M.R.O. 1—77,006—8-6-37.

(1) Number of pages 10

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(3) Initials of the Referencer

MADRAS RECORD OFFICE.

Government of Madras.

Public (Misc.) DEPARTMENT.

G.O. No. 634 Press Mis.

Dated 31-1- 1942.

Not to be folded or roughly handled

Proceedings of the Madras Government, Public Works Department,
31st January 1867.

No. 634. Read the following Circular from the Government of India, Public Works Department, (Railway), dated Fort William, 2nd January 1867, No. 1 :—

Copy of the following correspondence, relating to the construction of the law in the matter of the right of Railway Companies to carry their letters, &c., independent of the Post Office, is forwarded for information to the Local Governments and Administrations noted in the margin.

Madras.	Oudh.
Bombay.	Central Provinces.
Bengal.	British Burmah.
N. W. Provinces.	Mysore.
Punjab.	Hyderabad.

By Order,

(Signed) C. H. DICKENS, Lieut.-Colonel, R. A.,
Secy. to the Govt. of India.

From the Officiating Director General of Post Office of India, to the Secretary to Government of India, Home Department, dated 15th November 1866, No. 2,242.

1. In continuation of Mr. Riddell's letter, No. 1,203, dated the 31st July, I have the honor to submit a copy of the accompanying communication* from the Secretary to the General Post Office, London, together with† its enclosure in original.

* No. 940 R, dated 26th September.
† To be returned.

2. The opinion of the Lord Advocate on the questions referred to him in 1850 by Her Majesty's Post Master General, as set forth in the enclosure, may, I presume, be held applicable to Indian Railway Companies as respects their right to carry letters on their own business by their servants, as well as their title to carry letters which concern goods conveyed by them ; for, as stated in paragraph 5 of Mr. Riddell's letter, the law is precisely the same in England and in India.

3. Although Mr. Cowie's opinion, dated the 13th July last, of which a copy was submitted by Mr. Riddell, puts a different interpretation on the terms of the Indian Act in respect of the right of Railway Companies to carry letters on their own business by their servants, it will probably be deemed proper to admit the more liberal construction which has been recognized in Scotland, and which has hitherto been practically admitted in India.

4. If the Government concur in this view, I shall be prepared to make the opinion known to the Officers of the Post Office Department.

From the Secretary to the General Post Office, London, to the Director General of Post Office of India, dated 26th September 1866, No. 940 R.

1. I have to acknowledge the receipt of your letter, No. 1,204, of the 31st July last, making enquiry as to the extent to which the Railway Companies in England are allowed to convey their letters, &c., independently of the Post Office.

2. In 1850, the Lord Advocate was consulted as to the rights of the Scotch Railway Companies in this respect, and he was of opinion that Railway Companies do not in any way contravene the Post Master General's privilege by conveying letters on their own business by their servants.

3. I enclose a copy of the case submitted to the Lord Advocate with his opinion thereon.

Memorial for the Post Master General for opinion of Counsel, dated 16th August 1850.

The exclusive privilege of the Post Office is set forth in the 2nd Section of the Act 1st Vic. Cap. 33, whereby it is enacted that Her Majesty's present Post Master General and the

person or persons to be from time to time hereafter appointed by the Queen's Majesty by Letters Patent under the Great Seal of Great Britain shall be the Master of the Post Office by the style of Her Majesty's Post Master General and wheresoever within the United Kingdom and other Her Majesty's Dominions Posts or Post communications are now or may be hereafter established the Post Master General by himself or by his Deputies and their respective servants or agents shall have the exclusive privilege of carrying from one place to another all letters except in the following cases and also have the exclusive privilege of carrying from one place to another all letters except in the following cases and shall also have the exclusive privilege of performing all the incidental services of receiving, collecting, sending, despatching and delivering all letters except in the following cases (that is to say) :—

Letters sent by a private friend in his way journey or travel so as such letters be delivered by such friend to the party to whom they shall be directed.

CURRY.—Does this exemption not include letters by Railway Companies on their private business?

Letters sent by a messenger on purpose concerning the private affairs of the sender or receiver thereof.

Commissions or returns thereof and affidavits and writs process or proceedings or returns thereof issuing out of a Court of Justice.

Letters sent out of the United Kingdom by a private vessel (not being a packet boat).

Letters of merchants, owners of vessels of merchandize or the cargo or loading therein sent by such vessels of merchandize or by any person so employed by such owners for the carriage of such letters according to their respective directions, and delivered to the respective persons to whom they shall be directed without paying or receiving hire or reward advantage for profit for the same in anywise.

Letters concerning goods or merchandize sent by common known carriers to be delivered with the goods which such letters concern without hire or reward or other profit or advantage or receiving or delivering such letters.

But nothing herein contained shall authorize any person to make a collection of such exempt letters for the purpose of sending them in the manner hereby authorized. And the following persons are expressly forbidden to carry a letter or to receive or collect or deliver a letter although they shall not receive hire or reward for the same that is to say :—

Common known carriers their servants or agents except a letter concerning goods in their carts or wagons or on their pack horses and owners drivers or guards of stage coaches.

Owners masters or commanders of ships vessels steam-boats or boats called or being passage or packet boats sailing or passing coastwise or otherwise between ports or places within Great Britain or Ireland or between to or from a port or ports within Her Majesty's dominions or territories out of the United Kingdom or their servants or agents except in respect of letters of merchants owners of ships or goods on board.

Passengers or other persons on board any such ships vessels steam-boats passage or packet boat.

The owners of or sailors water-men or others on board a ship vessels steam-boat or other boat or barge passing or re-passing on a river or navigable canal within the United Kingdom or other Her Majesty's dominions.

The above privilege of the Post Office is guarded by the 2nd Section of the Act 1st Vic. Cap. 36 intituled "An Act for consolidating the laws relative to offences against the Post Office of the United Kingdom and for regulating the Judicial Administration of the Post Office Laws and for explaining certain terms and expressions employed in those laws" whereby it is enacted "that for preventing any breach of the privileges conferred by the Post Office Acts on the Post Master General for the benefit of the Public Revenue, that every person who shall convey otherwise than by the Post a letter not exempted from the exclusive privilege of the Post Master General shall for every letter forfeit five pounds and every person who shall be in the practice of so conveying

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letters not so exempted shall for every week during which the practice shall be continued forfeit one hundred pounds and every person who shall perform otherwise than by Post any service incidental to conveying letters from place to place whether by receiving or by taking up or by collecting or by ordering or by despatching or by carrying or by re-carrying or by delivering a letter not exempted from the exclusive privilege of the Post Master General shall forfeit for every letter five pounds and every person who shall be in the practice of so conveying letters not so exempted shall for every week during which the practice shall be continued forfeit one hundred pounds, and every person who shall perform otherwise than by the Post any services incidental to conveying letters from place to place whether by receiving or by taking up or by collecting or by ordering or by despatching or by carrying or by re-carrying or by delivering a letter not exempted from the exclusive privilege of the Post Master General shall forfeit for every letter five pounds and every person who shall be in the practice of so performing any such incidental service shall for every week during which the practice shall be continued forfeit one hundred pounds and every person who shall send a letter not exempted from the exclusive privilege of the Post Master General otherwise than by the Post or shall cause a letter not so exempted to be sent or conveyed otherwise than by Post shall forfeit for every letter five pounds and every person who shall be in the practice of committing any of the acts last mentioned shall for every week during which the practice shall be continued forfeit one hundred pounds and every person who shall make a collection of exempted letters for the purpose of conveying or sending them otherwise than by the Post shall forfeit for every letter five pounds and every person who shall be in the practice of making a collection of exempted letters for either of these purposes shall forfeit for every week during which the practice shall be continued one hundred pounds and Be it declared that the term "Post" shall herein include all Post communications by land or by water (except by outward bound vessels not being employed by or under the Post Office or the Admiralty) to carry Post letters and the above penalties shall be incurred whether the letter shall be sent singly or with any thing else or such incidental service shall be performed in respect to a letter either sent or to be sent singly or together with some other letter or thing. And in any prosecution by action or otherwise for the recovery of any such penalty the onus shall be upon the party prosecuted to prove that the act in respect of which the penalty is alleged to have been incurred was done in conformity to the Post Office Laws."

A question has occurred as to the extent of the privilege conferred on the Memorialist by the aforesaid Acts of Parliament, owing to certain Railway Companies in Scotland conveying letters on their own business by their servants. Their right to do this does not appear to Mr. Peacock, the Solicitor of the General Post Office for England, to be free from doubt, and he has advised that Counsel should be consulted on the subject, and accordingly the Memorialist has directed that this Memorial should be laid before Counsel for his opinion. It appears to the Memorialist, however, and he also desires to be specially advised on this point, that there is a distinction to be drawn between the servants of a Railway Company carrying such letters if they are sealed, than if they are open.

In advising the above points, Counsel may assume that there is nothing contained in the Acts of Parliament incorporating the Railway Companies in Scotland or the general Acts incorporated therewith, which in any way effects the privileges of the Memorialist in virtue of the Clauses of the Acts of Parliament before quoted.

In addition to the foregoing, it has been thought necessary to take the opinion of Counsel at same time as to another practice of the Railway Companies in Scotland.

It appears that the servants of these Companies are in the habit of conveying letters for other parties unconnected with the Railway Company, and not on Railway business, which conveyance Mr. Peacock (Solicitor of the General Post Office for England) considered to be clearly in contravention of the privileges of the Memorialist, except in so far as these letters relate to goods sent with such servants. It is presumed by the Solicitor of the General Post Office for Scotland that Mr. Peacock considered the servants of Railway Companies as being entitled to the exemption (see page 1) given by the Act before quoted to letters "sent by common known carriers to be delivered with the goods which such letters concern;" but it appears to Mr. Cowie that this

exemption is plainly limited, by the immediately following words of the Act, only to cases where the Railway servants deliver such letters "without hire or reward or other profit or advantage for receiving or delivering such letters." This appears to be an important limitation of the exemption, and in consequence a query has been added to this Memorial for Counsel's opinion upon it, as well as the two other points before stated.

QUERIES.

1st.—Is Counsel of opinion that the Railway Companies in Scotland do not in any way contravene the privilege of the Memorialist by carrying letters on their own business by their servants whether such letters be sealed or open, and

2nd.—Assuming that the servants of these Railway Companies are entitled to the exemption given to common known carriers (stated in page 1), are they entitled to carry letters which "concern" goods conveyed by them and receive hire reward profit or advantage for delivering such letters?

OPINION.

1st.—I am of opinion that the Railway Companies do not in any way contravene the Memorialist's privilege by carrying letters on their own business by their servants, whether such letters be sealed or open, nor am I aware that on this question there is any ground of distinction between open and sealed letters. Practically, it may be advisable for parties to send open letters simply to satisfy any officer entitled to seize or inspect them that they are within the admitted exemption.

2nd.—I am of opinion that the Railway Companies are entitled to the same privileges on the same conditions as common carriers; and therefore, although I think them entitled to carry letters which concern goods conveyed by them, I do not think them entitled to receive separately for such letters hire reward profit or advantage.

EDINBURGH,
9, *St. Colme Street;*
11*th April* 1851.

The opinion of

(Signed) A. RUTHERFORD.

From the Officiating Under Secretary to the Government of India, Home Department, to the Director General of Post Office of India, dated 17th December 1866, No. 1,419.

I am directed to acknowledge the receipt of your letter No. 2,242, dated 15th November last, and in reply to inform you that the construction of the law adopted in the English Post Office for the conveyance by the Railway Companies in England of their letters, &c., independently of the Post Office, may be recognized as applicable to the Indian Law.

No. 1,420.

Endorsed by Home Department.

Copy of the above, and of the letter to which it is a reply, forwarded to the Public Works Department, in continuation of Office Memorandum No. 3,672, dated 14th August last.

No. 635. ORDER THEREON, 31st January 1867, No. 314.

RAILWAY, No. 46. Communicated to the Consulting Engineer for Railways.

(True Extract.)

Colonel, R. E.,
Secretary to Government.

To the Consulting Engineer for Railways.
" Public Department.

Exd. S. T. Augustin.

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CIRCULAR No. 1 RAILWAY.

GOVERNMENT OF INDIA.

PUBLIC WORKS DEPARTMENT.

RAILWAY.

FORT WILLIAM, JANUARY 2, 1867.

Copy of the following correspondence, relating to the construction of the law in the matter of the right of Railway Companies to carry their letters, &c., independent of the Post Office, is forwarded for information to the Local Governments and Administrations noted in the margin.

Madras.	Oudh.
Bombay.	Central Provinces.
Bengal.	British Burmah.
N. W. P.	Mysore.
Punjab.	Hyderabad.

(By order.)

C. H. DICKENS, *Lieut.-Col., R. A.,*
Secy. to the Govt. of India.

W. B. Rutherford *Captain, R. E.,*
Asstt. Secy. to Govt. of India.

No. 2242, dated 15th November, 1866.

From—A. M. MONTEATH, Esq., *Offg. Director General of Post Office of India,*
To—Secretary to Government of India, Home Department.

In continuation of Mr. Riddell's letter No. 1203, dated the 31st July, I have the honour to submit a copy of the accompanying communication* from the Secretary to the General Post Office, London, together with its enclosure in original.†

* No. 940 R, dated 26th September.
† To be returned.

2. The opinion of the Lord Advocate on the questions referred to him in 1850 by Her Majesty's Post Master General, as set forth in the enclosure, may, I presume, be held applicable to Indian Railway Companies as respects their right to carry letters on their own business by their servants, as well as their title to carry letters which concern goods conveyed by them; for, as stated in para. 5 of Mr. Riddell's letter, the law is precisely the same in England and in India.

3. Although Mr. Cowie's opinion, dated the 13th July last, of which a copy was submitted by Mr. Riddell, puts a different interpretation on the terms of the Indian Act in respect of the right of Railway Companies to carry letters on their own business by their servants, it will probably be deemed proper to admit the more liberal construction which has been recognized in Scotland, and which has hitherto been practically admitted in India.

4. If the Government concur in this view, I shall be prepared to make the opinion known to the Officers of the Post Office Department.

No. 940 R, dated 26th September, 1866.

From—F. HILL, Esq., *Secretary to the General Post Office, London,*
To—Director General of Post Office of India.

I have to acknowledge the receipt of your letter No. 1204 of the 31st July last, making enquiry as to the extent to which the Railway Companies in England are allowed to convey their letters, &c., independently of the Post Office.

2. In 1850, the Lord Advocate was consulted as to the rights of the Scotch Railway Companies in this respect, and he was of opinion that Railway Companies do not in any way contravene the Post Master General's privilege by conveying letters on their own business by their servants.

3. I enclose a copy of the case submitted to the Lord Advocate with his opinion thereon.

The Secy to the Govt of Madras
P.W. Deptt (Railway)

Dated 16th August, 1850.

Memorial for the Post Master General for opinion of Counsel.

The exclusive privilege of the Post Office is set forth in the 2nd Section of the Act 1st Vic. Cap. 33 whereby it is enacted that Her Majesty's present Post Master General and the person or persons to be from time to time hereafter appointed by the Queen's Majesty by Letters Patent under the Great Seal of Great Britain shall be the Master of the Post Office by the style of Her Majesty's Post Master General and wheresoever within the United Kingdom and other Her Majesty's Diminions Posts or Post communications are now or may be hereafter established the Post Master General by himself or by his Deputies and their respective servants or agents small have the exclusive privilege of carrying from one place to another all letters except in the following cases and also have the exclusive privilege of carrying from one place to another all letters except in the following cases and shall also have the exclusive privilege of performing all the incidental services of receiving, collecting, sending, despatching and delivering all letters except in the following cases (that is to say):—

Letters sent by a private friend in his way journey or travel so as such letters be delivered by such friend to the party to whom they shall be directed.

Query.—Does this exemption not include letters by Railway Companies on their private business?

Letters sent by a messenger on purpose concerning the private affairs of the sender or receiver thereof.

Commissions or returns thereof and affidavits and writs process or proceedings or returns thereof issuing out of a Court of Justice.

Letters sent out of the United Kingdom by a private vessel (not being a packet boat).

Letters of merchants, owners of vessels of merchandize or the cargo or loading therein sent by such vessels of merchandize or by any person so employed by such owners for the carriage of such letters according to their respective directions, and delivered to the respective persons to whom they shall be directed without paying or receiving hire or reward advantage for profit for the same in anywise.

Letters concerning goods or merchandize sent by common known carriers to be delivered with the goods which such letters concern without hire or reward or other profit or advantage or receiving or delivering such letters.

But nothing herein contained shall authorize any person to make a collection of such except letters for the purpose of sending them in the manner hereby authorized. And the following persons are expressly forbidden to carry a letter or to receive or collect or deliver a letter although they shall not receive hire or reward for the same that is to say:—

Common known carriers their servants or agents except a letter concerning goods in their carts or wagons or on their pack horses and owners drivers or guards of stage coaches.

Owners masters or commanders of ships vessels steam-boats or boats called or being passage or packet boats sailing or passing coastwise or otherwise between ports or places within Great Britain or Ireland or between to or from a port or ports within Her Majesty's dominions or territories out of the United Kingdom or their servants or agents except in respect of letters of merchants owners of ships or goods on board.

Passengers or other persons on board any such ships vessels steam-boats passage or packet boats.

The owners of or sailors water-men or others on board a ship vessel steam-boat or other boat or barge passing or re-passing on a river or navigable canal within the United Kingdom or other Her Majesty's dominions.

The above privilege of the Post Office is guarded by the 2nd Section of the Act 1st Vic. Cap. 36 intituled "An Act for consolidating the laws relative to offences against the Post Office of the United Kingdom and for regulating the Judicial Administration of the Post Office Laws and for explaining certain terms and expressions employed in those laws" whereby it is enacted "that for preventing any breach of the privileges conferred by the Post Office Acts on the Post Master General for the benefit of the Public Revenue, that every person who shall convey otherwise than by the Post a letter not exempted from the exclusive privilege of the Post Master General shall for every letter forfeit five pounds and every person who shall be in the practice of so conveying letters not so exempted shall for every week during which the practice shall be continued forfeit one hundred pounds and every person who shall perform otherwise than by Post any service incidental to conveying letters from place to place whether by receiving or by taking up or by collecting or by ordering or by despatching or by carrying or by re-carrying or by delivering a letter not exempted from the exclusive privilege of the Post Master General shall forfeit for every letter five pounds and every person who shall be in the practice of so conveying letters not so exempted shall for every week during which the practice shall be continued forfeit one hundred pounds, and every person who shall perform otherwise than by the Post any services incidental to conveying letters from place to place whether by receiving or by taking up or by collecting or by ordering or by despatching or by carrying or by re-carrying or by delivering a letter not exempted from the exclusive privilege of the Post Master General shall

forfeit for every letter five pounds and every person who shall be in the practice of so performing any such incidental service shall for every week during which the practice shall be continued forfeit one hundred pounds and every person who shall send a letter not exempted from the exclusive privilege of the Post Master General otherwise than by the Post or shall cause a letter not so exempted to be sent or conveyed otherwise than by Post shall forfeit for every letter five pounds and every person who shall be in the practice of committing any of the acts last mentioned shall for every week during which the practice shall be continued forfeit one hundred pounds and every person who shall make a collection of exempted letters for the purpose of conveying or sending them otherwise than by the Post shall forfeit for every letter five pounds and every person who shall be in the practice of making a collection of exempted letters for either of these purposes shall forfeit for every week during which the practice shall be continued one hundred pounds and Be it declared that the term "Post" shall herein include all Post communications by land or by water (except by outward bound vessels not being employed by or under the Post Office or the Admiralty) to carry Post letters and the above penalties shall be incurred whether the letter shall be sent singly or with any thing else or such incidental service shall be performed in respect to a letter either sent or to be sent singly or together with some other letter or thing And in any prosecution by action or otherwise for the recovery of any such penalty the onus shall be upon the party prosecuted to prove that the act in respect of which the penalty is alleged to have been incurred was done in conformity to the Post Office Laws.

A question has occurred as to the extent of the privilege conferred on the Memorialist by the aforesaid Acts of Parliament owing to certain Railway Companies in Scotland conveying letters on their own business by their servants. Their right to do this does not appear to Mr. Peacock, the Solicitor of the General Post Office for England, to be free from doubt and he has advised that Counsel should be consulted on the subject and accordingly the Memorialist has directed that this Memorial should be laid before Counsel for his opinion It appears to the Memorialist however and he also desires to be specially advised on this point that there is a distinction to be drawn between the servants of a Railway Company carrying such letters if they are sealed than if they are open.

In advising the above points Counsel may assume that there is nothing contained in the Acts of Parliament incorporating the Railway Companies in Scotland or the general Acts incorporated therewith which in any way affects the privileges of the Memorialist in virtue of the Clauses of the Acts of Parliament before quoted.

In addition to the foregoing it has been thought necessary to take the opinion of Counsel at same time as to another practice of the Railway Companies in Scotland.

It appears that the servants of these Companies are in the habit of conveying letters for other parties unconnected with the Railway Company, and not on Railway business which conveyance Mr. Peacock (Solicitor of the General Post Office for England) considered to be clearly in contravention of the privileges of the Memorialist except in so far as these letters relate to goods sent with such servants. It is presumed by the Solicitor of the General Post Office for Scotland that Mr. Peacock considered the servants of Railway Companies as being entitled to the exemption (see page 1) given by the Act before quoted to letters "sent by common known carriers to be delivered with the goods which such letters concern" but it appears to Mr. Bowie that this exemption is plainly limited by the immediately following words of the Act only to cases where the Railway servants deliver such letters "without hire or reward or other profit or advantage for receiving or delivering such letters." This appears to be an important limitation of the exemption and in consequence a query has been added to this Memorial for Counsel's opinion upon it as well as the two other points before stated.

QUERIES.

1st.—Is Counsel of opinion that the Railway Companies in Scotland do not in any way contravene the privilege of the Memorialist by carrying letters on their own business by their servants whether such letters be sealed or open, and

2nd.—Assuming that the servants of these Railway Companies are entitled to the exemption given to common known carriers (stated in page 1) are they entitled to carry letters which "concern" goods conveyed by them and receive hire reward profit or advantage for delivering such letters?

OPINION.

1st.—I am ot opinion that the Railway Companies do not in any way contravene the Memorialist's privilege by carrying letters on their own business by their servants whether such letters be sealed or open, nor am I aware that on this question there is any ground of distinction between open and sealed letters. Practically it may be advisable for parties to send open letters simply to satisfy any officer entitled to seize or inspect them that they are within the admitted exemption.

2nd.—I am of opinion that the Railway Companies are entitled to the same privileges on the same conditions as common carriers; and therefore, although I think them entitled to

carry letters which concern goods conveyed by them, I do not think them entitled to receive separately for such letters hire reward profit or advantage.

EDINBURGH,
9, *St. Colme Street*;
11*th April* 1851.

The opinion of

(Signed) A. RUTHERFORD.

No. 1419, dated 17th December, 1866.

From—W. E. WARD, Esq., *Offg. Under Secy. to Govt. of India, Home Dept.*,

To—Director General of Post Office of India.

I am directed to acknowledge the receipt of your letter No. 2242, dated 15th November last, and in reply to inform you that the construction of the law adopted in the English Post Office for the conveyance by the Railway Companies in England of their letters &c., independently of the Post Office, may be recognized as applicable to the Indian Law.

No. 1420.

Endorsed by Home Dept.

Copy of the above, and of the letter to which it is a reply, forwarded to the Public Works Department, in continuation of Office Memorandum No. 3672, dated 14th August last.

GOVERNMENT OF INDIA.

PUBLIC WORKS DEPARTMENT.

RAILWAY.

To

The Secretary & Board &c &c

CIRCULAR No. 1 RAILWAY.

Dated January 2, 1867.

Received 4th " "

Construction of the law in the matter of the right of Railway Companies to carry their letters, &c., independent of the Post Office.