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MADRAS RECORD OFFICE.

Government of Madras.

Public works DEPARTMENT.

G.O. No. 2171	Press
468-63	~~Mis.~~
Dated 19 7	1867.

Not to be folded or roughly handled

G.O. No. 2771 P.W.D. & 19th July 1867

*Proceedings of the Madras Government, Public Works Department,
19th July 1867.*

No. 468. Read the following letter from the Secretary to the Government of India, Public Works Department, (Railway,) to the Secretary to the Government of Madras, Public Works Department, (Railway,) dated Simla, 7th June 1867, No. 476 R:—

1. I am directed to acknowledge the receipt of copy of Despatch No. 2 of 1867, addressed by the Government of Madras to the Secretary of State, on the subject of damage to Railway works by the bursting of tank embankments in Zemindary estates.

2. The Madras Government, it is observed, sets aside a recommendation of the Consulting Engineer for Railways of periodical inspections by Public Works Officers, and expresses its fear that the only effectual remedy can be found in actions for damages against the Zemindars by the Railway Company.

3. The Governor General in Council is of opinion that it would be only fair and reasonable that the proprietors of land should be responsible for any harm or loss which may arise from damage caused by the bursting of artificial embankments which they or their ancestors have constructed. If there be any doubt upon this point, it would be well to settle the matter by legislation.

4. There are cases where the damage may arise solely from natural causes, as from the action of a river, in which also some question of responsibility on the part of the landholders appears to His Excellency in Council to arise. Such accidents, it is obvious, do not arise in the same sense as the other class, from the fault of the landed proprietors, but still they have the knowledge of the circumstances, and often the means of applying remedies which may save disasters to the public; and where the Zemindary is a large one, and held on a permanent peishkush, or quit-rent, the proprietor, as regards his advantageous position, stands to a certain extent in the place of the State, that is, he enjoys revenues which, but for his peculiar tenure, would go to the State, and in such cases it would only be fair that the responsibility of repairs should rest wholly or partially on him according to his circumstances. This also might be settled by law.

5. The Governor General in Council would not advocate that all tanks and embankments should be placed under the control of the authorities, as this might involve large establishments, and there would be few cases where commensurate advantage would arise. But it does seem proper that there should be power on the part of the Government to direct competent Officers to inspect and report on such works in the interests of the public safety in important cases (such as tanks and embanked rivers in the vicinity of Railways), and that following such inspection should be executive power to the extent of guarding from danger arising from such works, and from rivers and streams generally. There should be some means of recovering from the landed proprietors, under due limitation, any expenses that may be necessarily incurred by the Government in repairs or protective works.

6. In the Upper Provinces of India, I am directed to state, practically the responsibility of guarding against accidents of the kind referred to, is shared between the District Engineer and the Collector. If any disruption of an embankment, or change in the course of a river, is anticipated, these officers would consult together; and if either or both anticipated danger, they would take the necessary steps for obtaining the authority of the local Government as to what might be proper in such case.

*Proceedings of the Madras Government, Public Works Department,
19th July 1867.*

7. The Governor General in Council would wish the Government of Madras to re-consider the subject, and that the Government in such cases should not look upon the matter merely in its capacity of landed proprietor, but also as the controlling authority of the country and guardian of the public safety. In this latter capacity the Government should possess such legal powers as are reasonably necessary.

No. 469.

ORDER THEREON, 19th July 1867, No. 2,171.

RAILWAY, No. 52.

1. In this letter, the Governor General in Council has stated his opinion, with reference to the damage to Railway works by the bursting of tank embankments in Zemindary estates, that it would

be only fair and reasonable that proprietors of land should be responsible for any harm or loss which may arise to Railway works by the bursting of adjacent embankments which they or their ancestors have constructed, and that if there be any doubt on this point that it would be well to settle the matter by legislation. It is also pointed out that when damage may arise solely from natural causes as from action of a river, landholders have the knowledge of the circumstances and often the means of applying remedies which may save public disasters, and that certain Zemindars who hold large estates on a permanent peishkush, or quit-rent, must be regarded as standing to a certain extent in the place of the State, and as such must be held, according to circumstances, either wholly or partially responsible for the repairs necessary to avert accidents to the line of Railway. It is also pointed out that there should be power on the part of Government in the interests of the public safety for the inspection of such works as tanks and embanked rivers in the vicinity of Railways and legal means of recovering from the landed proprietors, under due limitation, any expenses that may be necessarily incurred by the Government in repairs or protective works.

2. At present no such legal powers are vested in the local Government, and having in view the great importance of providing against the occurrence of accidents to the several lines of Railway in this Presidency from such works as are described above, the Governor in Council resolves to direct that the whole of the papers relating to this subject be referred to the Legislative Department with instructions to prepare, in communication with the Consulting Engineer for Railways, the draft of a bill to provide the necessary legal powers to secure the several objects adverted to in the letter from the Secretary to the Government of India, dated 7th June 1867.

(True Extract.)

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

To the Legislative Department.

„ Consulting Engineer for Railways.

Recd. Sept 10

Ed. S. T. Augustin.

*This subject has several times
been before the Govt. On each occasion
it has been well discussed and no
doubt has remained on the mind of
either of the members of the Govt; that
as the law now stands, we have
not the power necessary to force
Zemindars to place their tank bunds,
canals, & irrigation channels, &
sluices in proper efficient order and
condition. I doubt, therefore,
whether any advantage will attend
the re-consideration of the subject
which the Govt of India will be
advised to in the last para: of
their com: of 7 June last; neither can
I trace any rule, actual or implied,
which gives us the legal powers
which the Eng: Govt seem to believe
we possess. If any such exist.*

in the other Resolving Committee
be regretted that. The extent, in
of their character, bearing, & extent, was
not specifically made. —

As it appears to me, there is only
one way of meeting the difficulty, and
remedying the great evils & dangers
which are likely to arise from permitting
continuance of the present state of
things, and that is, by local legislation.
Had the Railway Company, through
their agent here, chosen to bring
an action against the Zemindar in
whose limits the breach occurred in
the N. W. line in Nov-1884, a judgment
would, undoubtedly, then have been
passed defining the responsibility
attaching to the defendant. Landlord
proprietors who allowed their irri-
gation works to fall into an insecure
state, and that judgment, when
generally known to Zemindars &

other land holders near & along the
line of rail, would in all probability
have operated as a sufficient warning
and removed the necessity for legislation.
But the R. Co. omitted to bring matters
to a ^{legal} issue, whilst on the other hand,
the villagers said to have been injured
by the deficient waterway of the tunnel
at the 78th mile, abstained from
instituting any action for damages
against the R. Co.

It will be inconvenient - out of place,
I think, to attach to Mr Taylor's new
Railway Bill, the additions proposed
to bring our Zemindars to order. I should
much prefer seeing the subject at-
tention taken up & disposed of in our
local legislative Council. and I
would advise that the usual
steps be taken by the Acting Asst Secy
Secretary in communication with the
Consulting Engineer for Railways,
for preparing a draft Bill

confering on the Govt the impor-
tant powers of supervision & control
which are now wanted

12 July

W.D.

Legislative Department
2d July 1867

Memorandum for the Orders
of the Honorable the Asst. Secy

Letter from the Govt of India,
Public Works Department,
Railway - suggesting the
adoption of legislative mea-
sures to prevent injury to
Railway works from the
bursting of tank embank-
ments in Zemindary Estates.

Dated 7th June 1867. R. 4/6 R.

(+ transferred from the P.W. Dept
to the Leg. Dept, for disposal)

+ Introduced by the
Honble Mr. G. N. Taylor.

As a Bill "to amend
and consolidate the laws
relating to Railways in
India" (a copy of which
is enclosed) is now before
the Council of the Governor
General, it may perhaps
be deemed proper in
preference to legislating
locally on the subject
of the foregoing letter.

that

that the Government of India should be asked to embody the necessary provisions in that part of the Bill which contains regulations for the protection of the property of Railway Companies; and the Consulting Engineer for Railways may be instructed to place himself in communication with this Department, in view to the preparation of a draft of the requisite clauses to be submitted for incorporation in the Imperial Bill.

Orders are required.

It seems doubtful whether this legislative provision for a special civil engineer for embankments belonging to Government, should be added to Mr. Taylor's already existing Railway Bill, or whether the Govt. for the legislative Council will be

W. A. Sullivan
W. A. Sullivan

C. C.

as competent to frame a measure to meet the requirements of this Presidency as regards its Railways as the local legislative Council

M. E.

Public Works Department.

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PROCEEDINGS of the MADRAS GOVERNMENT.

Under date the 19th July 1867

Read the following letter from the

Secretary to the Government of India, Public Works Department.

Here, under 7th June 1867. N^o 4768. 2
July 1867 N^o 4768.

ORDER THEREON

N
W.D.

In this letter, the Governor General in Council has stated his opinion, with reference to the damage to Railway works by the bursting of Tank embankments in Zemindary estates, that it would be only fair and reasonable that proprietors of land should be responsible for any harm or loss which may arise from Railway works by the bursting of adjacent embankments which they or their ancestors

ancestors have constructed and that if there be any doubt on this point that it would be well to settle the matter by legislation. It is also pointed out that when damage may arise solely from natural causes as from action of a river - landholders have the knowledge of the circumstances and often the means of applying remedies which may save public disasters and that certain zemindars who hold large estates on a permanent peshkash, or quit rent, must be regarded as standing to a certain extent in the place of the State, and as such must be held, according to circumstances, either wholly or partially responsible for the repairs necessary to avert accidents to the Line of Railway. It is also pointed out that there

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should be power on the part of Government in the interests of the public safety for the inspection of such works as tanks and embanked rivers in the vicinity of Railways and legal means of recovering from the land proprietors, under due limitation, any expenses that may be necessarily incurred by the Government in repairs or protective works.

2. At present no such legal powers ~~are~~ ~~described~~ ~~there~~ are vested in the local Government and having in view the great importance of providing against the occurrence of accidents to the several lines of Railway in this Presidency from such works as are described above, the Governor in Council resolves to direct that
the

the whole of the papers
relating to this subject be
referred to the Legislative
Department with instructions
~~inter alia~~ ~~to prepare~~
~~to prepare~~ to prepare in
communication with the
Consulting Engineer for
Railways, the draft of
a Bill to provide the
necessary legal powers to
secure the several objects
adverted to in the letter
from the Secretary of the
Government of India
dated 7th June 1867.

[Signature]

To the Secy. Dept. ^{Correspondence} ~~Inter alia~~
Consulting Engineer for Railways
Enclosure ~~ditto~~

- *
I. Bill to consolidate & amend the Law
relating to Railways in India
by Mr. Taylor.
- II. Annexure to — Do —
- III. Report No. II of 1867 —
- IV. G.O. 780 in the Mail No. 873 dated 2/6/64
- V. — Do — 52 — Do — 8/26 Jan 1865
- VI. — Do — 2733 in the M.O. 8/16 Sept 1865
- VII. — Do — 12 — Do — 8/3 Jan 1866
- VIII. — Do — 643 — Do — 8/22 Feb 1867
- IX. — Do — 766 — Do — 8/13 March 1867
- X. — Do — 1017 — Do — 8/12 April 1867.

22-2201

Q. M. 19. 7. 63. N. 2171.

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No.

PROCEEDINGS OF GOVERNMENT.

Date.