

(1) Number of pages 30
(2) Date of repair 10-8 1/8
(3) Initials of the Referencer _____

MADRAS RECORD OFFICE.

Government of Madras.

Public works DEPARTMENT.

G.O. No. 3789	Press
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Dated 4 12 1868.	

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*Proceedings of the Madras Government, Public Works Department,
4th December 1868.*

No. 106. Read the following Circular from the Secretary to the Government of India, Public Works Department, (Railway,) dated Simla, 25th September 1868, No. 20 :—

1. Referring to Public Works Department Resolution Nos. 971—9 R, dated 26th October 1865, I am directed by the Governor General in Council to forward copy of further papers relating to the investigation of Railway accidents, and to state that the Government of India leaves it to the several Local Governments and Administrations to make such rules as may be deemed proper for their own Civil and Railway Officials.

2. Some of the main points provided for in the rules drafted by the Government of Bengal have been inserted in the Bill for consolidating and amending the Law relating to Railways in India, but it is uncertain when this Bill will become Law.

From the Officiating Junior Secretary to the Government of Bengal, Judicial Department, to the Secretary to the Government of India, Public Works Department, dated 17th November 1865, No. 6,462.

1. With reference to previous correspondence* in the Railway Branch, Public Works Department, on the subject of the amendment of the

* From Secretary to Government of India, Public Works Department, No. 708 R, dated 19th August 1865.
To Secretary to Government of India, Public Works Department, No. 1,393 G, dated 23rd idem.
From Secretary to Government of India, Public Works Department, Nos. 848-56 R, dated 28th September.
From Secretary to Government of India, Public Works Department, No. 882 R, dated 5th October.
To Secretary to Government of India, Public Works Department, No. 1,611 G, dated 12th idem.

Railway Act (XVIII. 1854), and the preparation of a Code of Rules for the guidance of Government and the Railway Companies' servants in cases of accident, I am directed by the Lieutenant Governor to submit, for the consideration of the Government of India, the following additional suggestions :—

2. It appears necessary to introduce, among the proposed amendments of the Act, a clause which will enable the Police, on receiving intimation of any serious accident, at once, and without instructions from the Magistrate, to commence a local inquiry, and to summon any person who may appear likely to be acquainted with the facts and circumstances of the case. The Railway Law, as it stands, does not confer these powers, but only authority to arrest without warrant in certain cases persons known to have committed Railway offences, while the Code of Criminal Procedure only allows the Police to inquire into offences punishable under a special law upon a distinct order from the Magistrate. His Honor would, therefore, introduce a section to the following or the like effect :—“ Upon information being laid before an Officer in charge of a Police Station of the occurrence, within the limits of such station, of an accident of a nature likely to endanger life, or to cause serious loss of property, or which actually has endangered life, or caused serious loss of property ; or of the commission of any of the offences defined in Sections 25, 26, 27, 28, Act XVIII., 1854 ; or of the fact of any obstruction having been placed on the rails, he shall send immediate intimation to the Magistrate having jurisdiction, and shall proceed in person, or shall depute one of his subordinate Officers to the spot to inquire into the facts and circumstances of the case, and to take such measures as may be necessary for the discovery and apprehension of any persons who may be shown to have been guilty of any offence punishable under the Act. In the conduct of such inquiry, Officers of Police shall be guided by the same Rules, and shall exercise the same powers, as in inquiries instituted under Section 135 of the Code of Criminal Procedure (XXV., 1861).”

3. A clause seems also to be required, binding the Railway Company to make immediate report of all accidents to the Consulting Engineer. This might be incorporated in Sections 7 and 8 of the draft which accompanied the letter from your Office, No. 837, dated 3rd March 1862.

4. Similarly, the Railway Company ought to be bound to render all necessary assistance to the Police and the Magistrate in the conduct of inquiries, and should be rendered liable to a penalty for default, proved to the satisfaction of a Court of Justice.

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5. I am also to forward a revised set of Rules for the guidance of Officers concerned in the investigation of Railway accidents. These Rules are framed to meet the amended Law, not the Law as it now stands. The additions and alterations which will be found in paragraph 4 and paragraph 12, Clause 3, do not require any comment.

6. I am to take this opportunity to forward to the Government of India copy of a correspondence,† which has recently passed between the Railway Company and this Government, on the subject of the Rules requiring the Agent to prosecute his subordinates for breaches of the Act. The Lieutenant-Governor sees no reason to modify the opinion expressed by him in paragraph 4 of Major Hovenden's letter to your address, No. 1,393 G, dated 23rd August last.

Rules for the guidance of Officers by whom investigation into cases of Railway accidents should be conducted.

The Consulting Engineer's duties.—It shall be the duty of the Consulting Engineer to obtain the earliest possible information of all Railway accidents of a serious nature, and to make such inquiries as he shall deem necessary.

2. He shall report all special or serious accidents to the Lieutenant-Governor, through the Judicial Department of the Secretary's Office.

3. He shall direct the attention of Magistrates to cases which, in his opinion, require investigation.

4. In the event of a judicial inquiry into an accident, he shall, if called upon to do so, attend at the Magistrate's Office, and render him such assistance in the inquiry as he can. He may, if he see fit, be allowed to conduct the prosecution before the Magistrate. When a case is committed to the Sessions, he should watch the course of the final trial as well as the Committing Officer's proceedings.

4A. Whatever, under these Rules, is required to be done by the Consulting Engineer, may be done by the Deputy or Assistant Consulting Engineer.

5. *The duties of the District Superintendents of Police.*—The District Superintendent will himself proceed to the scene of every serious accident of a nature likely to, or which may actually, have endangered life, or caused serious loss of property. If, for any unavoidable reason, he is unable to go himself, he will at once report the fact to the Magistrate, who will either himself undertake the inquiry, or depute his Assistant, or the Assistant Superintendent of Police.

6. The Officer conducting the inquiry shall summon all Officers of the Railway Department whose presence he considers necessary, and, if he is of opinion that sufficient grounds exist for a judicial investigation, shall bind all parties to appear before the Magistrate on a day to be fixed by that Officer.

7. *The Magistrate's duties.*—The Magistrate, on receiving the report of the Officer holding the inquiry, shall fix a time and place for the judicial investigation of the case. Ordinarily, the investigation into serious accidents of a nature likely to endanger life, or cause serious loss of property, shall be held at the Railway Station nearest to the scene of the accident; but, if the Officer holding the inquiry see reason to think that the ends of justice will be promoted by his so doing, he may, on the application of the Railway Company, or of the Consulting Engineer to Government, appoint any other place within his jurisdiction for the hearing of the case, or may, with the sanction of the High Court, transfer the case for judicial investigation to any other Magistrate having jurisdiction on the line. Such other Magistrate shall thereupon proceed to inquire into the case in the same manner as if it had occurred in his own district.

8. The Magistrate will, whenever he wishes for the assistance of the Consulting Engineer, either in aiding the Police inquiry, or in prosecuting the case before him, or in giving evidence on matters relating to Railway Administration, issue a requisition to that Officer to attend.

9. He will report the result of his inquiries into all serious accidents to the Commissioner for the information of Government.

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10. He will insist upon the attendance of all Officers of the Railway Company, of whatever rank, if he considers such attendance necessary.

11. He will enforce the provisions of the Act against the high Officers of the Railway Company, in the event of their omitting to prosecute their subordinates for breaches of the Railway Law.

12. *The Railway Company's duties.*—These are—

1st.—To bring to justice all their subordinates guilty of breaches of the Railway Act.

2nd.—To report immediately to the Consulting Engineer all accidents occurring on the Line, giving the fullest information on the subject.

3rd.—To report at once to the District Superintendent, and the nearest Police Station, the occurrence of any accident or offence of a serious nature, such as described in Section Act 186

• To be filled in when the amended Law is passed, and to assist the Police and Magistrate in conducting inquiries into accidents, and to depute some responsible and intelligent Officer, who shall aid these authorities in obtaining evidence and securing the attendance of the Company's subordinates.

4th.—To see that any of their subordinates guilty of breaches of the Railway Act, who are likely to abscond, are at once arrested and made over to the District Police.

Memorandum by the Joint Secretary to the Government of Bengal, Railway Department, dated 31st October 1865, No. 1,697 G.

TRANSFERRED to the Judicial Department for disposal.

From the Deputy Agent, East Indian Railway Company, to the Deputy Consulting Engineer to the Government of Bengal, (Railway Department,) dated 16th October 1865, No. 9,258 G.

With reference to your No. 1,528 G, of 15th ultimo (clauses extracted marginally), I have the honor to forward copy of the Traffic Manager's No. 4,951 of 9th instant, and to inquire whether it was intended to deprive the Railway Company of the right of electing, which they should do, in major and minor cases.

There are offences of every day occurrence which are all, strictly speaking, breaches of the Railway Act, but in which prosecution is not advisable. These cases are inquired into and dealt with by heads of departments themselves.

I presume it is not intended to insist upon prosecution in all cases, but only in those of graver importance, and I think this point would be better left to the discretion of the Railway Company.

From the Traffic Manager, to the Agent, East Indian Railway Company, dated 9th October 1865, No. 4,954.

GOVERNMENT REGULATIONS AS TO ACCIDENTS AND OFFENCES.

With reference to the above, forwarded under your docket, No. 8,855, of 22nd ultimo, I beg to call your attention to Clause 11, in which Magistrates are called on to enforce the Act against the high Officers of the Railway Company in the event of their omitting to prosecute their subordinates for breaches of the Railway Law. Also to Clause 12 as regards Railway Officers, in which it is laid down as their duty—"to bring to justice all their subordinates guilty of breaches of the Railway Act."

Now, as almost every offence committed in the open Line by any servant of the Company in the Engineering, Locomotive, Telegraph, or Traffic Department, may be said to be an offence against the Railway Act, it will result, if strictly carried out, that all offences hitherto considered as minor ones, and dealt with by the head of the department, will have to be taken before Magistrates, or else, at any time, a Magistrate may, at his own discretion, proceed against a superior Officer. I need not point out the needless trouble and expense these minor prosecutions would be to the Company, and I think some explanation and qualification of these clauses is advisable. I shall be glad to hear from you on this subject at your early convenience.

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RESOLUTION—By the Government of Bengal, Judicial Department, dated 17th November 1865, No. 6,461.

Read letter from the Deputy Agent, East Indian Railway, No. 9,258 G, dated 16th ultimo, to the address of the Deputy Consulting Engineer to the Government of Bengal, which has been transferred to this department for disposal.

The Rules complained of by the Deputy Agent were framed rather with a view to the contemplated amendment of the Railway Act, than to the Act as it stands. But even now the Lieutenant-Governor thinks that they should not be left inoperative. Section 29, Act XVIII, 1854, enacts that every Officer and servant of the Railway Company shall be legally bound to do everything conducive to the safety of the public, which he is required to do, and to abstain from every act likely to cause danger, from which he is required to abstain, by any regulation made by the Company, and allowed by the Governor General in Council. Such a regulation binding the Agent, either in person or through one of his subordinate Officers, to prosecute for every offence against the Railway Act, whereby the safety of the public may, in his opinion, be endangered, as well as for every offence against the said Act, for which he may be required by the Magistrate to prosecute, ought, therefore, the Lieutenant-Governor thinks, to be framed by the Company, and submitted for the confirmation of Government.

ORDER.—Ordered, that a copy of this Resolution be sent to the Railway Branch for information and communication to the East Indian Railway Company's Agent.

From the Secretary to the Chief Commissioner, Central Provinces, Public Works Department, to the Secretary to the Government of India, Public Works Department, dated 6th December 1865, Nos. 13—5,189.

1. I am directed to acknowledge receipt of Public Works Department Proceedings, No. 976 R, dated 26th October 1865, forwarding, with certain observations, Draft Rules for the guidance of all Officers concerned in the investigation of Railway accidents.

2. In reply, I am directed to state that Mr. Temple quite concurs in the Rules and the amendments proposed by the Government of India.

3. Mr. Temple, however, desires me to suggest the following additions to the Rules—

The Railway Company's duties.—That in addition to reporting accidents to the Consulting Engineer, the Company shall be bound to make immediate report to the District Superintendent of Police, or, in his absence, to the Officer in charge of his head-quarters.

The duties of District Superintendent of Police.—The 2nd Clause of Rule 5 should be to the effect that, if the District Superintendent be unable to proceed to the scene of the accident, he should depute a subordinate, and that if he is absent, the Officer in charge should act as required of the District Superintendent himself.

It might also be added that in every case the District Superintendent, or Officer in charge at head-quarters, should at once forward on the report to the Magistrate, with a note showing the steps taken towards making an investigation into the matter.

The duties of the Magistrate.—Rule 7 might be worded as follows :—

The Magistrate, on receiving the report of the Police Officer, may, should he deem it necessary, proceed himself, or depute one of his Assistants, to the scene of the accident, and at the conclusion of his inquiry, or on receipt of report from the Officer conducting the inquiry, shall fix a time and place, &c.

RESOLUTION—By the Government of India, Public Works Department, dated 27th January 1866, Nos. 100—1.

Read :—

Letter No. 6,462, dated 17th November 1865, from the Government of Bengal, in the General Department (Judicial).

Letter No. 13—5,189, dated 6th December 1865, from the Chief Commissioner of the Central Provinces.

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Read again :—

Public Works Department Extract Proceedings, Nos. 704—14R, dated 19th August 1865.

Nos. 848—56½ R, dated 28th Sept. „

Letter No. 1,363 G, dated 23rd August 1865, from the Govern-

ment of Bengal, in the Railway Department.

Public Works Department Extract Proceedings Nos. 971—9 R, dated 26th October 1865

OBSERVATIONS.—The proposals in paragraphs 2 and 4 of the letter from the Government of Bengal, No. 6,462, should be referred for consideration in the Legislative Branch of the Home Department.

2. The proposal in paragraph 3 is met by Clause 41 of the Bill to consolidate and amend the Law relating to Railways in India, recently introduced into the Council of the Governor General for making Laws, and the proposal in paragraph 3, Clause 1, of the letter from the Chief Commissioner of the Central Provinces is provided for in Clause 57 of the Bill.

3. The remaining proposals in paragraphs 5 and 6 of the Bengal Government letter, and in the letter from the Chief Commissioner of the Central Provinces, refer to a Code of Rules for investigating accidents, which were drawn up by the Government of Bengal, and, as originally drafted, were circulated for consideration with Public Works Department Resolution Nos. 971—9 R, dated 26th October 1865.

4. Before these Rules are approved by the Government of India, the suggestions that may be made by other Governments will be considered, and the Rules will be brought into consonance with the Law as it may be amended.

5. The additions and alterations in the revised draft received from the Government of Bengal, commend themselves as improvements; but with reference to the objections taken by the Officers of the East Indian Railway to Rule 11, and Clauses 1 and 4 of Rule 12, it may be remarked that these provisions would apply to cases of accident only.

6. The modification and additions suggested by Mr. Temple to the duties of the District Superintendent of Police, and of the Magistrate, respectively, as defined in Rules 5 and 7, appear useful. They may be referred for the opinion of the Government of Bengal.

7. The papers connected with the Rules for investigating accidents should be forwarded to the Legislative Branch of the Home Department for the purpose of being placed before the Select Committee of the Council, to whom the Bill to amend the Law has been referred for report, in order that such provision may be introduced into the Bill as may be considered necessary or proper to further the end in view.

ORDER.—Ordered, that these observations be communicated to the Legislative Branch of the Home Department, together with copies of the papers now read for the first time, for the purposes indicated.

Ordered also, that these observations, together with a copy of the letter from the Chief Commissioner of the Central Provinces, be communicated to the Government of Bengal for information, and with reference to paragraph 6 for report.

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From the Officiating Under Secretary to Government of the Punjab, Public Works Department, Railway Branch, to the Secretary to the Government of India, Public Works Department, dated 24th March 1866, No. 79.

1. I have the honor to acknowledge the receipt of your several communications relating to the amendment of Act XVIII. of 1854, and forwarding Draft Rules for the guidance of all concerned in the investigation of Railway accidents, and, in the first place, to apologise for the delay which has occurred in replying to those communications from the case having been by mistake mislaid.

2. His Honor the Lieutenant-Governor desires me to express the entire concurrence of this Government in the proposed amendment of the Act, and also in the rules about Railway accidents. Immediately on receipt of the communications above alluded to, the Judicial Commissioner was asked for his opinion on the subject, and a copy of that Officer's reply is hereto appended for the information of the Supreme Government.

From the Judicial Commissioner of Punjab, to the Under Secretary to the Government of Punjab, Public Works Department, Railway Branch, dated 19th December 1865, No. 3,609.

1. I have the honor to acknowledge your No. 433 of 1st instant, relative to the investigation of Railway accidents, and to observe, with reference to the rules proposed for the guidance of Officers concerned in such investigations, that they seem generally suitable. I am disposed to think, however, that the Police should be by law empowered, on reasonable suspicion that there has been any infringement of the Railway Act, and without any complaint, to institute an inquiry with a view to bringing the offenders before a Magistrate. It would be well also to supplement the rule which imposes on the Railway Company the duty of prosecuting, by providing that it shall be the duty of every subordinate of the Railway Company who is aware of any breach of the Railway Act, to give information of the same to the Agent, either direct or through a prescribed channel, whenever he has reason to believe that the Agent may not otherwise obtain the information.

2. The opportunity should be taken also of providing a remedy, if possible, for the difficulty experienced at present in dealing with cases of cattle straying on the line, as noticed in your No. 1,073 of 8th instant. The Railway employés should be directed to take the stray cattle to the nearest pound established under Act III. of 1857, instead of, as at present, to the nearest Police Station, and cases in which the owners of animals straying on the line are prosecuted, should be triable by *Subordinate Magistrates*, so that if it is deemed expedient hereafter to invest any of the Railway Officers with Magisterial powers for the purpose of dealing with these cases, an appeal may lie from their orders.

3. With reference to paragraphs 4 and 5 of your letter, I beg to state that I concur generally with Mr. Thornton's remarks on the power which the Police at present possess of inquiring into Railway accidents. I have issued instructions on this subject to the Magisterial Authorities, as directed by the Lieutenant-Governor, and I now forward a copy of these instructions for His Honor's information.

4. The enclosures of your letter are herewith returned.

From the Judicial Commissioner of Punjab, to the Commissioners of Lahore, Mooltan, and Umritsur Divisions, dated 19th December 1865, Nos. 3,610—12.

1. As some misapprehension appears at present to exist in regard to the power of Magisterial or Police Officers to inquire into the circumstances attending the occurrence of Railway accidents, I have been requested by His Honor the Lieutenant-Governor to issue instructions in accordance with the present state of law on the subject.

2. You will observe that the Railway Act XVIII. of 1854 contains no provision authorising Magistrates or Police Officers to inquire officially into such accidents, and the provisions of the Criminal Procedure Code authorise official action only when the accident is attended with fatal results, or when a complaint has been made to the Magistrate that an offence has been committed, or when an offence, without any complaint, comes to the Magistrate's knowledge.

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3. If the accident be attended with loss of life it is the duty of the Police, under Section 161, Criminal Procedure Code, to make immediate inquiry and report the apparent cause of death.

4. If a complaint be made that an offence punishable under the Railway Act or other law, has been committed, the Magistrate will, of course, inquire into it under the ordinary rules.

5. If an offence punishable under the Railway Act or other law, come to the knowledge of the Magistrate, he may, under Section 63, Criminal Procedure Code, without any complaint take cognizance of it, and proceed against the person known or suspected to have committed the offence. If he does not know or suspect the person who has committed the offence, he may still, under Section 133, Criminal Procedure Code, direct inquiry to be made into the offence by a Police Officer.

6. You will observe that these provisions, except in the case of an accident attended with loss of life, only authorise the Magistrate to take official action when an offence comes to his knowledge, and the mere fact that a Railway accident has occurred is not of itself sufficient to justify the interference of the Magistrate, for it may have occurred quite independently of any offence having been committed.

7. But it will often be possible for the Police or the Magistrate, without making an official inquiry, or exercising their official authority, to obtain information regarding accidents occurring on the Railway, and if, from the information thus acquired, it appears to the Magistrate that an offence has been committed, he may, without any complaint having been made, proceed under the provisions noticed above, and make inquiry into the offence. It is, perhaps, unnecessary to remark that no measures unauthorised by law should be resorted to for obtaining such information.

8. A Bill for amending the Railway Act is now under the consideration of the Legislative Council, but until it pass into law, Magisterial and Police Officers should be guided by these instructions.

From the Secretary to the Resident at Hyderabad, Public Works Department, to the Secretary to the Government of India, Public Works Department, dated 21st November 1865, No. 114.

With reference to the Proceedings of Government in the Public Works Department, No. 977R, dated 26th October 1865, I have the honor, under instructions from the Resident, to state that all points in which improvement seems desirable appear to have been noticed in the replies of the different Governments, and I am desired only to urge the expediency of—

1st.—Making the Act applicable to Railways running through foreign territories, as proposed in paragraph 4 of Resolution No. 713, dated 19th August last.

2nd.—Of compelling a Station Master to report accidents endangering life, or causing serious injury to property, or likely to have either of these results, to the nearest District Superintendent of Police, or Assistant Superintendent in charge of a Division of a District, and also to the nearest Police Station, under penalty of a fine for every day's delay after the first 12 hours.

3rd.—Of giving all Magistrates, through whose jurisdiction the Railway runs, concurrent jurisdiction along the line, with reference to all matters connected with the Railway Act.

From the Under Secretary to the Government of the North-Western Provinces, Public Works Department, Railway Branch, to the Secretary to the Government of India, Public Works Department, dated 20th January 1866, No. 35.

1. I am directed to acknowledge the receipt of the observations of the Governor General in Council, on the Draft Rules concerning the investigation into Railway accidents, prepared by the Government of Bengal, forwarded with your No. 973 R., dated 26th October last.

2. In reply, I am to intimate that the rules as to accidents appear to be generally unobjectionable, but to submit the following remarks and suggestions in regard to certain clauses.

3. *Para. 8.*—Some provision should be made for inability of the Consulting Engineer to attend. If, as is proposed, there is to be but one Consulting Engineer for the whole line of the East Indian Railway, it is quite impossible that he should attend and look after all cases of accidents between Calcutta and Delhi, let alone the Jubbulpoor Line.

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Para. 12, Clause 4.—It is presumed that the Railway Officials or Police are alluded to as the parties who should arrest delinquents and make them over to the District Police.

4. His Honor sees no objection to the amendment of paragraph 3 of the Rules as given in paragraph 3 of the observations; if it is applicable to the first part only of the clause, some provision, the Lieutenant-Governor is of opinion, must be made for inability on the part of the District Superintendent of Police to attend.

From the Officiating Secretary to the Chief Commissioner of Oath, Public Works Department, to the Secretary to the Government of India, Public Works Department, dated 24th January 1866, No. 1,974.

1. With reference to your No. 975 R, dated 26th October 1865, forwarding, for such suggestions as may appear desirable, Draft Rules for guidance in investigation of Railway accidents, I have the honor, by direction of Chief Commissioner, to state that he considers the modifications mentioned in paragraph 3 of observations of Government of India desirable.

2. With regard to "Magistrate's duties," Chief Commissioner is of opinion that the Magistrate should be held responsible for promptitude in making the inquiry; he should see that the District Superintendent of Police, or, failing him, his Assistant is promptly and actively engaged in prosecuting inquiries; as the District Superintendent of Police is now entirely under the orders of the Magistrates, and, in fact, his Assistant for Police duties, it is the Magistrate that should be held responsible. Report of the occurrence of an accident should be made by the Railway Official (whether Agent or Station Master) nearest to the scene of accident to the Magistrate direct, by telegraph and letter, and it would then be for the Magistrate to direct the Police Officer to proceed to the spot, and to go himself also, should the occasion seem to require it.

3. Under the head of Railway Company's duties, Chief Commissioner would suggest that all accidents be reported to the Consulting Engineer by the Railway Company; in addition to this, it seems desirable that, where either loss of property, or injury to life or limb, or where attempts to cause either one or other of these, have occurred, the highest Railway Official on the spot should at once report to the Magistrate of the district, in the most expeditious manner possible; the Consulting Engineer might happen to be hundreds of miles away, and it is not, therefore, sufficient, Chief Commissioner thinks, in such cases to report only to him. Report should be made to the Magistrate in the first instance, as well as to the Consulting Engineer, as promptitude in instituting inquiries may be as necessary in cases of accidents as of ordinary crime. The Railway Company should be required to issue such orders as will ensure report being made in the speediest manner possible, to the Magistrate, and it would be well, in Railway Time Tables, to give the name of the district in which each Station is situated, otherwise, the Agents and Station Masters may not know to which Magistrate to report.

From the Secretary to the Government of Madras, Public Works Department, Railway Branch, to the Secretary to the Government of India, Public Works Department, dated 19th April 1866, No. 1,225.

I am directed to acknowledge the receipt of the Proceedings of His Excellency the Governor General of India in Council, No. 971 R, dated 26th October 1865, and in reply to transmit, for the consideration of the Government of India,

copies of the papers marginally noted, containing the remarks of this Government, and of the Consulting Engineer for Railways, on the Draft Rules for the guidance of Officers concerned in the investigation of Railway accidents.

From the Consulting Engineer for Railways, to the Secretary to the Government of Madras, Public Works Department, Railway Branch, dated 8th December 1865, No. 602.

1. I have the honor to acknowledge receipt of order of the 6th instant, No. 3,700, communicating, for any observations I may wish to make, the proposed Rules for the guidance of Officers concerned in the investigation of accidents on Railways.

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2. The only suggestions I have to make are as follow:—

Paragraph 11.—He will enforce the provisions of the Act against the Agent of the Railway Company, in the event of his omitting either to prosecute, or to cause heads of departments to prosecute subordinates who have infringed the Railway Law.

Paragraph 12.—There should be inserted between Clauses 1 and 2—to report immediately to the nearest Police Officer, or Magistrate, all accidents occurring on the line.

3. It would appear to me that, although the Agent is the responsible representative of the Company, the proper parties to prosecute subordinates for breaches of the Railway Act, are the heads of departments, who would, however, be guided by the instructions of the Agent. For example, I think an Engine Driver, who may have caused a collision, should be prosecuted by the Locomotive Superintendent; a Station Master, for omitting to put up signals, by the Traffic Manager, and so on.

4. It is desirable that the Local Railway Authorities should report the occurrence of accidents direct to the Magistrate, as great delay would be liable to arise, if the intelligence were to be conveyed to him through the Consulting Engineer.

Proceedings of the Madras Government, in the Judicial Department, dated 27th March 1866, No. 450.

Read again the Proceedings of Government in the Public Works Department, dated 6th December 1865, No. 3,700.

Read also the following letter:—

From the Inspector General of Madras Police, to the Chief Secretary to the Government of Madras, dated 3rd March 1866, No. 364.

In reply to G. O., No. 16, dated 5th January 1866, I have the honor to remark, with reference to paragraphs 5 and 6 of the Rules for the investigation of Railway accidents, that the preliminary investigation by Police Officers (without previous order by a Magistrate) under Chapter IX. of the Code of Criminal Procedure, is confined to the class of cases shown in the Schedule thereto appended. The Procedure laid down by the Code was evidently before the drafters of the Rules; but I have the same doubt whether it applies to such preliminary inquiry as this.

2. I think it will be necessary to have an express order by the Magistrate, under Section 133, to enable the Superintendent of Police to investigate such a case, otherwise I doubt whether he could summon individuals, or bind over parties to appear, as authorised by the Code.

3. The Superintendent of Police, or his Assistant, visits the scene of accidents in a possible case, and acts in aid of the Magistracy.

ORDER.—Ordered that the foregoing letter from the Inspector General of Police be communicated to the Public Works Department, with reference to the Proceedings in that Department, dated the 6th December last, No. 3,700.

2. The following remarks suggest themselves, on the proposed Rules for the investigation of Railway accidents:—

Rule 2.—The reports of special or serious accidents should, the Governor in Council thinks, be made to the Public Works Department of the Secretariat, from which they would, if necessary, be passed on to the Judicial Department.

Rule 4.—This Rule requires the Consulting Engineer to watch a case committed to a Court of Session pending final trial. It would be impossible for him to do so, as a rule, in every case. Moreover, it is the province of the Government Prosecutor to watch the case, and of the Police to obtain all available evidence.

Rules 5 and 6.—For the words "the Magistrate," the words "the Magistrate of the district" should be substituted; the Chief Executive Officer of the district being obviously the authority referred to in the Rules. "Magistrate" would embrace all persons exercising all or any of the powers of a Magistrate according to Section 15 of the Criminal Procedure Code.

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Rule 9.—As regards this Presidency, the words "Secretary to Government in the Public Works Department" should be substituted for the word "Commissioner."

Rule 10.—"Any Officer" should be substituted for "all Officers" in this Rule, and also in Rule 6.

3. Referring to the remarks of the Inspector General of Police on paragraphs 5 and 6 of the Rules in his letter above recorded, the Governor in Council observes that, in all cases likely to become the subject of investigation in connection with Railway accidents, Police Officers have the power, under the Code of Criminal Procedure, to make arrests without warrants, and, consequently, to hold preliminary inquiries without the express order of the Magistrate.

Order thereon by the Government of Madras, in the Public Works Department, dated 19th April 1866, No. 1,224.

ORDER.—Ordered that the foregoing papers be communicated to the Government of India.

From the Officiating Commissioner of Mysore, to the Secretary to the Government of India, Public Works Department, dated 1st April 1867, Nos. 2—1.

1. With reference to Government of India's Resolution No. 978 R, under date the 20th October last, forwarding, for consideration, the Draft Rules proposed by the Government of Bengal for the guidance of Officers concerned in the investigation of Railway accidents, I do myself the honor of submitting copy of a communication, received from the Officiating Judicial Commissioner in Mysore, in which, in paragraphs 3 and 4, he offers certain observations relative to those parts of Rule 7 that appear to contravene in some respects the provisions of the Code of Criminal Procedure. The objection further urged in paragraph 8, respecting the use in the 8th Rule of the term, "Commissioner," which is inapplicable both to the Madras Presidency and to this Province may be removed by omitting the words "to the Commissioner" altogether.

2. I beg to express my regret that, pending the reference made to the Divisional Officers, so much delay has taken place in submitting this reply.

From the Officiating Judicial Commissioner, to the Secretary to the Commissioner of Mysore, dated 8th March 1867, No. 245.

1. I have the honor to return the Proceedings of the Government of India, No. 978 R, with the draft of Rules for the investigation of Railway accidents, and to inform you that none of the Superintendents of Divisions have any suggestions on the subject to offer.

2. The Rules relating to the duties of a Magistrate appear to have reference to proposed alterations of Act XVIII of 1844 of which I have no information.

3. The Rule (7) which prescribes that the Judicial inquiry shall be held at the nearest Railway Station, might, in some instances, conflict with Sections 26 and 30 of the Code of Criminal Procedure, since the train might not have passed the nearest Station, and that Station might not be within the jurisdiction in which the accident occurred.

4. With regard to the subsequent part of the 7th Rule, it would seem more proper that application for the order transferring an inquiry to another jurisdiction, should be made to the High Court, who alone have any discretion in the matter, under Section 35 of the Code of Criminal Procedure.

5. The 8th Rule requires the Magistrate to report to the Commissioner, but in the Madras Presidency there are no Commissioners corresponding with those in Bengal.

6. It has been doubted whether, since the enactment of the Code of Criminal Procedure, the Executive Government have the power to make general rules for regulating the practice and proceedings of Criminal Courts in the Regulation Provinces. Such power is by Section 443 of the Code vested in the Sudder, now the High Courts, and Magistrates are bound by Section 21 of the same Code to guide themselves by the several provisions of the Code.

*Proceedings of the Madras Government, Public Works Department,
4th December 1868.*

From the Secretary to the Government of Bombay, Public Works Department, Railway Branch, to the Secretary to the Government of India, Public Works Department, dated 13th May 1867, No. 967.

I am directed to acknowledge the receipt of your No. 92, dated 21st January, forwarding the duplicate copy of the observations of the Government of India, No. 972, dated 26th October 1865, on the draft Rules for the investigation of accidents on Railways in India, for any suggestions this Government may have to offer thereon, as may appear desirable.

2. I am desired, in reply, to forward copies of the replies received from the Consulting Engineer for Railways to this Government, and the Agents of Railway Companies, communicating their opinions and views on these draft Rules.

3. At the same time, I am to add, as the opinion of this Government, that Rule II. should be modified according to the present practice here, i. e., the reports sent through the Railway Department. It saves time.

Rule III.—May be adopted.

Rule IV.—The Consulting Engineer's suggestions should be embodied in this Rule. The words "or his Deputy" should also be inserted in the first line.

Rule V.—This may be modified as proposed by the Government of India; but for the necessity for the attendance of the District Superintendent of Police should be restricted to cases in which loss of life has occurred. In cases of loss of property, the Railway Police Superintendent will be the proper person to make the inquiry. In cases of loss of life also he will make inquiry; but the District Superintendent should likewise receive notice, and should attend, as he may possibly be on the spot sooner than the Railway Superintendent, and in that case, should take the case up, but not otherwise. This restriction is absolutely necessary, or the Railway Police Superintendent and the District Superintendent will clash.

Rule VI.—May be adopted.

Rule VII.—This Rule appears already sufficiently provided for by Law. It is not for the Executive Government to issue instructions to Magistrates acting judicially.

Rule VIII.—May be adopted, with the addition at the close of the words "or send his Deputy."

Rule X.—Is quite unnecessary; the Magistrate has specific powers by Law, and no Rules can make those legal powers greater or less. He has ample powers for summoning any one he wants, and the Rule should be omitted.

Rule XI.—Is unnecessary and offensive, and should be omitted.

Rule XII.—May be adopted; but modified by the word "District," being omitted, and also Clause 4, as there is a Railway Police now organised with the same legal powers as the District Police.

Memorandum from the Consulting Engineer for Railways, Bombay, to the Secretary to the Government of Bombay, Public Works Department, Railway Branch, dated 17th April 1867, No. 1,256.

The undersigned has the honor to submit copies of the various replies received from the Officers to whom references were made on the subject of these Draft Rules.

General Rivers and Mr. Currey appear to be under the impression that these Rules were to be embodied in the Railway Act, but the undersigned does not understand that to be the case.

Taking the Rules in order, the following remarks may be offered for consideration:—

Rule I.—This is unobjectionable, and has been the practice in this office.

Rule II.—In this Presidency, reports of all accidents are furnished to the Secretary to Government, Railway Department.

*Proceedings of the Madras Government, Public Works Department,
4th December 1868.*

Rule III.—This is here done by the Secretary to Government, Railway Department.

Rule IV.—The first part of this Rule is acted on when a Magistrate requires the assistance of the Consulting Engineer, or one of his Deputies. The Consulting Engineer cannot, however, undertake to conduct a prosecution, or to watch a case; these duties should be performed by the Railway Companies' Solicitors, or by the Government Law Officers, should Government order an inquiry, and the Railway Company decline to prosecute.

Rule V.—This Rule cannot always be carried out. The Railway Superintendent of Police may, at the time of an accident occurring, be at a distant portion of the line, and not able to attend in time to be of any use. The District Superintendent may not happen to be near at hand. In any case, it seems unnecessary to provide for inquiry in cases where no loss of life or personal injury has occurred. Where property only is concerned, the liability of the Railway Company to make good the loss would be determined in the Civil Courts, and it is probable that their judgment would be given on the evidence brought before them, and not on the results of any inquiry made by Police Superintendents or Magistrates.

Rule VI.—With reference to the Agents' opinions on this question, it would seem desirable that the Police Superintendent should limit his summonses to local Railway Officers.

It would be obviously improper to summon the Agent of the Company to a distance of 300 or 400 miles to attend an inquiry on a broken limb.

Rule VII.—This Rule requires no remark beyond that already given as to inquiries where property merely is concerned, and that is generally desirable on account of the great convenience to Railway servants, that Judicial inquiries should be conducted as near as possible to a Railway Station.

Rule VIII.—It is of course to be understood that the Consulting Engineer may appoint one of his Deputies to represent him. Major Bonus points out a possible inconvenience with regard to the Sindh Railway, where the local Police Magistrates are stationed at a distance from the Railway.

Rule IX.—No remark.

Rule X.—May be open to grave objections if the Magistrate happened to be of an arbitrary disposition. The powers of a Magistrate, as before stated, are amply sufficient, and do not require any special extension for Railway purposes.

Rule XI.—The opinions of General Rivers and Mr. Currey are conclusive as to the necessity for leaving to the discretion of the Railway Companies, whether prosecutions should be instituted or not. Government can, whenever they see fit to make inquiries, call on the Agents for the reasons why they do not prosecute.

Rule XII.—These duties are best left to the discretion of the Railway Agents; it is impossible to lay down Rules to meet every case.

From the Agent, Great Indian Peninsula Railway Company, to the Consulting Engineer for Railways, Bombay, dated 16th March 1867, No. 1,641.

1. In reply to your letter of the 8th instant, I beg to submit that the whole principle of laying down a set of Rules, defining details of duties of several individuals, and making those Rules law, seems to me unpractical and unconstitutional.

2. Let Government give orders to their own servants, and punish them in their own way, if orders are disobeyed; but why, in Railway matters should these duties require legislative enactment, and what are the penalties if the rules are not obeyed?

3. Take, for instance, Rules 10 and 11 of the Magistrate's Rules; how is he to insist on Officers' attendance, and how can this be carried out to such an unlimited extent as the words, if he considers such attendance necessary, imply?

4. All Courts have legal powers to order the attendance of any evidence, but what are the Rules or Laws now proposed to effect in addition?

*Proceedings of the Madras Government, Public Works Department,
4th December 1868.*

5. So, also, as to the so-called Railway Company's duties. I quite admit these to be duties, and I am prepared to admit many others, but no legislation is likely to make breaches of them penal, nor would any Judge inflict penalties laid down by such legislation.

6. Take Rule 2.—The present Railway Act provides for the reporting of accidents; how could the supposed improvement in this be carried out? How could the fullest information be given immediately.

From the Deputy Consulting Engineer for Railways in Sindh, to the Consulting Engineer for Railways, Bombay, dated 18th March 1867, No. 426.

I have the honor to offer the following remarks upon the Draft Rules referred for my opinion under your No. 723 of the 8th instant:—

No. 1.—Provision will, of course, be made for the words "Consulting Engineer" to include Deputy Consulting Engineer in all the Rules.

No. 2.—The following should be added at the end of this Rule—"In Sindh, the report will be made to the Commissioner in Sindh."

Nos. 3 and 4.—I do not know whether the word "Magistrate" includes other Judicial Officers of lower rank. If it does, these Rules should be modified, for the inconvenience caused by the Deputy Consulting Engineer being summoned to Jerruck or Tatta, would be very great, and he should not be liable to be so summoned by Native Officials, who, in most cases, make the necessary inquiries regarding accidents on the Sindh line. See remarks in Rule 7.

No. 6.—After the word "Department," the words, "and all servants of the Railway Company," should be inserted.

No. 7.—I suggest the addition of the following words to this Rule—"The inquiry shall not be held at any place which is not on the line, or one of the terminal points."

This addition will prevent the occurrence of the contingency contemplated in my remarks in Nos. 3 and 4.

No. 9.—I think the following should be added to this Rule, in order that the Consulting Engineer or his Deputies may be in a position to comply with the orders of Government to the effect, that, in the case of all fatal accidents, the "verdict of the Court of Inquest is to be given on the accident return."

"In all cases of fatal accident, the Consulting Engineer will be furnished by the Magistrate with a copy of the verdict of the Court of Inquest."

From the Agent, B. B. and Central India Railway Company, to the Consulting Engineer for Railways, Bombay, dated 27th March 1867, No. 1,404.

1. In reply to your letter, No. 722, of the 8th instant, enclosing, for my observations, a copy of Draft Rules for the guidance of Officers concerned in the investigation of Railway accidents, with reference to the proposed new Railway Act, I have the honor to submit, in the first place, that I should much prefer in expressing any opinions about the new Railway Act, either to have the Act as a whole, or at least to have all the clauses bearing on any one question before me. The Rules under notice can hardly, I imagine, comprehend all which might be requisite, either to be specified in the Act, or to be issued as instructions to Officers who may have to carry out the Act with respect to Railway accidents, and it is awkward to have to treat the subject piece-meal. However, taking the Rules by themselves, I may state that they appear to me to be in many points objectionable and unnecessary, and, in fact, I do not conceive that circumstances call for the embodiment of regulations, such as these at all in an Act of the Legislature.

2. Adverting to one or two points touched upon in the Rules—
Clause 4.—Any prosecution before a Magistrate or Court of Law should be conducted by the Company, but if, in any case, the Company declined to prosecute, it might be competent to Government, through the Consulting Engineer, to order and conduct a prosecution as on the part of the Crown, if they thought fit.

*Proceedings of the Madras Government, Public Works Department,
4th December 1868.*

Clauses 5 and 6.—The interference to the extent specified, of the District Superintendent of Police, is quite unnecessary; any police action that may be called for can be taken by the Railway Police; it is not requisite for the Police to intervene in all cases.

Clause 10.—I apprehend that a Magistrate may be expected to dispose of a case brought before him according to Law, without being invited, as he is by this clause, to summon gentlemen, whose time is fully occupied, perhaps hundreds of miles, to be present at an investigation, or render explanations which can be just as well be attended to by the local Officers who represent the Company on the spot, and I am very sorry to notice, both in this and the following clause, another instance of the vexatious spirit which pervaded many of the details of the proposed new Railway Act, and which was remonstrated against by the Agent of the Great Indian Peninsula Railway and myself in the beginning of 1866.

Clauses 11 and 12.—The Company are, and have always been, ready to prosecute their subordinates for breaches of the Railway Act, but a discretion should rest with the responsible Officers of the Company, as to whether, in any particular case, a prosecution should be instituted or not; indiscriminate legal prosecution in all cases will not result in providing the Company with an efficient staff of European subordinates, and will not conduce to the discipline or proper working of the line for which the chief Officers of the Company are answerable. Further, a prosecution, which fails before a Magistrate or Jury, does more harm than good, and, in many instances in which we have instituted prosecutions, we have been unable to obtain convictions owing to the contradictory or unsatisfactory character of the native evidence adduced, the absconding of important native witnesses, the different view which various Magistrates take of cases of the same nature, and other causes, most of them peculiar to this country; a proper discretion must, therefore, be used in resorting to legal prosecutions. Paragraph 2 of Clause 12 is carried out. With respect to paragraph 3 of Clause 12; the Company always take care to be represented by Officers competent to give the Magistrate any information he may require in prosecutions under the Railway Act. Paragraph 4, Clause 12, is carried out. Taking Clause 12, however, as a whole headed, and herefore I apprehend, professing to define the "Railway Company's duties," it is, if I rightly understand the duties, remarkable rather for those which it omits mention of altogether, than for those which it enumerates.

No. 107.

ORDER THEREON, 4th December 1868, No. 3,789.

RAILWAY, No. 10.

As nothing has occurred in this Presidency to render a change of existing rules for the investigation of Railway accidents necessary, the consideration of the subject of the foregoing papers will be deferred until the passing of the new Railway Act.

(True Extract.)

Colonel, R. E.,

Secretary to Government.

To the Consulting Engineer for Railways.

Exd. F. R. Bantleman.

Court of 1868 Madras.

PUBLIC WORKS.

To

THE CONSULTING ENGINEER FOR
RAILWAYS.

Dated December, 1868.

Recd.

G. O., 12 December 1868, No. 3,789.

DECEMBER.

Nos. 106-107

Accidents (Railway).—The consideration of the subject for effecting a change in the existing rules on account of the investigation of accidents, deferred until the passing of the new Railway Act.

Public Works Dept.

Proceedings of the Madras Government
under date 11th Nov 1868.

To the Govt of India

Read the following
Here enters by 20. 9. 25. Sept 1868.

The Government are of
opinion that the rules proposed
by the Government of Bengal
for the guidance of Officers by
whom investigations into cases
of Railway accidents should
be conducted, with the amend-

Nothing has occurred in
the preceding to create a
necessity for Rules such as the
Bengal Govt have prepared
in a hurry house.

It is very awkward to publish
rules which in any respect go
beyond the law - and hence we
have it admitted that the law
is so, and that it is not until
when the new law will come
into existence. I think to
leave matters as they now are,
if some rules are to be put up
the new Railway Act.

ments suggested by the In-
specter General of Madras
Police in his letter of the 3rd
March 1868, will be found
sufficient to ensure the
safety of the public. They
will accordingly be brought

A. H.

into operation in the British
 design, and the communication
 to the Consulting Eng. for
 Railway and to the Judicial
 Dept. for circulation to the
 authorities concerned, for in-
 formation and guidance. —

to assuming the responsibility
of the Govt. not accepted ^{my}
supper I have looked over this
Draft Rules & made in them what
seem to be a few necessary
changes.

The Consulting Engineer
for Railways
Civilian Dept.

Rules for the guidance of Officers by
in investigation into cases of Railway Accidents
shall be conducted.

The Consulting Engineer's duties:-

It shall be the duty of the Consulting Engineer to obtain the earliest possible information of all Railway accidents of a serious nature, and to make such enquiries as he shall deem necessary.

2. The Reports of Special or serious accidents should be made to the Public Works Dept. of the Secretariat from which they would, if necessary, be passed on to the Judicial Dept.

He.

C. Eng.
3. He shall direct the attention of Magistrates to cases which, in his opinion, require investigation.

4. In the event of a judicial enquiry into an accident, he shall, if called upon to do so, attend at the Magistrate's Office, and render him such assistance in the enquiry as he can. He may, if he see fit, be allowed to conduct the prosecution before the Magistrate.

4. A. Whatever, under these Rules, is required to be done by the Consulting Engineer, may be done by the Deputy or Assistant Consulting Engineer.

5. The duties of the District Superintendent of Police.

The District Superintendent or his Agent, if so directed, will himself proceed to the scene

of

of every serious accident of a nature likely to, or which may actually, have endangered life, or caused serious loss of property. If, for any unavoidable reason, he is unable to go himself, he will at once report the fact to the Magistrate of the District, who will either himself undertake the enquiry, or depute his Assistant, or the Assistant Superintendent of Police.

6. The Officer conducting the enquiry shall summon any Officer of the Railway Dept. whose presence he considers necessary, and, if he is of opinion that sufficient grounds exist for a judicial investigation, shall bind all parties to appear before the Magistrate on a day to be fixed by that Officer.

7. The

7. The Magistrate's duties:-

The Magistrate, on receiving the Report of the Officer holding the enquiry, shall fix a time and place for the judicial investigation of the case. *if such to be done by him or by another Magistrate.*

Ordinarily, the investigation into serious accidents of a nature likely to endanger life or cause serious loss of property, shall be held at the Railway Station nearest to the scene of the accident; but, if the Officer holding the enquiry see reason to think that the ends of justice will be promoted by his so doing, he may, on the application of the Railway Company, or of the Consulting Engineer to Government, appoint any other place within his jurisdiction for the hearing

but a Magistrate may, if he thinks fit, hold the enquiry at any other place within his jurisdiction.

of the case, or may, with the sanction of the High Court, transfer the case for judicial investigation to any other Magistrate having jurisdiction in the District. Such other Magistrate shall thereupon proceed to enquire into the case in the same manner as if it had occurred in his own District.

8. The Magistrate will, whenever he makes for the assistance of the Consulting Engineer, either in aiding the Police enquiry, or in prosecuting the case before him, or in giving evidence on matters relating to Railway Administration, issue a requisition to that Officer to attend.

9. He will report the result of his enquiries into all serious accidents to the Secretary to

Government in the Public Works Department for the information of Govt.

10. He will insist upon the attendance of any Officer of the Railway Company, of whatever rank, if he considers such attendance necessary.

11. He will enforce the provisions of the Act against high Officers of the Railway Company, in the event of their omitting to prosecute their subordinates for breaches of the Railway Law.

12. The Railway Company's duties.

These are -
1st. To bring to justice all their subordinates guilty of breaches of the Railway Act.

2nd. To report immediately to the Consulting Engineer all accidents occurring on the Line

When it has become known that an accident has occurred on the line, the Officer in charge of the line should immediately report the same to the Consulting Engineer.

When it has become known that an accident has occurred on the line, the Officer in charge of the line should immediately report the same to the Consulting Engineer.

? Administer to the Officer

Line, giving the fullest information on the subject.

3rd. To report at once to the District Superintendent, and at the nearest Police Station, the occurrence of any accident or offence of a serious nature such as described in Section 186th, and to assist the Police and Magistrate in conducting enquiries into accidents, and to depute some responsible and intelligent Officer, who shall aid those Authorities in obtaining evidence and securing the attendance of the Company's subordinates.

4th. To see that any of their subordinates guilty of breaches of the Railway Act, who are likely

be filled in when the ended Carr is papered.

likely to abscond, are at
once arrested and made over
to the District Police.

(10)

3789 Public Works Department
No 3789
Proceedings of the Madras Government
Under date the 4th December 1868
(Read the following)

to the Secretary to the
Government of India G.O. dated 25th Sept 1868 No 20

As nothing has occurred
in this Presidency to render
a change of existing rules
for the investigation of
Railway accidents necessary
the consideration of the sub-
ject of the foregoing paper
will be deferred until the
passing of the new
Railway Act.

To
The Comr Genl for Railways
13
Decr 7/12/68



Dec 4/87
Govt. of 1868 Madras.

PUBLIC WORKS.

To
The Consulting Engineer
for Railways

Dated th.

Recd. E.M.

G. O. 4th Decr 1868, No. 3789

Nos. 106 & 107

Accidents (Railway). The consideration
of the subject for effecting a change
in the ^{existing} rules on account of the in-
vestigation of accidents, deferred
until the passing of the new Rail-
way Act.