
Received of

Received
27/26

27/26

Communicated to the
Consulting Engineer for Rail.
ways, with reference to
Colonel Gordon's letter
No. 53. dated 22nd March 1862.

Spence & Co. George
16th August 1863.

W. B.

to the Consulting
Engineer for Railways. 13

27/26 1861

With an order

Proposed Bill to amend Act XVIII. of 1861.

27/26-1861

27/26-1861