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MADRAS RECORD OFFICE.

Government of Madras.

Publ. & Works DEPARTMENT.

G.O. No. 658 / 659	Press Mis.
572. 573	
Dated 26-2.	1866.

Not to be folded or roughly handled

No. 572. Read the following Endorsement of the Consulting Engineer for Railways, dated Madras, 17th February 1866, No. 73 :—

Read the following letter from the Agent and Manager of the Madras Railway Company, to the Acting Consulting Engineer for Railways, dated Madras, 15th February 1866, No. 101.

1. Having carefully read over and considered the Indian Railways, Bill, which has been introduced by the Honorable G. Noble Taylor, to amend Acts Nos. XVIII. of 1854, and LII. of 1860, I have the honor to offer the following observations.

2. Clause XIII. (Part III.) does not enumerate "Cloths and Tissues embroidered with the precious metals, or of which such metals form part, articles of Ivory, Ebony, or Sandal-wood," which were provided for by Act No. III. of 1865, entitled "An Act relating to the rights and liabilities of common Carriers." These omissions strike me as important, inasmuch as Clause XIV. (Part III.) is worded as follows:—

"The liability of such Railway Company for loss of or injury to any articles or goods to be carried by them, *other than those specially provided for by this Act*, shall not be deemed, or construed to be limited, or in any wise affected by any public notice given, or any private contract made by them, but such Railway Company shall be answerable for such loss or injury, when it shall have been caused by negligence or misconduct on the part of their Agents, Officers, or Servants."

3. Clause XXXII. declares that at any time after a Railway is constructed, it shall be lawful for the Local Government, to make roads across such Railway, either by means of bridges, or upon a level, in either of which cases, the works, gates, &c., shall be executed and erected, and at all times hereafter maintained, at the expense of the Local Government.

4. Clause XXXIII. provides that "if the Railway cross any road on a level, whether such road be made before or *after* the construction of the Railway, the Railway Company shall erect, and at all times maintain good and efficient gates, either across the road at each side of the Railway, where the same shall communicate with the road, and shall employ proper persons to open and shut such gates."

5. It appears to me that there is some inconsistency between these two clauses. It has been suggested, that Clause XXXIII. was intended to run as follows "before or *during* the construction of the Railway," instead of as printed, "before or *after* the construction of the Railway."

6. Then again, I would remark with regard to Clause XXXIII., that it should be clearly defined that private or occupation roads are excluded from the operation of this enactment, and that the term "any road" has reference only to public thoroughfares, otherwise Railway Companies would be saddled with a standing expense, which was never contemplated, and which I consider it would be unjust to call upon them to bear.

7. Clause XL provides for the imprisonment of the Agent and Manager of any Company, in case of disobedience of any Injunction of the High Court. Personally, I should be quite ready to answer for my own acts, but I object most strongly to be put into prison for the delinquencies of any subordinate officer, even temporarily, pending explanation as to who was in fault, and therefore I respectfully urge that the clause should be amended.

8. The fines imposed by Clauses XIII., XLV., and XLVI. appear to me as excessive, and unnecessary, and therefore such clauses should, I think, be amended.

9. Clause LIV. as to the "rule of construction of this Act" provides that "every officer and servant of such Railway Company shall be deemed to be legally bound to do every thing necessary for or conducive to the safety of the public, which he shall be required to do, by any regulation, which shall be made by the Company, and allowed by the Governor in Council of India in Council"

10. This clause has been our stumbling block in one or two prosecutions, and should, on that account, I think, be amended.

11. It is absolutely impossible to work a Railway without its being necessary, at times, to issue exceptional rules and notices to meet exceptional circumstances and cases, and if such rules and notices are not to be legally binding upon servants of a Company, because they have not received the sanction of the Governor General of India in Council, it will be useless to attempt to prosecute employees disregarding such notice, and as special regulations would only be required upon an emergency, and where, so to speak, irregular working would be necessary, it is more essential that notices, issued under such circumstances, by a Company, should be legally binding.

12. Clause LXXIII. states that the Company's Bye-Laws shall have affixed to them the common seal of the Company. This is quite correct in England, but cannot be acted on here, inasmuch as the seal of the Company is kept in London. Hitherto the signature of the Consulting Engineer and the Agent to the Bye-Laws is all that has been considered necessary, and for my part I would not advocate any change.

1. It appears desirable that the views of the Agent and Manager of the Madras Railway should be submitted to the Honorable Mr. Taylor, to be laid before the Legislative Council in Calcutta.

2. I think Clause XIII. of the proposed Act should include the articles specified in paragraph 2 of Mr. Elwin's letter.

3. Reading Clauses XXXII. and XXXIII. of the Act, with paragraph 2 of the Resolution of the Government of India, communicated with G. O. of the 5th instant No. 450, it seems that the intention of the Government of India is, that although the expense of making a road across the Railway on a level and erecting gates shall be borne by the Government, yet the Railway Company will be required to "employ proper persons for the opening and shutting of gates at such crossings."

4. From Clause XXXII. it is evident that the Local Government is to bear the expense of maintaining gates erected across a Railway after it shall have been constructed, but this is not clearly expressed in Clause XXXIII.

5. Adverting to Mr. Elwin's remarks in paragraph 6, I think that in a country like India, it is not possible to clearly define "private or occupation roads." The question, I find, has already been considered by this Government, and an expression of their views has been given in a letter from the Chief Secretary to the Secretary to the Government of India, No. 683, dated 24th December 1863.

6. The Secretary of State for India has also, in a letter to the Secretary Great Southern of India Railway Company, embodied in the Proceedings of Government of the 12th March 1864, No. 168, expressed an opinion that gates erected on roads leading to villages, for the use of the village communities, should be looked upon as public road gates, for the care of which the Railway Company is responsible.

7. Clause XL., which refers to the imprisonment of the Agent will not, I presume, be enforced, except in cases where the Railway authorities unite in setting the law at defiance.

8. Clause LIV. of the Act should, I think, be so worded as to allow the Railway Companies sufficient latitude to issue special rules and notices for the working of the traffic; such rules and notices to be legally binding upon their servants, even though, from special circumstances, it may not have been possible to secure thereto the previous approval of the Government of India.

9. Clause LXXIII. should provide that in the absence of the Company's seal the signature of the Agent and Manager, on the part of the Company, and the signature of the Consulting Engineer, on the part of the local Government, will be sufficient, if affixed to the Bye-Laws.

(Signed) J. H. M. SHAW STEWART, Major, R. E.,
Acting Consulting Engineer for Railways.

No. 573. ORDER THEREON, 26th February 1866, No. 658.

RAILWAY, No. 41.

Resolved that the foregoing papers be forwarded to the Government of India, with an intimation that His Excellency

the Governor in Council considers it desirable that Clauses 13, 54 and 73 of the proposed new Act relating to Railways in India should be modified in the manner suggested in paragraphs 2, 8, and 9 of the Consulting Engineer's observations on the letter from the Agent and Manager of the Madras Railway Company.

(Here enter No. 659, dated 26th February 1866.)

(True Extract.)

(Signed) CHARLES A. ORR, Colonel, R. E.,
Secretary to Government.

To the Consulting Engineer for Railways.

Exd S. T. Augustin.

PUBLIC WORKS DEPARTMENT,
FORT SAINT GEORGE,
26th February 1866.

No. 659.

No. 574.

To

THE SECRETARY TO THE GOVERNMENT OF INDIA,

SIR,

RAILWAY, No. 42.

No. 101, dated 15th February 1866.
,, 73, ,, 17th ,, "

1. I am directed to transmit, for the consideration of His Excellency the Governor General in Council, a copy of the papers noted in the margin from the Consulting Engineer for Railways and the Agent and Manager of the Madras Railway Company, containing their views on certain points in the Draft Bill which was introduced into the Legislative Council of the Government of India on the 10th January last, to consolidate and amend the Laws relating to Railways in India.

2. I am to draw attention to paragraphs 3 to 7 of the Consulting Engineer's observations on the Agent's letter, and to state that this Government are of opinion that the discrepancies between Clauses XXXII. and XXXIII. of the Act should be corrected, and that Clauses XIII. LIV. and LXXIII. should be modified to the extent suggested by Major Shaw Stewart in paragraphs 2, 8, and 9.

I have the honor to be,

Sir,

Your most obedient servant,

(Signed) CHARLES A. ORR, Colonel, R. E.,
Secretary to Government.

Exd. S. T. Augustin.

7. Clause XL provides for the imprisonment of the Agent and Manager of any Company, in case of disobedience of any Injunction of the High Court. Personally, I should be quite ready to answer for my own acts, but I object most strongly to be put into prison for the delinquencies of any subordinate officer, even temporarily pending explanation as to who was in fault, and therefore I respectfully urge that the clause should be amended.

8. The fines imposed by Clauses XLIII., XLV., and XLVI. appear to me excessive, and unnecessary, and therefore such clauses should, I think, be amended.

9. Clause LIV. as to the "rule of construction of this Act" provides that every officer and servant of such Railway Company shall be deemed to be legally bound to do every thing necessary for or conducive to the safety of the public, which he shall be required to do, by any regulation, which shall be made by the Company, and allowed by the Government of India in Council.

10. This clause has been our standing block in one or two presentations, and should, on that account, I think, be amended.

11. It is absolutely impossible to work a Railway without the aid of servants at times, to issue exceptional rules and notices, in case of exceptional circumstances and cases, and if such rules and notices are not legally binding on the servants of a Company, because they have not to be approved by the Government of India in Council, it will be useless to attempt to promote safety by issuing such notices, and as special regulations would only be required upon emergency, and where, so to speak, irregular working would be necessary, it is more essential that notices, issued under such circumstances, by a Company, should be legally binding.

12. Clause LXXIII. states that the Company's Bye-Laws shall be affixed to them the common seal of the Company. This is quite correct in England, but cannot be acted on here, inasmuch as the seal of the Company is in the hands of the Agent and Manager, and the signature of the Consulting Engineer and the Agent to the Bye-Laws is all that has been considered necessary, and if in any part I would not address any change.

1. It appears desirable that the views of the Agent and Manager of the Madras Railway should be submitted to the Honorable Mr. Taylor, to be laid before the Legislative Council in Calcutta.

2. I think Clause XIII. of the proposed Act should include the articles specified in paragraph 2 of Mr. Elwin's letter.

3. Reading Clauses XXXII. and XXXIII. of the Act, with paragraph 2 of the Resolution of the Government of India, communicated with G. O. of the 24th instant No. 450, it seems that the intention of the Government of India is, that although the expense of making a road across the Railway on a level and erecting gates shall be borne by the Government, yet the Railway Company will be required to employ proper persons for the opening and shutting of gates at such crossings.

4. From Clause XXXII. it is evident that the Local Government is to bear the expense of maintaining gates erected across a Railway after it shall have been constructed, but this is not clearly expressed in Clause XXXIII.

5. Adverting to Mr. Elwin's remarks in paragraph 6, I think that in a country like India, it is not possible to clearly define "private or occupation roads." The question, I find, has already been considered by this Government, and an expression of their views has been given in a letter from the Chief Secretary to the Secretary to the Government of India, No. 683, dated 24th December 1863.

6. The Secretary of State for India has also, in a letter to the Secretary Great Southern of India Railway Company, embodied in the Proceedings of Government of the 12th March 1864, No. 168, expressed an opinion that gates erected on roads leading to villages, for the use of the village communities, should be looked upon as public road gates, for the care of which the Railway Company is responsible.

7. Clause XL., which refers to the imprisonment of the Agent will not, I presume, be enforced, except in cases where the Railway authorities unite in setting the law at defiance.

8. Clause LIV. of the Act should, I think, be so worded as to allow the Railway Companies sufficient latitude to issue special rules and notices for the working of the traffic; such rules and notices to be legally binding upon their servants, even though, from special circumstances, it may not have been possible to secure thereto the previous approval of the Government of India.

9. Clause LXXIII. should provide that in the absence of the Company's seal the signature of the Agent and Manager, on the part of the Company, and the signature of the Consulting Engineer, on the part of the local Government, will be sufficient, if affixed to the Bye-Laws.

(Signed) J. H. M. SHAW STEWART, Major, R. E.,
Acting Consulting Engineer for Railways.

No. 573. ORDER THEREON, 26th February 1866, No. 658.

RAILWAY, No. 41.

Resolved that the foregoing papers be forwarded to the Government of India, with an intimation that His Excellency

the Governor in Council considers it desirable that Clauses 13, 54 and 73 of the proposed new Act relating to Railways in India should be modified in the manner suggested in paragraphs 2, 8, and 9 of the Consulting Engineer's observations on the letter from the Agent and Manager of the Madras Railway Company.

(Here enter No. 659, dated 26th February 1866.)

(True Extract.)

(Signed) CHARLES A. ORR, Colonel, R. E.,
Secretary to Government.

To the Consulting Engineer for Railways.

Exd. S. T. Augustin.

No 101

Madras Railway Company,
Agent and Manager's Office,
Madras, February 15th 1866.

Sir,

A. B. Edwin Esq.,
Agent and Manager, of the
Madras Railway Company.

To,

Major J. H. M. S. Stewart, R.E.
Acting Consulting Engineer
for Railways.

Sir,

Having carefully read over, and
considered the Indian Railways Bill, which has
been introduced by the Hon^{ble} L^d. John
Taylor, to amend Acts Nos XVIII of 1854 and
Ist of 1860, I have the honor to offer the
following observations.

2. Clause XIII (Part III) does not
enumerate "Platts and Issues embrodered with
"the precious Metals, or of which such Metals
"form part, articles of Ivory, Ebony, or Sandal
"Wood", which were provided for by Act
No III of 1865, entitled "an Act relating to the
"rights and liabilities of common carriers". These
omissions strike me, as important, inasmuch as
Clause XIV (Part III) is worded as follows.
"The liability of such Railway
"Company for loss of or injury to any articles or
"goods to be carried by them, other than those
"specially provided for by this Act, shall not
be

"be deemed, or construed to be limited, or in any
"wise affected by any Public relation since, or any
"Public contract made by them, but such
"Railway Company shall be answerable for such
"loss or injury, when it shall have been caused
"by negligence or misconduct on the part of the
"Agents, Officers, or Servants."

3. Clause XXXII declares, that at
any time after a Railway is constructed, it shall
be lawful for the Local Government, to make
Roads across such Railway, either by means of
bridges, or upon a level, to either of which
the Works, gates, &c. shall be erected and
erected, and at all times kept in maintenance,
at the expense of the Local Government.

4. Clause XXXIII provides that if the
"Railway cross any Road on a level, whether such
"Road be made before or after the construction
"of the Railway, the Railway Company shall erect
"and at all times maintain good and efficient
"gates, either across the Road at each side of
"the Railway, which the same shall communicate
"with the Road, and shall employ proper persons
"to open and shut such gates."

5. It appears to me that there is
some inconsistency between these two clauses.
It has been suggested, that Clause XXXII
was intended to apply as follows: "before or
"during the construction of the Railway, and
"of its termini, before or after the construction
"of the Railway."

6. Then again, I would remark with
regard to Clause ~~XXXIII~~ that it should be
clearly defined that private or occupation roads
are excluded from the operation of this enactment,
and that the term "any Road" has reference
only to public thoroughfares, otherwise Railway
Companies would be saddled with a standing
expense, which was never contemplated, and
which I consider it would be unjust to call
upon them to bear.

7. Clause XL provides for the
imprisonment of the Agent and Manager of any
Company, in case of disobedience of any instruction
of the High Court. Personally, I should be
quite ready to answer for my own acts, but I
object most strongly to be put into prison
for the delinquencies of any subordinate officer,
even temporarily, pending explanation as to who
was in fault, and therefore I respectfully urge
that the clause should be amended.

8. The fines imposed by Clauses ~~XXV~~
~~XLV~~ and ~~XLVI~~ appear to me, as excessive,
and unnecessary and therefore such clauses should,
I think, be amended.

9. Clause L as to the "Rule of
Construction of this Act" provides that "every
officer and servant of such Railway Company
"shall be deemed to be legally bound to do
"everything necessary for or conducive to the
"Safety of the Public, which he shall be
"required."

Required to do, by any Regulation, which shall be made, by the Company, and allowed by the Governor General of India in Council:

10. This Clause has been very strongly block in one or two resolutions, and shall, on that account, I think, be amended.

11. It is absolutely impossible to run a Railway, without its being necessary at times to issue Exceptional Rules and orders to suit Exceptional Circumstances and Cases, and if such Rules and Orders are not to be legally binding upon Servants of a Company, because they are not permitted the sanction of the Governor General of India in Council, it will be useless to attempt to prosecute any regulations regarding such Rules, and as Special Regulations would only be required upon an emergency, and when, so to speak, irregular working would be necessary, it is not essential that notices, issued under such circumstances, by a Company, should be legally binding.

12. Clause XXXIII states, that the Company's Bye Laws shall have effect as if they were the Common Seal of the Company. This is quite correct in England, but cannot be acted on here, inasmuch as the Seal of the Company is kept in London. Still the signature of the Consulting Engineer and the Agent to the Bye Laws, is all that has been considered necessary.

necessary, and for my part, I would not advocate any change.

I have the honor to be,
Sir,
Your most obedient servant,
W. J. W. W.
Agent and Manager.

E. J. W.

It appears desirable that the views of the Agent and Manager of the Madras Railway should be submitted to the Honorable Mr. Jaylor to be laid before the Legislative Council in Calcutta.

I think clause XIII of the proposed Act should include the articles specified in paragraph 2 of Mr. Cairns letter.

Reading clauses XXXII and XXXIII of the Act, with paragraph 2 of the Resolution of the Government of India, communicated with G. O. of the 5th instant, No 450, it seems that the intention of the Government of India is, that altho the expense of making a road across the Railway on a level and erecting gates shall be borne by the Government, yet the Railway Company will be required to "employ proper persons for the opening and shutting of gates at such crossings."

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18257
Madras Railway

The Agent and Manager of the M.R.R.

The Acting Secy to the Government for Railways

Despatch No 15
Dec 3 1866.

26/11/

Submitting observations with reference to certain clauses in the Madras Railway Bill -

26.11.66

4. From clause XXXII, it is evident that the Local Government is to bear the expense of maintaining gates erected across a Railway after it shall have been constructed, but this is not clearly expressed in clause XXXIII.

5. Adverting to Mr. Caird's remarks in paragraph 6, I think that in a country like India, it is not possible to clearly define "private or occupation roads." The question, I find, has already been considered by the Government, and an expression of their views has been given in a letter from the Chief Secretary to the Secretary to the Government of India, No 683, dated 24th December 1863.

6. The Secretary of State for India has also, in a letter to the Secretary Great Indian Railway Company, embodied in the Proceedings of Government of the 12th March 1864.

1864. No 168, expressed an opinion that gates erected on roads leading to Villages, for the use of the Village Communities, should be looked upon as public roads. Gates, for the care of which the Railway Company is responsible.

7. Clause XL which refers to the imprisonment of the Agent will not, I presume, be enforced except in cases where the Railway Authorities unite in setting the Law at defiance.

8. Clause LIV of the Act should, I think, be so worded as to allow the Railway Companies sufficient latitude to issue special Rules and Notices for the working of the Traffic, such Rules and Notices to be legally binding upon their Servants, even though, from special circumstances, it may not have been possible to secure them the previous approval of the Government of India.

9. Clause LXXXIII should provide that in the absence of the Company's Seal.

seal, the signature of the Agent and
Manager, on the part of the Company,
and the signature of the Consulting
Engineer, on the part of the local Govern-
ment, will be sufficient, if affixed
to the Byes Laws.

Madras }
17th July/66 }
M. Stewart : Major R.
Ag Consulting Engineer R.F.

To The Secretary to Government
Public Works Dept^o
Fort St. George

Public Works Dept^o
No 658 177
Orders of the Madras Government
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the Agent and Manager of the
Madras Railway Company

Seal, the signature of the Agent and
Manager, on the part of the Company,
and the signature of the Consulting

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men 21 Dec, 1863. 683
to the 13 March 1864. 1687

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Recd of Govt for February
Trans No. 15, G. M. - 18.12.65 - 60

1866. Dept.
RAILWAY DEPARTMENT.

From Acting
The Cons. Engineer for Railways,

To
The Secretary to Government,
P. W. Dept.

Dated 17th } Feb 7 1866.
Received 17th }
No. 73.
Enclosures, No. 1

Observations on a
letter from the Agent &
Manager of the Madras
Railway Company, No 101 of 15th Inst, submitting
remarks with reference to certain clauses
in the Indian Railway's
Bill.

100,658-4659-265, 3 July 1866

For Secy

572

22nd July 1866

Public Works Dept

No 658 177

Proceedings of the Madras Government
Under date 1826 February 1866.
Read the following

From the Acting Consulting
Engineers for Railways.

Observations on a letter
from the Agent and Manager
of the Madras Railway Company,
No 101 of 15th Inst, submitting
remarks with reference to certain
clauses in the Indian Railway's
Bill.

(Forwarded 17th February 1866
No 73)

Thanked by the
Calcutta Railway
Committee

Resolved that the
foregoing papers be forwarded
to the Government of India
with an intimation that His
Excellency the Governor in
Council considers it desirable
that clauses 13, 54 and 73 of
the proposed new Act relating
to Railways in India should
be modified in the manner
suggested in paras 2, 8 and
9 of the Consulting Engineers
observations on the letter from
the Agent and Manager of the
Madras Railway Company.

To Secy: Engr for P.W. Dept

1st March

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No 659-

By the Secretary to the
Government of India -

Sir/
I am directed to
transmit for the considera-
tion of His Excellency the
Governor General in Council
a copy of the papers noted
in the margin from the
Consulting Engineer for Railways
and the Agent & Manager
of the Madras Railway Company
containing their views on certain
points in the Draft Bill
which was introduced into
the Legislative Council of the
Government of India on
the 10th January last to
consolidate and amend the
Laws relating to Railways
in India -

I am to draw attention
to paras 3 to 7 of the Consulting
Engineers observations on the
Agents letter, and to state
that this Government are
of opinion that the discrepancies

12707 of 15th Feb/86
" 73 " 17th " -

Fort St George
26th Feb/86

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C. J. B.

Recd 26th Feb/86.
P.O. " 1st March with 4 copies of
G.O. No. 658/86

