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MADRAS RECORD OFFICE.

Government of Madras.

Public works DEPARTMENT.

G.O. No.	2336	Press
66, 67		Mis.
Dated	5-10	18 12.

Not to be folded or roughly handled

*Proceedings of the Madras Government, Public Works Department,
5th October 1872.*

No. 66. Read the following letter from the Officiating Deputy Secretary to the Government of India, Public Works Department, (Railway,) to the Secretary to the Government of Madras, Public Works Department, (Railway,) dated Simla, 17th September 1872, No. 1,491 G-R :—

In compliance with the request made in Public Works Department No. 1,464-R. of the 23rd August 1870, the Government of India have been supplied by you half-yearly with a statement of the changes made in the tariffs of the Railways in the Madras Presidency; but the statements thus obtained are not convenient for reference, when the tariff charge of articles not exceptionally or specially treated has to be ascertained.

2. I am accordingly to request that two complete copies of the classified goods tariff may be regularly furnished to the Government of India whenever fresh editions are published.

No. 67. ORDER THEREON, 5th October 1872, No. 2,336.

RAILWAY, No. 8.

COMMUNICATED to the Consulting
Engineer for Railways for future
guidance.

(True Extract.)

(Signed) G. W. WALKER, Colonel, R.E.,

Secretary to Government.

To the Consulting Engineer for Railways.

Exd. E. C. Shunker.

All communications
should be addressed to
the Secretary

No 14915-R
GOVERNMENT OF INDIA
PUBLIC WORKS DEPARTMENT.
STATE RAILWAYS.

To

The Secretary to the Govt. of Madras,
Public Works Department (Railways)

Simla, 17th September 1872

Sir,

In compliance with the request made
in Public Works Department No. 1464-R
of the 23rd August 1870, the Government
of India have been supplied by you
half yearly with a statement of the
changes made in the tariffs of the
Railways in the Madras Presidency,
but the statements thus obtained
are not convenient for reference, when
the tariff charge of articles not ex-

to I may however mention that it is within
my knowledge that he heard nothing of the
accident having happened till many days
afterwards; and that, therefore, at all events,
considering the great number of the heaps of
stones made at his instance, by way
of contradiction to the Plaintiff's assertion
that there was not room for him to drive
past. The heaps of stone were collected
for the purpose of building a Culvert close
to the spot, and very near the place, the pass-
way has been stopped, and a temporary track
made for accommodation of traffic. It
will be seen also, that the Plaintiff admits
that he was aware that this material was
being collected, and that he had driven
over it on the previous day, he cannot,
therefore, plead ignorance that the Roadway
was to some measure narrowed; he also
admits, and it is notorious among those
who know him, that he is extremely short-
sighted, and that, although he can see with a
glass, he cannot say whether he was using
one at the time. I fancy that it is scarcely
likely that he was using his glass, unless
he wears spectacles, a question that was
better to be asked. I know the Plaintiff
personally, and have never seen him wear-
ing spectacles. The time of the year
when the accident happened was the full
Coffee crop season, when the traffic along
the road is greatest; there cannot be a shadow
of

75 2
of doubt that numerous carts had been
passing along the road throughout the
day, and as it was a moonlight night, they
could also (as is the practice) have used the
Road long before any of the Departmental
work people could have had an opportunity
of removing the obstacle, had it existed.
It is proved, that there was nothing to
obstruct the Road between 8 and 9, the follow-
ing morning; and it is also a fact that
the spot where the occurrence took place
is about 12 miles from the nearest Depart-
mental only lines; while Mr. McAlroane's
house is about the same distance, or a little
more, in the other direction, and off the Road,
making it unlikely that news of the
accident could have reached the work people
early enough to enable them to put the stones
heaps further off from each other. Those
who know Laurence Clarke, and of your
prejudice, scarcely admit the likelihood of
their taking the trouble to effect such re-
moval unless by special orders, even if
they had heard of the accident. I must
say I think it scarcely credible that
while the road was admitted by the Plain-
tiff himself not to be dangerously obstruc-
ted the previous day, when he drove over it
the Plaintiff's testimony that it was used through-
out the day and night by country carts, and
was also perfectly safe early the follow-
ing morning, that just forth the occasion
of

to of the Plaintiff's moonlight drive, at a time
when he was naturally driving tolerably fast
to get home to his dinner, the heaps of stones
were purposely put close together. It
must be born in mind that although the
road is in use for wheel traffic, it is one
under construction along its whole distance;
and that where cuttings or bridges have
to be built, it is absolutely necessary that
material should be collected; and that if
sufficient provision is not made to accommodate
traffic while such work is going on, more
cannot be demanded. It is not long
ago that there was not a mile of road hardly
in the whole district that could be used by
wheels, even for slow traffic, and many were
seriously practicable for horsemen: to expect,
therefore, that the same confidence, and want
of caution, is readable driving over country
roads by night as would be in a Presidency
Territory, is absolutely unreasonable. I think
it is absolutely advisable, and if such a precedent
were established, Government would be
exposed to continual actions of such a
nature. I do not mean for one instant
to say anything against the Plaintiff
in the present suit (whose character secures
him from any such insinuation) but I
do know of some individuals who might
meet with accidents which, if the principle
of prior knowledge of an obstacle, or danger
in a road, were to be held as not necessitating

caution, would no doubt have frequent oppor-
tunities of bringing similar suits, it would
not be easy to prove whether insobriety had
had anything to do with such an incident,
but it would not be at all unlikely, and
therefore, I think that it is desirable that
this case should be dealt with by some
legal authority of somewhat higher stand-
ing than the Municipality of North Wynand.
My own theory is that a stone had in all
probability either been accidentally dislodged
from an adjoining heap by a Palmer Bull
cart, or been purposely placed on the road
by a Cart driver, to stretch his wheels,
a practice that they are very prone to, and
that Mr. Malcolms, a short-sighted man,
driving at a tolerably rapid pace, in a very
rickety conveyance, bumped his wheel
on the stone, and was jerked out. It will
be observed that Mr. Malcolms' evi-
dence supports this theory, and it is
further strengthened by the fact that
neither she, nor her child, was thrown
out, nor was the dog cart upset; had the
obstruction been a heap of stones, this latter
could not have been avoided; and moreover,
unless the conveyance was being rapidly
driven such a ^{very slight} first cut scarcely have
occurred, but the obstacle would either have
stopped the Cart altogether, or the wheel
would have gone too gradually over it to
cause much a shock. In that case I

2. It cannot see how any one can be held responsible, unless the person placing the stone there could be identified. I do not know whether Coolies employed on daily hire are in law constituted servants and whether employees are liable for their acts when out in accordance with the orders given by their masters daily labourers.

3. I have only further to state that the costs in the suit up to date have been Plaintiff's Rs. 60, Defendant's Rs. 47 9. Mr. Gaster did not apply to me to take up the case officially prior to the hearing before the Commissioner. I should have brought it before you.

4. I have now to ask instructions as to whether Government is disposed to defend the case or to appeal in case of an adverse finding by the Commissioner. I myself think that it would be best to have the points of law's question definitely settled.

5. There is evidently a clerical error in the heading of the Commissioner's proceedings which is dated 22 September 1872 -

I have the honour to be
Sir,
Your most Obedient servant
P. B. Kew
Major
Special Exp. Engineer
Wynand

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Path Works 1872 Department
Trans. of 1872 for Oct 10
The 1st. Engrs. Co. 29
Wynand

To.
The Secy. to Genl.
D. P. 10
Madison.

Date 27th }
No. 11th } Sept 1872

En. 10
No. 346. —

P. W. 4637/72.

Submitted Document
connected with the list
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ag. Mr. H. W. 10 Sub Eng
North Wynand Range
for order. —

Sept 19/72 No 42
encl. to Oct 12 1872

No 2339.7 Oct 1872

to cannot see how and where can be better

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G. H. H. S.

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To
The Consulting Engineer
for Railways

Dated

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