

6. In submitting the Budget for 1885-86 the effect of the transfer of these tolls will be shown and proposals submitted for orders. In the meantime, I can only say that if the tolls are withdrawn as well as the maintenance grant of the road, the Local Fund Board will be completely crippled and might just as well be abolished, for it will no longer be able to discharge the obligations which are laid upon it.

ENCLOSURE No. 1.
Comparative Table of Tolls.

SCHEDULE UNDER ACT XV OF 1864 (INDIA).		CORRESPONDING CHARGE UNDER SCHEDULE OF MADRAS ACT IV OF 1871.	
Particulars.	Amount.	Amount.	Remarks.
	RS. A. P.	RS. A. P.	
On every four-wheeled carriage ...	2 0 0	0 8 0	(On springs).
On every two-wheeled carriage ...	1 0 0	0 4 0	Do.
On every ekka ...	0 4 0	...	Description of vehicle unknown.
On every hackery on springs ...	0 2 0	0 4 0	
On every cart and hackery not on springs drawn by eight bullocks, buffaloes, horses, ponies, asses or mules, if laden.	1 8 0	0 4 0	
On every cart and hackery not on springs drawn by eight bullocks, buffaloes, horses, ponies, asses or mules, if not laden.	0 8 0	0 2 0	
On every cart and hackery drawn by six bullocks, &c., if laden.	0 12 0	0 4 0	
On every cart and hackery drawn by six bullocks, &c., if not laden.	0 6 0	0 2 0	
On every cart and hackery drawn by four bullocks, &c., if laden.	0 8 0	0 4 0	
On every cart and hackery drawn by four bullocks, &c., if not laden.	0 4 0	0 2 0	
On every cart and hackery drawn by two bullocks, &c., if laden.	0 4 0	...	} Same.
On every cart and hackery drawn by two bullocks, &c., if not laden.	0 2 0	...	
Buffaloes or bullocks per head, if laden.	0 1 0	...	} Free.
Buffaloes or bullocks, per head if not laden.	0 0 6	...	
On every elephant ...	1 8 0	1 0 0	
On every camel, if laden ...	0 8 0	0 4 0	
On every camel, if not laden ...	0 4 0	0 4 0	
On every horse, if laden or ridden ...	0 1 0	0 2 0	
On every horse, unladen or led ...	0	0	
On every tattu or mule, if laden or ridden.	0 0 9	0 1 0	mules.
On every tattu or mule, unladen or led.	0 0 6	...	No provision for and Anna 1 for ponies and asses laden.
On every ass, if laden or ridden ...	0 0 6	...	Free (ponies and asses).
On every ass, unladen or led ...	0 0 6	0 1 0	
On every sheep, goat or pig ...	0 0 3	...	
On every palanquin, dhooly, palna, tonga with eight bearers.	1 0 0	...	} Free.
On every palanquin, dhooly, palna, tonga with six bearers.	0 12 0	...	
On every palanquin, dhooly, palna, tonga with four bearers.	0 8 0	...	
On every palanquin, dhooly, palna, tonga with two bearers.	0 4 0	...	
On every foot-passenger ...	0 0 3	...	

By order of the Superintendent, Madras Survey.

No. 1424

Bellary Chepauk, 19 October 188

From

Lt. Col. A. M. V. S. R. E.

THE SUPERINTENDING ENGINEER,

3rd 1st CIRCLE,

To

THE

Chief Engineer

P. D. D.

Madras

Sir,

Enclosures.

I have the honor to request that sanction may be given to write off to the debit of Establishment, the sum of Rs. 7 being the amount of one month's salary advanced to Overseer's clerk A. Premising while on Privilege Leave.

2. The advance was authorized agreeably to Rule I Section 138 of the Privilege Leave Code (6th Edition), but as the clerk resigned his appointment at the expiration of the Privilege Leave, the Examiner requires the sanction of the Government for the adjustment of the advance, with reference to the "note" under section 76 of the Leave Code which rules that Privilege Leave allowances are not due to the officer, if he does not return to duty on the expiration of the leave.

3. The Executive Engineer states that the advance cannot be recovered as the man has left the service.

I have the honor to be

Your most obedient servant

Lt. Col. A. M. V. S. R. E.

Superintending Engineer 3rd Circle

Copy to Superintendent, Madras Survey.

No. 207
C. O. Form No. 89

For

LIST OF INSTRUMENTS SENT FOR REPAIR.

Description of Instruments.

No.

Size in
Inches.

Maker's Name.

With or without
Stand.

REMARKS.
REC'D 11 SEP 84

3 Little Prisms
complete

1. David Waller
spare

These are sent for
necessary repairs &
readjustments

SURVEY OFFICE,

Madras

1892

By Capt. J. S. Superintendent, Madras Survey.

FORMER CASES.

No.

of 187

Receipt No.

Dated

LATER CASES.

No.

of 187

No.

Subject.

Litho Presses; &

Forwards for

repair.

From

The

Col. H. J. Rogers &

To

Supl. Stores

The

General Supl

D. P. W. stores

Dated

Despatched

Received

707
m

Subject.

Litho Presses; &

Forwards for

repair.

1874

1074

76987

September

GOVERNMENT OF MADRAS.

PUBLIC WORKS DEPARTMENT.

General.
Account.

READ—the following letter from D. C. GORDON, Esq., Examiner, Public Works Accounts, to the Secretary to Government, Public Works Department, dated Madras, 29th August 1884, No. 59 W.:—

I have the honor to forward, for information and orders of Government, notes by Mr. Rainier, Deputy Examiner, of his inspection of the office of the Bellary division.

Paragraph 2.—The Executive Engineer's attention should be given to this.

Paragraph 3.—The Superintending Engineer will consider these matters with reference to paragraph 2181 (standing order No. 155 of 1884) of the code, G.O., No. 271 W., of 24th January 1883, and code paragraph 2306.

Paragraph 4.—The accounts for July were received on 21st August, and if the work abstracts had been posted periodically on receipt of the initial accounts, the chances are the accounts would have been received much earlier.

Paragraph 6.—There is no excuse whatever for these delays, if there be proper system and methodical arrangements in the office.

Paragraph 9.—Proposals should be submitted to the Superintending Engineer.

Paragraph 10.—The whole of this matter requires the Superintending Engineer's interference. As regards the military quarters, the procedure is clearly set down in code paragraphs 1447 to 1454 (including standing order No. 210 of 1883) and if these rules are observed there should be neither trouble nor unpunctuality. In regard to the old barracks at Rámandrug, and their occupation rent-free or otherwise, orders of Government are perhaps necessary. The attention of the Superintending Engineer is invited to code paragraph 1230 in reference to the rent payable by the overseer.

Paragraphs 7, 11 and 12.—The remarks show the grounds of complaint which this office has against the work sent from this division. The records and books examined at this inspection are in fair order, there is little or nothing to find fault with; but where the detailed audit of the accounts is concerned there are evidences of carelessness to instructions, vague explanations on points referred, and an apparent want of energy and spring about the office from which it wants rousing. The Executive Engineer has to remember that the advancement of the accountant depends on the work he sends to the audit office, rather than on what is seen at inspections, and that inattention to instructions sent out in audit notes, &c., react on the divisional office and on its administration.

ENCLOSURE.

Notes of inspection by H. RAINIER, Esq., Deputy Examiner, Public Works Accounts, Madras, of the office of the Executive Engineer, Bellary Division, on the 14th and 15th August 1884.

Major S. C. Clarke, R.E., the Executive Engineer, and P. Bashiem Naidu, the accountant, were present. The office was last inspected on the 28th September 1883 (*vide* G.O., No. 2963 W., of 18th October 1883).

2. The imprest accounts are in order, and so are the cash-books. The accuracy of the Executive Engineer's drawing account balance on 31st July 1884 was proved. A more complete preparation of the cash balance statement is promised. Insufficient care in this document led to

GENERAL.
ESTABLISHMENT.

G.O. of (1884) Madras.
PUBLIC WORKS.

Dated August, 29th.

Recd.

Encl.

G.O., 29th Aug. 1884, No. 2137 W.

AUGUST.

Rent of Government Buildings

Rate for fixing.—Orders intimating that G.O., No. 1330, dated 18th June 1884, Public Department, prescribing the —, cannot be acted upon until confirmed by the Government of India.

29TH AUGUST 1884, No. 2137 W., PUBLIC WORKS.

GOVERNMENT OF MADRAS.

PUBLIC WORKS DEPARTMENT.

General.
Establishment.

READ—the following letter from Colonel J. BEATTY, R.E., Superintending Engineer, IV Circle, to the Chief Engineer, Public Works Department, dated Coimbatore, 18th August 1884, No. 379 E.W. :—

I have the honor to request you will be good enough to furnish me with a copy of G.O., No. 1330, Public, of 18th June 1884, and inform me if I am to act upon it. The Collector of Salem claims to have his rent charged according to that order from the date it was issued.

ORDER—dated 29th August 1884, No. 2137 W., Public Works.

G.O., Public, No. 1330, dated 18th June 1884, cannot be acted upon in the Public Works Department until it has received the confirmation of the Government of India, and has been formally promulgated to officers of the department for guidance.

(True Extract.)

Major, R.E.,
Under Secy. to Govt., P.W.D.

To Superintending Engineers.
To the Consulting Architect to Government.
„ Examiner, Public Works Accounts.
„ Public Department.

Exd. E. Fernandez.
Spare Copies

GENERAL.
ESTABLISHMENT.

Govt. of (1884) Madras.

PUBLIC WORKS.

Dated August, 11th.

Recd.

Encl.

11th Aug. 1884, No. 1958 W.

AUGUST.

Rent

Government of India requested to confirm the proceedings of Madras Government, Public Department, prescribing 6 per cent. on the capital cost of a building as its maximum monthly —.

11TH AUGUST 1884, No. 1958 W., PUBLIC WORKS.

PUBLIC WORKS DEPARTMENT.

General.
Establishment.

LETTER—from

COLONEL J. SHAW-STEWART, R.E.,

Secretary to the Government of Madras,

Public Works Department,

To

THE SECRETARY TO THE GOVERNMENT OF INDIA,

PUBLIC WORKS DEPARTMENT.

SIR,

I am directed to forward, for the confirmation of the Government of India, the accompanying copy of proceedings of Government in the Public Department, No. 1330, dated 18th June 1884, prescribing 6 per cent. on the capital cost of a building as the maximum charge for rent. Under existing rules * of the Government of India, no such limit has been laid down.

* Government of India Code, Volume I, Chapter XI, Section IV, paragraph 25. The rental is required to be assessed at a figure that will cover interest at $4\frac{1}{2}$ per cent. in addition to a fair allowance for risks and repairs. This allowance will of course vary slightly according to the character of the building; but, in the opinion of His Excellency the Governor in Council, it is desirable that the maximum rental to be charged should be fixed by rule; and the allotment of $1\frac{1}{2}$ per cent. (equivalent to three months' rental), provided in the proceedings under reference, will, it is thought, amply cover all "risks and repairs."

2. The maximum monthly rents noted in the margin of the accompanying proceedings for the various grades of civil officers have been assumed as a guide to the Public Works Department, in framing estimates for the construction of buildings. They are not intended to affect the prescribed assessment of 6 per cent., which is to be paid as rent.

3. I am to request the early orders of the Government of India on these proposals, the circulation of which for the guidance of officers of the Public Works Department has been withheld pending a reply to the present communication.

I have the honor to be,

Sir,

Your most obedient servant,

(Signed) J. SHAW-STEWART, Colonel, R.E.,
Secretary to Govt., P.W.D.

OOTACAMUND,
11th August 1884.

Exd. E. Fernandez.
Spare Copies

GENERAL.
ESTABLISHMENT.

Govt. of 1884 Madras.

PUBLIC WORKS.

Dated August, 11th.

Recd.

Encl.

G.O., 11th Aug. 1884, No. 1957 W.

AUGUST.

Rent

Ordered that the Government of India be requested to confirm the orders in the Public Department prescribing 6 per cent. on the capital cost of a building as its maximum monthly —.

G.O., dated 7th September 1882, No. 556 R., Public Works.

Read—the following papers :—

From the Consulting Engineer for Railways, dated Madras, 28th August 1882, No. 185 A.

From the Collector of North Arcot, to the Consulting Engineer for Railways, dated Palmanér, 29th June 1882, No. 32.

I have the honor, with reference to G.O., No. 379 R., dated 15th instant, to request that you will be so good as to move the Madras Railway Company to issue instructions to their Railway Engineers to send me now, as well as at any future time should occasion arise, lists of works to which, in their opinion, it is necessary that the provision of section 1, Act I of 1858, should be applied, stating the extent to which they consider repairs are required to avert imminent danger of a destructive breach.

2. The following is a list of the works which have, from time to time, been reported to need repair, and I shall be glad to know, at the earliest possible date, to which of them, and roughly to what extent such emergent repairs are needed :—

- | | |
|----------------------|-----------------|
| 1. Pommadi. | 7. Manúr. |
| 2. Mangapuram. | 8. Ponnangalam. |
| 3. Maddur (big). | 9. Iyaneri. |
| 4. Do. (small). | 10. Chittandi. |
| 5. Kalakattur (big). | 11. Nammaneri. |
| 6. Do. (small). | |

Copy of a letter to the Agent and Manager, Madras Railway Company, from Consulting Engineer for Railways, dated 5th July 1882, No. 467.

In forwarding proceedings of Government, No. 379 R., dated 15th June 1882, I have the honor to request that you will be so good as to send me now, as well as at any future time, should occasion arise, lists of works to which, in your opinion it is necessary that the provisions of section 1, Act I of 1858, should be applied, stating the extent to which repairs are required to avert imminent danger.

2. In the margin is given a list of the works in the Kárvetnagar zemindari,

- | | | |
|----------------------|-----------------|--|
| 1. Pommadi. | 7. Manúr. | which have, from time to time, been reported as needing repair, and I shall be glad to know to which of them, and roughly to what extent emergent repairs are needed. The first nine of these tanks are referred to in paragraph 1 of letter, No. 28, dated 19th May 1882, from the Collector of North Arcot, embodied in the proceedings which are now forwarded. |
| 2. Mangapuram. | 8. Ponnangalam. | |
| 3. Maddur (big). | 9. Iyaneri. | |
| 4. Do. (small). | 10. Chittandi. | |
| 5. Kalakattur (big). | 11. Nammaneri. | |
| 6. Do. (small). | | |

Collector of North Arcot, embodied in the proceedings which are now forwarded.

From the Agent and Manager, Madras Railway Company, to the Consulting Engineer for Railways, dated Madras, 16th August 1882, No. 587.

With reference to your letter, No. 467, dated the 5th ultimo, as to certain tanks in the Kárvetnagar zemindari, I have the honor to inform you that I learn from the Acting Chief Engineer that the Resident Engineer of the Division, who was directed to examine and report on their condition, states that he cannot learn anything about the Iyaneri and Chittandi tanks.

2. Mr. Carter therefore requests that he may be furnished with a district or taluk map, showing the position of the tanks in question, to enable him to identify them.

3. Will you be so good as to favor me with a map that will assist in tracing the tanks referred to.

property; and I venture again to draw attention to the letter from the Government of India, under date 7th June 1867, above alluded to, especially to that portion in which the Governor-General in Council stated: "It does seem proper that there should be power on the part of the Government to direct competent officers to inspect and report on such works in the interests of the public safety in important cases (such as tanks and embanked rivers in the vicinity of railways), and that following such inspection should be executive power to the extent of guarding from danger arising from such works, and from rivers and streams generally. There should be some means of recovering from the landed proprietors, under due limitation, any expenses that may be necessarily incurred by the Government in repairs or protective works."

Order—dated 15th June 1882, No. 379 R., Public Works.

The Government are advised that the proper course is for the Madras Railway Company to apply to the Civil District Court for an injunction to compel the zemindar to execute necessary and reasonable repairs to the tanks noticed in the Collector's letter. This should be done without delay.

2. In the mean while, it will be for the consideration of the Collector whether the condition of any of the tanks is such as to warrant the provisions of Act I of 1858 being put into force.

3. The question of special legislation will be referred for the consideration of the Government of India.

[Here enter, No. 379-A.R., dated 15th June 1882.]

(True Extract.)

(Signed) J. SHAW-STEWART, Colonel, R.E.,
Joint Secy. to Govt., P.W.D.,
Railway Branch.

To the Consulting Engineer for Railways,
" Judicial department.
" Revenue department.
" Chief Engineer for Irrigation.

G.O., dated 15th June 1882, No. 379-A, R., Public Works.

Letter—from the Joint Secretary to the Government of Madras, Public Works department, Railway Branch, to the Secretary to the Government of India, Public Works department (Railway), dated Ootacamund, 15th June 1882.

I am directed to forward copy of the proceedings of this Government under date 15th June 1882, No. 379 R., and to suggest, for the consideration of the Government of India, the advisableness of special legislation with the object of preventing risk to life and property by damage to railways arising from neglect on the part of proprietors of private irrigation works.

2. This matter was dealt with by the Government of India in their letter to this Government, dated 7th June 1867, No. 476 R.; but, under the circumstances explained in the proceedings now forwarded, the suggested legislation was postponed, and subsequently abandoned as unnecessary.

3. The Government have, however, been advised that, in the event of a private irrigation work being neglected to such an extent as to threaten danger to a line of railway, they have no power at present either to compel the proprietor to execute needful repairs, or to step in and undertake the same, recovering the cost from the proprietor, except perhaps where the emergency is great and urgent, when Act I of 1858 might apply.

4. In view to this fact, they are of opinion that special legislation, on the lines sketched by the Government of India in 1867, is highly advisable; but that the subject cannot properly be dealt with by local legislature for a limited area.

G.O., dated 7th September 1882, No. 556 R., Public Works.

Read—the following papers :—

From the Consulting Engineer for Railways, dated Madras, 28th August 1882, No. 185 A.

From the Collector of North Arcot, to the Consulting Engineer for Railways, dated Palmanér, 29th June 1882, No. 32.

I have the honor, with reference to G.O., No. 379 R., dated 15th instant, to request that you will be so good as to move the Madras Railway Company to issue instructions to their Railway Engineers to send me now, as well as at any future time should occasion arise, lists of works to which, in their opinion, it is necessary that the provision of section 1, Act I of 1858, should be applied, stating the extent to which they consider repairs are required to avert imminent danger of a destructive breach.

2. The following is a list of the works which have, from time to time, been reported to need repair, and I shall be glad to know, at the earliest possible date, to which of them, and roughly to what extent such emergent repairs are needed :—

1. Pommadi.	7. Manúr.
2. Mangapuram.	8. Ponnangalam.
3. Maddur (big).	9. Iyaneri.
4. Do. (small).	10. Chittandi.
5. Kalakattur (big).	11. Nammaneri.
6. Do. (small).	

Copy of a letter to the Agent and Manager, Madras Railway Company, from Consulting Engineer for Railways, dated 5th July 1882, No. 467.

In forwarding proceedings of Government, No. 379 R., dated 15th June 1882, I have the honor to request that you will be so good as to send me now, as well as at any future time, should occasion arise, lists of works to which in your opinion it is necessary that the provisions of section 1, Act I of 1858, should be applied, stating the extent to which repairs are required to avert imminent danger.

2. In the margin is given a list of the works in the Kárvetnagar zemindari, which have, from time to time, been reported as needing repair, and I shall be glad to know to which of them, and roughly to what extent emergent repairs are needed. The first nine of these tanks are referred to in paragraph 1 of letter, No. 28, dated 19th May 1882, from the

1. Pommadi.	7. Manúr.
2. Mangapuram.	8. Ponnangalam.
3. Maddur (big).	9. Iyaneri.
4. Do. (small).	10. Chittandi.
5. Kalakattur (big).	11. Nammaneri.
6. Do. (small).	

Collector of North Arcot, embodied in the proceedings which are now forwarded.

From the Agent and Manager, Madras Railway Company, to the Consulting Engineer for Railways, dated Madras, 16th August 1882, No. 587.

With reference to your letter, No. 467, dated the 5th ultimo, as to certain tanks in the Kárvetnagar zemindari, I have the honor to inform you that I learn from the Acting Chief Engineer that the Resident Engineer of the Division, who was directed to examine and report on their condition, states that he cannot learn anything about the Iyaneri and Chittandi tanks.

2. Mr. Carter therefore requests that he may be furnished with a district or taluk map, showing the position of the tanks in question, to enable him to identify them.

3. Will you be so good as to favor me with a map that will assist in tracing the tanks referred to.

GOVERNMENT OF MADRAS.

LEGISLATIVE DEPARTMENT.

READ—the following papers :—

G.O., dated 15th June 1882, No. 379 R., Public Works.

Read—the following letter from the Consulting Engineer for Railways, dated Madras, 8th June 1882, No. 150 A :—

From A. J. STUART, Esq., Acting Collector of North Arcot, to the Consulting Engineer for Railways, dated Chittoor, 19th May 1882, No. 28.

I have the honor to give in the margin the different dates on which notices were sent to the zemindar of Kárvetnagar directing him to execute repair of each of the tanks there noted, repairs to which have been called for in your department for the protection of the Railway line, and to state that, with regard to most of them, he has not yet taken any proper steps to put them

Names of tanks.	Dates of notices given.
1. Pommadi	4th, 16th, and 29th June 1881.
2. Mangapuram	4th, 16th, 29th June, 29th Sept., 16th October, 8th November, 7th and 19th December 1881.
3. Maddur (big)	4th, 16th, and 29th June 1881.
4. Do. (small)	10th August, 30th November 1880, and 4th, 16th, and 29th June 1881.
5. Kalakathur (big)	Do. and 15th November 1881.
6. Do. (small)	16th February 1882.
7. Manúr	5th April 1882.
8. Ponnangulam	
9. Iyaneri	

in order, and in respect to others, the measures he has taken are quite insufficient. 2. The deputy tahsildar of Tirutani, on Mr. Whiteside's order, has prepared estimates for repairing seven of these tanks, and is engaged on two more. They aggregate Rs. 37,238, an amount so large that I do not see how they can be executed except by a Public Works department officer specially deputed for the purpose; the Executive Engineer has informed me that he is not able to undertake them with his present establishment. It seems also very necessary that estimates to so large an amount should be revised by some one with professional knowledge. Especially from what I have seen myself of some of them, I think they are in excess of what can legally be required of the zemindar, viz., that he should execute the rough repairs to the tanks, sluices, and calingulabs, if any, which already exist, the construction of new works not being a matter which can be insisted upon at his expense.

3. I trust, therefore, that you will be so good as to report to Government the urgency of the case, and to ask that a special Public Works department officer or subordinate may be deputed to the work, and funds allotted for the purpose by Government, to be recovered from the zemindar on the completion of the works.

4. I may add that the circumstances of the zemindar in respect of his debts are such that there is no certainty of his being able to provide the funds required for the purpose. He has up to now only carried out work on four of the above tanks, said to amount to Rs. 6,700, not certainly over-stated.

Submitted for the consideration of Government.

2. The Agent of the Madras Railway Company having brought to notice that certain tanks, within the zemindari of Kárvetnagar, had been allowed, through want of necessary repairs, to fall into a condition which threatened injury to the line of railway, the Collector of North Arcot has addressed, in view to the zemindar being called on to have the tanks placed in a proper state of repair.

3. In the letter now laid before Government, the Collector states that, in spite of numerous notices sent to him, the zemindar has not yet taken any proper steps with respect to most of the tanks in question while, with respect to others, the measures he has taken are quite insufficient.

4. Mr. Stuart adds that estimates for the repair of seven tanks, amounting to Rs. 37,238, have been prepared in the Revenue department; and he requests that a special officer or subordinate from the Public Works department may be deputed to revise the estimates and to execute the work, funds being "allotted for the purpose by Government, to be recovered from the zemindar on the completion of the work."

5. This is not the first occasion on which the Madras Railway has been endangered by irrigation works lying above the line within the Kárvetnagar zemindari.

In 1865 and 1866 certain tanks, belonging to the zemindar, burst, and caused considerable injury to the line of railway. The Madras Railway Company thereupon brought an action in the Chittoor Court against the zemindar for recovery of the sum of Rs. 45,000, said to have been the amount of damage sustained by them; and it may be well to state briefly the history of that suit.

6. In the first instance, the suit was dismissed by the Civil Judge of Chittoor, on the ground that the plaintiff did not disclose a cause of action; but on appeal, it was remanded by the High Court for trial upon the merits. The Civil Judge then found that the company had undoubtedly sustained damage by the bursting of the zemindar's tanks; that such injury was not the result of default or neglect of the company, but that the zemindar was not liable for the loss sustained by the company, as he had used reasonable and proper precautions to guard against all ordinary accidents; that the bursting of the tanks was an extraordinary accident, and that the zemindar was not bound to provide against such. The suit was therefore dismissed with costs. On appeal, that judgment was upheld by the High Court. On further appeal, the Privy Council held that the principle, that a man in exercising a right may be liable without negligence for injury done to another, being inapplicable to rights conferred by statute, was inapplicable to the case of the zemindar, which was analogous to that of persons on whom statutory rights had been conferred and statutory duties imposed; inasmuch as the tanks were ancient and part of a national system of irrigation recognised by law, and their maintenance was a duty in many instances devolving on zemindars, who have no power to do away with the tanks in which large numbers of people are interested. On this point, the Privy Council quoted the ruling by Chief Justice Cockburn:—"Where the legislature has sanctioned and authorized the use of a particular thing, and it is used for the purpose for which it was authorized, and every precaution has been observed to prevent injury, the sanction of the legislature carries with it this consequence, that if damages result from the use of such a thing independently of negligence, the person using it is not responsible." As to the question of negligence, the Privy Council observed that the court below had quoted and applied Baron Alderson's definition:—"Negligence consists in the omitting to do something that a reasonable man would do, or in the doing something which a reasonable man would not do, in either case unintentionally causing mischief to a third party." The Privy Council apparently accepted that definition; and, on the question of fact whether or not negligence was proved by the evidence, they saw no sufficient reason to depart from the rule of not disturbing the concurrent finding of two courts. The appeal was therefore dismissed with costs.

21st January 1869.

18th " 1870.

26th September 1870.

15th February 1871.

3rd July 1874.

7. In the case of the tanks alluded to in the letter now before Government, it appears probable that, in the event of the line of railway sustaining injury in consequence of the bursting of one or more of them, the company could recover damages from the zemindar, on the ground of proved negligence. But it is beyond doubt that, in the interests of all concerned, the Railway Company, the Government, the public, and the zemindar himself, the object in view should rather be the prevention of injury, by taking in proper time all reasonable precautions for the security of the tanks, than the subsequent recovery of damages from the zemindar, after the occurrence of injury. The Collector's letter, however, shows that the attainment of this object is a matter of great difficulty.

8. As having an important bearing on this question, it may be observed that the expediency of defining by legislation the duties devolving on owners of tanks has already been the subject of considerable discussion.

In the letter from the Government of India, dated 7th June 1867, No. 476 R., it was stated that the Governor-General in Council was of opinion that it would be only fair and reasonable that the proprietors of land should be responsible for any harm or loss arising from damage due either to the bursting of artificial embankments which they or their ancestors had constructed, or to natural causes, such as the action of rivers within their zemindaries; and special legislation was suggested, if doubt existed as to the responsibility. A Bill was accordingly drafted in the Legislative department, "to provide for the prevention of injury to lines of railway from the escape or overflow of water from irrigation works in zemindari or other lands," and was referred for the opinion of the Board of Revenue. It was returned to the Legislative department, with instructions to make certain modifications in its scope; but the Advocate-General expressed an opinion that the state of the law upon the subject was far from certain, and that it would be desirable to await the final disposal of the suit, then pending, against the zemindar of Kárvetnagar. The matter accordingly remained in abeyance for five years; and, after the judgment of the Privy Council, adverted to above in paragraph 6, the Government decided that the law was no longer uncertain, and that further legislation was unnecessary.

Proceedings of Government, Legislative department, No. 191, dated 14th August 1867.

Proceedings of Government, Revenue department, No. 721, dated 17th March 1869.

Proceedings of Government, Legislative department, No. 32, dated 20th October 1874.

9. Subsequently that decision, orders were issued for the inspection of every private tank, the condition of which should be objected to by the Railway Engineers as being inconsistent with the safety of the railway, and for drawing up instructions for making such tank secure. It was further ordered that copies of those instructions should be formally served by the Collector of the district on the owner of the tank objected to, with a warning of his liability for accidents which might ensue from his neglect to carry them out; and the Government subsequently observed that, if those orders were properly carried out, there should be no difficulty in affixing such liability as would enable the Railway authorities to sue for damages in future with success.

Proceedings of Government, Public Works department, No. 2724, dated 21st September 1875.

10. I beg, however, respectfully to point out that the old maxim, "prevention better than cure," applies with special force to this matter. To recover damages from the negligent proprietor is far from being as satisfactory as to compel him to exercise due precaution beforehand. It is quite possible that negligence in this matter might result in a serious accident to a train, involving loss of life as well as injury to

Memorandum by the Under Secretary, dated 9th July 1884.

The accompanying bill has been drafted to meet the proposals submitted by the Public Works department. The following remarks will, it is hoped, explain the reasons for the form the bill has taken:—

1. It was necessary to insert an interpretation clause restricting the class of "landholders" whose responsibilities would be affected by the bill. The bill of 1867 included holders under ryotwari tenure, which obviously was not intended. This bill will include all persons paying fixed permanent revenue to the Government.

2. Section 3 of the bill is not satisfactory for this reason;—it defines the irrigation works which are to be subjected to inspection under the bill far too vaguely. To say that all works situated at such distance from a railway as to be likely in case of flood to injure that railway shall come under the bill is open to this objection, that the works may be situated from 50 to 100 or even more miles from the railway line. The only mode of avoiding this vagueness would seem to be to leave it to the Governor in Council by notification to define what works should come under the bill; such a course would involve a survey and many preliminary steps previous to the bill being brought into operation, which would be objectionable. As it is under bill no responsibility will lie upon any landholder until the Collector calls upon him to take action.

3. The procedure under the bill will be as follows:—The officer having powers of a Collector under the bill will be able to enter upon and survey any of the works mentioned in section 3. He will then where necessary report to Government any action that he may think necessary for securing the safety of these works. It will then remain for Government, if it chooses, to call upon the landholder to carry out the necessary works within a reasonable time, or show excuse why he should not, *i.e.*, his tenure might not make him responsible, or the tank or work might be a *dasabundam inam*, &c.

Probably under the last section of the bill the Government will find it advisable to grant the powers given to a Collector under the bill to District Engineers.

4. Section 9 of the bill gives power to the Government officers to act in emergent cases.

5. In cases of dispute, either as to the responsibility of the landholder for the repairs executed, or as to the amount expended upon the repairs, the bill throws all action on the Government officers; in this it follows the provisions of the Land Acquisition Act. The Collector is the person to make the reference to the civil court, and he is bound to pay all the costs at first; he is to state his case against the landholder fully, and the civil court in deciding the case is to take into consideration any plea the landholder may submit on his behalf, and to give costs as it may deem fit.

The difficulty in drafting the bill has been so to draft it that under it the landholder is as fully protected as is desired in the directions given by the Government of India (G.O., 30th November 1883, No. 3418 W., Public Works). This has been attempted by so drafting the bill that no landholder is required under the bill to take any action whatever until summoned to the civil court. Supposing, for instance, the Collector takes action wrongly against a landholder who by custom or agreement is not legally bound to maintain the irrigation work held to be dangerous, the landholder in such a case will under the bill be put to no inconvenience; satisfied of his position he will merely ignore the orders served on him, and when finally summoned in the civil court, having proved his non-liability, will obtain a decree in his favor, the Government paying all costs.

On the other hand the Collector under the bill has full powers of entry and inspection and of recovery of expenses incurred and costs in any case where a landholder is held by the courts to have not acted up to his obligation, and it is but fair that the initiatory action and all costs connected with the same should in the prior action fall upon the Government and not the zemindar.

NOTE.

As I understand the matter an Act drafted on the principles laid down by the Government of India can only oblige zemindars to carry out ordinary repairs, or, in the words of Colonel Anderson (Proceedings of Madras Government, Legislative department, No. 191, dated 14th August 1867), to maintain existing works in a state of efficiency up to the *standard of the original design*. Professional examination of a tank may show that from insufficiency of escape the tank is very likely to breach, but this is a different matter, the risk must be accepted, or Government must construct the necessary work; the Act can only deal with keeping the works in a proper state of repair, by which is to be understood maintaining the bank at a certain fixed safe height above high-water mark and keeping existing masonry works in good order.

It follows, therefore, that section 3 must not state the zemindar is liable to keep the work in such order that the railway is not likely to be injured.

This section should not, I think, refer to the distance from the railway at which a tank is situated, but, in general terms, should be made applicable to all tanks in such a position that the railway is liable to suffer from their breaching.

Section 6 will need amendment if, as above suggested, the zemindar is to be made answerable for repairs only.

As regards the remainder of the Act, so long as the Collector, who, in my opinion, is properly named as the authority in section 4, is able to carry out emergent repairs while the zemindar is moving heaven and earth to escape from his liability, I am contented to leave it entirely in the hands of the Legislative department.

I am disposed to think that, restricted as it is, the Act will be of no great benefit, and that as good results, or better, would be obtained by authorizing the Collector to enter on and inspect private tanks and call upon the owners to execute the necessary repairs (I understand that emergent repairs could now be undertaken by Collector under an existing Act). If the owner neglected to carry out the repairs, and the railway was subsequently damaged, the Railway Company would certainly proceed in any action brought against him, and it needs only one such case to ensure that the Collector's call for repair would be attended to promptly in all cases.

23rd July 1884.

(Signed) J. O. HASTED, Colonel, R.E.,
Chief Engineer for Irrigation.

NOTE.

The object of the Act, as I understand it, is twofold—

- (a) To enable Government to enter upon private tanks, and execute forthwith all necessary repairs to avert damage to railways.
- (b) To recover afterwards from the proprietors all, or part, of the expenditure thus incurred.

The Government of India stipulates that, as regards the second object above defined, the normal liability of the proprietor shall be limited as defined by the Privy Council in case cited in Proceedings of Government, No. 379 R., dated 15th June 1882. These limits appear to be—

- (a) "Negligence" must be proved.
- (b) Negligence is to be decided by what a reasonable man would, or would not, do.

The bill ought, it would seem therefore, to provide for object (a), which is simple enough; and, in respect of (b), to provide for arbitration as to what would be the course followed by a reasonable man.

The Collector will enter upon and protect the tank, and then file a suit in the civil court tendering, as evidence, the report of the arbitration committee; the civil court would decree accordingly.

The question arises whether the Act should attempt to define, for the guidance of the arbitration committee, what constitute the acts and omissions of a reasonable man.

I believe it to be impossible to define these in any detail, and that Colonel Anderson's definition—if any—"up to the standard of the original design" is the most that ought to be attempted; but this definition may very possibly clash with that imposed by the Privy Council.

The act of a reasonable man, who is insolvent, might be to abandon and breach a tank which it would be beyond his means to repair to the extent of the original design; in fact such an instruction to the arbitrators would to my mind bar the very question, the solution of which is aimed at by the Act, viz., how far is it equitable to force a man who has inherited a white elephant to maintain it against what he conceives to be his own interest.

If no instruction is given to the arbitrators, they will take into account the insolvency of the proprietor, and decree that the abandonment of such a tank was the act of a reasonable man, and that Government must pay for the restoration of the tank; for it must be remembered that the intentional breaching of a tank, or non-repair of a breached tank, may mean passing flood waters down more quickly upon a railway or upon a lower tank in the chain, and thereby breaching it and others under it; or it may lead, as once happened on the Madras Railway, to a redistribution of the drainage. A tank had two weirs of capacity proportioned as 5 to 3; bridges of like kind were built on the railway; the tank was breached and abandoned; the whole drainage represented by the figure 8 being delivered to the bridge of capacity = to 3.

What is *imperative* is that Government should have power to enter upon and execute necessary work; what is *desirable* is that they should be able to recover some of the cost if it can be equitably demanded; but in my opinion the less the bill enters into this the better.

The Government must have power to do the necessary work at an hour's notice, and to proceed to recover at their leisure.

As regards the works to which the bill is to apply the Government of India in their No. 917 R.C., dated 12th October 1883, use the expression "private irrigation works."

Is not the bill to apply to "river embankments" and to groynes in their neighbourhood erected by zemindars for the safety of their foreshore.

Is it to apply to old or new roads with insufficient waterway, which might for the time be converted into tanks, and breaching injure a line of railway: such a result has happened with a Government road on two occasions with the South Indian Railway.

I am under the impression that, as the law at present stands, a Collector can only undertake urgent repairs when danger is imminent; the present bill is intended to prevent danger being imminent. I do not agree, therefore, with the Chief Engineer for Irrigation that this bill would be of no great benefit.

Such a bill will become more imperative year by year, as old tanks silt up and rivers raise their beds; as the old masonry works and banks deteriorate; and possibly as some proprietors become more impecunious.

(Signed) C. J. SMITH, Lt.-Col., R.E.,
Consulting Engineer for Railways.

14th August 1884.

Demi-official from Colonel J. SHAW-STEWART, R.E., dated Ootacamund, 28th August 1884.

Your note of 9th July with zemindari tanks papers reached me last month while on tour. I thought it best, in the first place, to get the opinions of the Chief Engineer for Irrigation and the Consulting Engineer for Railways, and their notes I now enclose.

Colonel Smith's note expresses very clearly my own views on the matter. The really essential point is that Government should take power to enter upon private tanks, &c., overlying railways, and to execute at once what repairs or improvements are deemed necessary for the security of such railways. All else is matter comparatively of minor importance.

Those being my views, I do not think the draft bill will answer, and simple as the object I have in view is, there are several different points from which it must be looked at before any satisfactory measure can be drawn up.

One point, which will require careful consideration, is who is to be held responsible for bringing to notice the ruinous or dangerous state of tanks, &c., possibly situated many miles from the railway they threaten.

It is clear that railway officials cannot undertake such duty, nor can the Consulting Engineer for Railways. I do not suppose the revenue officials would be prepared to undertake it, while the local Public Works officers have plenty to do without seeking additional work in zemindaries, with which they have no concern.

The solution of the difficulty will, I fancy, be to depute a special Public Works officer to the duty of inspecting and reporting on any private irrigation work, or chain of works, the efficiency of which may, for any reason, be suspected.

The point is, however, not an easy one for practical solution, and there are other difficulties in the way.

I would suggest that the papers should be referred to a committee with instructions to draft a bill on the lines laid down by the Government of India.

I think that Mr. Stokes, Colonels Hasted, and Smith (either with or without myself added) would be able to draft a short measure which would deal practically with all difficult points.

ORDER—dated 20th September 1884, No. 210, Legislative.

The papers connected with the "Railway Line Protection Draft Bill" will be referred to a committee consisting of Colonel J. O. Hasted, Colonel C. J. Smith, and Mr. H. E. Stokes, who will be requested to submit a revised bill embodying the objects desired.

(True Extract.)

Ag. Under Secy. to Govt.

To Colonel J. O. Hasted, R.E.,
" Lieut.-Colonel C. J. Smith, R.E., } with G.O., Legislative Department,
" H. E. Stokes, Esq., } dated 14th August 1867, No. 191.
" the Public Works department.

Exd. J. Wright.

18. Statement of Completed Works.
19. Statement of Additions to or Reductions from Budget Grant.

(True Copy)

J. E. Patton

Suptt. Correspondence Branch.

J. E. Patton

8d 2/10 10

J. E. Patton

[Ext. Wks. Form No. 111.]

GOVT.
OF MADRAS.

1884.

{ P. W.
DEPT.

EXAMINER, P. W. ACCOUNTS.

Madras,

4th October

1884.

OFFICE NOTE No. 493.

To

w.

Encs: 2.

Herewith the Imperial
Finance Accounts Separated under
Military and Civil Buildings Roads
and Services. Please have them
printed as distinct Accounts, and
kindly arrange for furnishing me
with paged proofs at an early date.

KEEP WITH

Genl. No.

dated

18

C.

29
4/10
No. 1841 W Chapak
13th Oct/84
To C. B 491 913-10-84

Paged proofs
forwarded herewith

CB.

11.10

SW

5/15.10

No. 1571

D.

GOVT.
OF MADRAS.

188

{ P. W.
DEPT.

SECRETARY.

Chepak,

5th Sept 1884.
1884.

OFFICE NOTE.

From

W.

R. N. 388

5.9.84

Enc: 1/10

To

C.

Proofs of Finance
Imperial,
and herewith
for revision & return.
Kindly check the
arrangement of the
statements on

Cy.

Vide

No. 2672 W 29-10-84

P. T. C.

To

W.

N^o 420 of 8th Sept/84

Enco: 1. 1/2

Herewith proof of
Imperial Finance accounts
duly checked. Please have
a paged proof furnished
at an early date?

del

b.

29

8/9

Re 1678D

To C.

R. N^o 424 a.a.d.

20. 9. 84 9/9

Chapall

20th Sept/84

Paged proof

herewith

Cy

Dw

19. 9. 84

N^o 456 of 22nd Sept/84.

Enco: 1

To W.

Herewith the paged
proof of the Imperial
Finance accounts -
Please have it struck off.

del

Rogers

b

a.a.d.

24/9

31/2/9.