(1) Number of pages 58

(2) Date of repair 18.1.88

(3) Initials of the Referencer Lavanya

TAMIL NADU ARCHIVES

GOVERNMENT OF TAMIL NADU

P. W. DEPARTMENT

G.O. No. / B.P. No:	1942-W	Press. / Mis.
Dated	6.8.1886	19 .

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Archives I--10,006 I -80.

GOVERNMENT OF MADRAS.

PUBLIC WORKS DEPARTMENT.

General.
Establishment.

READ—G.O., dated 30th June 1886, No. 127, Legislative.

Read—the following paper:—

From S. HARVEY JAMES, Esq., Officiating Secretary to the Government of India, Legislative Department, to the Assistant Secretary to the Government of Madras, dated Simla, 15th June 1886, No. 1123.

I am directed to return, herewith, with the assent of His Excellency the Viceroy and Governor-General signified thereon, the authentic copy of the law noted on the margin, which was received with your letter, No. 93, dated the 30th April, to the address of the Secretary to the Government of India in the Public Works Department.

An Act to provide for the prevention of injury to railways from the escape or overflow of water from irrigation works situated upon the lands of zemindars or other landholders.

Order—dated 30th June 1886, No. 127, Legislative.

Ordered that a copy of the "Railway Protection Act, 1886," assented to by His Excellency the Governor-General, be published in the *Fort St. George Gazette*.

2. The necessary steps will be taken in the Public Works Department for bringing the Act into operation.

3. The assent of the Governor-General to the Act will be communicated to the Council for making Laws and Regulations, as prescribed by rule 39 of the Council rules.

(True Extract.)

(Signed) A. G. CARDEW,
Ag. Assistant Secretary to Government.

ORDER—dated 6th August 1886, No. 1942 W., Public Works.

Ordered that the following notification be published in the *Fort St. George Gazette*:—

"Madras Act IV of 1886 (an Act to provide for the prevention of injury to Railways [illegible] escape or overflow of water from irrigation works situated upon the lands of zemin[illegible] landholders) having received the assent of His Excellency the Viceroy and Governor-General in Council, and having become law, the Right Honorable the Governor in Council directs that the aforesaid Act shall come into force and take effect from and after the 1st September 1886."

(True Extract.)

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

To the Consulting Engineer for Railways.
" Chief Engineer for Irrigation.
To Superintending Engineers.
To the Superintendent of Works, Tank Maintenance Scheme.
" Revenue Department.
" Legislative Department.
Exd. J. Moses.
Spare Copies

GENERAL.
ESTABLISHMENT.

Govt. of {1886} Mad

PUBLIC WORKS.

Dated August, 6th.

Read. *Encl.*

G.O., 6th Aug. 1886, No. 1942 W.

AUGUST.

Railway Protection Act

Ordering it to be notified in the *Fort St. George Gazette* that the Madras Act IV of 1886 shall come into force from and after the 1st September 1886.

6TH AUGUST 1886, No. 1942 W., PUBLIC WORKS.

GOVERNMENT OF MADRAS.

PUBLIC WORKS DEPARTMENT.

General.
Establishment.

READ—G.O., dated 30th June 1886, No. 127, Legislative.

Read—the following paper:—

From S. HARVEY JAMES, Esq., Officiating Secretary to the Government of India, Legislative Department, to the Assistant Secretary to the Government of Madras, dated Simla, 15th June 1886, No. 1123.

I am directed to return, herewith, with the assent of His Excellency the Viceroy and Governor-General signified thereon, the authentic copy of the law noted on the margin, which was received with your letter, No. 93, dated the 30th April, to the address of the Secretary to the Government of India in the Public Works Department.

An Act to provide for the prevention of injury to railways from the escape or overflow of water from irrigation works situated upon the lands of zemindars or other landholders.

Order—dated 30th June 1886, No. 127, Legislative.

Ordered that a copy of the "Railway Protection Act, 1886," assented to by His Excellency the Governor-General, be published in the *Fort St. George Gazette*.

2. The necessary steps will be taken in the Public Works Department for bringing the Act into operation.

3. The assent of the Governor-General to the Act will be communicated to the Council for making Laws and Regulations, as prescribed by rule 39 of the Council rules.

(True Extract.)

(Signed) A. G. CARDEW,
Ag. Assistant Secretary to Government.

ORDER—dated 6th August 1886, No. 1942 W., Public Works.

Ordered that the following notification be published in the *Fort St. George Gazette*:—

"Madras Act IV of 1886 (an Act to provide for the prevention of injury to Railways from the escape or overflow of water from irrigation works situated upon the lands of zemindars or other landholders) having received the assent of His Excellency the Viceroy and Governor-General in Council, and having become law, the Right Honorable the Governor in Council directs that the aforesaid Act shall come into force and take effect from and after the 1st September 1886."

(True Extract.)

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

To the Consulting Engineer for Railways.
" Chief Engineer for Irrigation.
To Superintending Engineers.
To the Superintendent of Works, Tank Maintenance Scheme.
" Revenue Department.
" Legislative Department.
Exd. J. Moses.
Spare Copies

GENERAL.
ESTABLISHMENT.

Govt. of {1886} Madras.

PUBLIC WORKS.

Dated August, 6th.

Recd. *Encl.*

G.O., 6th Aug. 1886, No. 1942 W

AUGUST.

Railway Protection Act

Ordering it to be notified in the *Fort St. George Gazette* that the Madras Act IV of 1886 shall come into force from and after the 1st September 1886.

GOVERNMENT OF MADRAS.

LEGISLATIVE DEPARTMENT.

READ—the following paper:—

From S. HARVEY JAMES, Esq., Officiating Secretary to the Government of India, Legislative Department, to the Assistant Secretary to the Government of Madras, dated Simla, 15th June 1886, No. 1123.

I am directed to return, herewith, with the assent of His Excellency the Viceroy and Governor-General signified thereon, the authentic copy of the law noted on the margin, which was received with your letter, No. 93, dated the 30th April, to the address of the Secretary to the Government of India in the Public Works Department.

An Act to provide for the prevention of injury to railways from the escape or overflow of water from irrigation works situated upon the lands of zemindars or other landholders.

ORDER—dated 30th June 1886, No. 127, Legislative.

Ordered that a copy of the "Railway Protection Act, 1886," assented to by His Excellency the Governor-General, be published in the *Fort St. George Gazette*.

2. The necessary steps will be taken in the Public Works Department for bringing the Act into operation.

3. The assent of the Governor-General to the Act will be communicated to the Council for making Laws and Regulations, as prescribed by rule 39 of the Council rules.

(True Extract.)

Ag. Asst. Secy. to Govt.

To the Public Works Department.
Copy to the Revenue Department.

Exd. P. L. Pereira.

Govt. of {1886} Madras.

LEGISLATIVE.

Issued

Recd. 16-7-86 Encl.

G.O., 30th June 1886, No. 127.

JUNE.

Railway Protection Act.

Passing the necessary orders in consequence of the — having received the assent of His Excellency the Governor-General.

30TH APRIL 1886, NOS. 93, 94, LEGISLATIVE.

LEGISLATIVE DEPARTMENT.

LETTER—from

A. G. CARDEW, Esq.,

Acting Asst. Secy. to the Govt. of Madras, Legislative Department.

To

THE SECRETARY TO THE GOVERNMENT OF INDIA,

PUBLIC WORKS DEPARTMENT.

SIR,

I have the honor, by order of the Right Honorable the Governor, to forward copy of the Act specified in the margin,* which was passed by the Madras Council on the 30th ultimo, and formally assented to by His Excellency on the 9th instant, and to request that it may be submitted to the Right Honorable the Governor-General for His Excellency's assent.

2. Two copies of each of the papers specified in the margin † are enclosed for reference.

I have the honor to be,
Sir,
Your most obedient servant,

A. G. CARDEW,
Acting Asst. Secy. to Govt.

* An Act to provide for the prevention of injury to Railways from the escape or overflow of water from irrigation works situated upon the lands of Zemindars or other landholders.

† 1. Bill as introduced with Statement of Objects and Reasons.
2. Report of the Select Committee on the Bill together with the Bill as amended.
3. Abstract Proceedings of the Madras Council, dated 12th August and 5th October 1885, and 30th March 1886.

OOTACAMUND,
30th April 1886.

No. 94.

	No. of copies.
1. Bill as introduced	17
2. Annexure	20
3. Report of the Select Committee	20
4. Bill as amended	17
5. Abstract Proceedings of the Madras Council, dated 12th August and 5th October 1885, and 30th March 1886	20 each.

Copy, with enclosures noted on the margin, forwarded to the Government of India in the Legislative Department, with reference to its letter, dated the 14th July 1879, No. 751.

A. G. CARDEW,
Acting Asst. Secy. to Govt.

Exd. T. O'Connor.

1886.

LEGISLATIVE DEPARTMENT.

From the Government of Fort St. George.

Issued

Recd. *Encl.*

Letter, &c., 30th April 1886,
Nos. 93, 94.

APRIL.

Railway Protection Act.

Forwarding the — for the assent of the Right Honorable the Governor-General.

30TH NOVEMBER 1883, No. 3418 W., PUBLIC WORKS.

GOVERNMENT OF MADRAS.

PUBLIC WORKS DEPARTMENT.

Buildings and Roads.
Civil Works

READ—the following letter from Colonel W. S. TREVOR, R.E., Secretary to the Government of India, Public Works Department (Railway Construction), to the Secretary to the Government of Madras, Public Works Department, dated Simla, 12th October 1883, No. 917 R.C.:—

With reference to the correspondence ending with [illegible] endorsement, No. 1006 R., dated 19th September 1883, on the subject of the necessity for special legislation with a view to preventing risk to life and property by damage to railways rising from neglect on the part of proprietors of private irrigation works, I am directed to state that His Excellency the Governor-General in Council would have no objection to legislate in the matter, on the following principles:—

(1) The normal liability of a Zemindar for the maintenance of his tanks must not exceed the limits defined by the Privy Council in the case cited in the Proceedings furnished with Madras Government letter, No. 379 A.R., dated 15th June 1882.

(2) The construction of a railway or other similar work in the neighbourhood of an existing tank must not increase the proprietor's liability in respect of the tank.

(3) The State is justified in executing, or in authorizing the execution of such works as are, in its opinion, necessary for averting serious danger to life or property, or serious obstruction to public traffic.

(4) Where such works are executed on private land, the liability of the land-owner to contribute towards their expenses must be measured by his liability under ordinary circumstances for executing them.

(5) In estimating this liability, regard should be had to local customs.

2. Provision could also be made to employ, for the purpose of assessing liabilities, either the ordinary machinery of the civil courts or a commission consisting, say, of the District Judge, the Collector of the district and an Engineer other than the Engineer responsible for the condition of the railway.

3. I am further to inquire whether it would not be desirable to extend the proposed Act to cases of apprehended danger to roads and other works besides railways.

ORDER—dated 30th November 1883, No. 3418 W., Public Works.

Ordered that the following reply be addressed to the Government of India:—

(Here enter No. 3419 W., dated 30th November 1883.)

(True Extract.)

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

To the Consulting Engineer for Railways, with copy of letter.
" Revenue Department, do. do.

Exd. P. L. Pereira.
Spare Copies

BUILDINGS AND ROADS.
CIVIL WORKS.

Govt. of {1883} Madras.

PUBLIC WORKS.

Dated November, 30th.

Recd. *Encl.*

G.O., 30th Nov. 1883, No. 3418 W.

NOVEMBER.

Private Irrigation Works.

Regarding special legislation for the prevention of risk to life and property arising from the neglect on the part of the owners of —.

PUBLIC WORKS DEPARTMENT.

Buildings and Roads.
Civil Works.

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 acknowledge the receipt of your letter, No. 917 R.C., dated 12th October 1883, on the subject of the necessity for special legislation for the prevention of risk to life and property arising from neglect on the part of proprietors of private irrigation works.

2. In reply, I am to say that His Excellency the Governor in Council accepts the principles laid down by the Government of India for legislative action; and will be prepared to consider the matter further on the publication of the bill.

3. With respect to paragraph 3 of the letter under acknowledgment, His Excellency the Governor in Council does not consider it desirable to extend the proposed Act, at all events for the present, to cases of apprehended danger to roads and other works besides railways.

I have the honor to be,
Sir,
Your most obedient servant,

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

FORT ST. GEORGE,
30th November 1883.

Exd. P. L. Pereira.
Spare Copies

BUILDINGS AND ROADS.
CIVIL WORKS.

Govt. of {1883} Madras

PUBLIC WORKS.

Dated November, 30th.

Recd. *Encl.*

G.O., 30th Nov. 1883, No. 3419 W.

NOVEMBER.

Private Irrigation Works

Regarding special legislation for the prevention of risk to life and property arising from the neglect on the part of the owners of —,

GOVERNMENT OF MADRAS.

PUBLIC WORKS DEPARTMENT.

Irrigation.

READ—the following papers :—

From Colonel J. BEATTY, R.E., Superintending Engineer, IV Circle, to the Chief Engineer for Irrigation, dated Coimbatore, 4th August 1883, No. 111.

With reference to your reminder, dated 16th July 1883, I have the honor to submit a complete return of tanks affecting the Madras Railway, for the half-year ending 30th June 1883, of Salem division.

4 Plans. | 4 Indexes.
4 Statements.

2. The maps and statements, &c., have been prepared for each taluk noted in the margin, separately, and they give the information for each tank as required by standing order No. 20 C.

1. Uttankarai. | 3. Tiruchengód.
2. Salem. | 4. Tirupatúr.

3. With regard to the returns for the other divisions, they have not yet been received from the divisional officers to whom, however, reminders have been sent.

No. 78 I.

Note by the Chief Engineer for Irrigation.

The returns for the half-year ended 30th June 1883 of the progress made in the repairs of tanks in the Salem division, which affect the south-west line of Madras Railway, received from the Superintending Engineer, IV Circle, with letter No. 111, dated 4th August 1883, are submitted for the information of Government. There are in all 231 tanks; of these it is stated that 17 tanks are classed as Imperial, 74 as minor tanks, and 140 are private tanks as shown below :—

Taluks.	Imperial.	Minor.	Private.	Total.
Uttankarai	1	32	32	65
Salem	6	11	1	18
Tiruchengód	2	9	3	14
Tirupatúr	8	22	104	134
Total ...	17	74	140	231

2. All these tanks have been inspected, and their present condition is as indicated in the following table :—

Taluk.	IMPERIAL.			MINOR.			PRIVATE.			TOTAL.			
	In good order.	In need of repair.	Recommended to be abandoned.	In good order.	In need of repair.	Abandoned.	In good order.	In need of repair.	Abandoned.	In good order.	In need of repair.	Abandoned.	Total.
Uttankari	..	1	..	9	21	2	6	26	..	15	48	2	65
Salem	3	3	..	2	* 9	..	..	1	..	5	13	..	18
Tiruchengód	..	2	..	2	7	..	1	2	..	3	11	..	14
Tirupatur	2	5	1	3	19	..	2	92	10	7	116	11	134
Total ..	5	11	1	16	56	2	9	121	10	30	188	13	231

* Two of these tanks are stated to be very unimportant and would cause no danger to the railway if they are breached.

CHEPÂK,
9th April 1884.

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

To the Acting Joint Secretary to Government,
Public Works Department, Irrigation Branch.

ORDER—dated 2nd May 1884, No. 447 I., Public Works.

The proposal to abandon one of the Imperial tanks is approved, and it is noticed that 12 other tanks have already been breached and abandoned. Of the 218 tanks to be maintained, 5 Imperial tanks, 16 minor tanks, and 9 private tanks require no repairs, and the remaining 188 tanks have to be placed in good order.

2. The Superintending Engineer should see that the requirements of the Imperial tanks which require repairs are attended to without delay, and should address the Collector with a view to ensure the necessary repairs being done to the minor and private tanks which require to be placed in proper order.

(True Extract.)

(Signed) J. O. HASTED, Colonel, R.E.,
Joint Secy. to Govt., P.W.D.,
Irrigation Branch.

To the Superintending Engineer, IV Circle.
" Chief Engineer for Irrigation.
" Revenue Department.
" Consulting Engineer for Railways.

Exd. E. Fernandez.
Spare Copies

IRRIGATION.

Govt. of {1884} Madras.

PUBLIC WORKS.

Dated May, 2nd.

Recd. *Encl.*

G.O., 2nd May 1884, No. 447 I.

MAY.

Tanks

Passing orders on the returns of the progress made in the repairs of — in the Salem division, affecting the south-west line of Madras Railway, for the half-year ended 30th June 1883.

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 in order, and in respect to others, the measures he has taken are quite insufficient.

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) ..	
5. Kalakathur (big) ..	10th August, 30th November 1880, and 4th, 16th, and 29th June 1881.
6. Do. (small) .	
7. Manúr	Do. and 15th November 1881.
8. Ponnangulam ..	16th February 1882.
9. Iyaneri	5th April 1882.

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 calingulahs, 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 was 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 plaint 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, No. 2171, dated 19th July 1867.

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 to 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. 1047, dated 15th April 1875.

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

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

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).	

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.

Submitted for the consideration of Government, with advertence to paragraph 2 of their order, dated 15th June 1882, No. 379 R.

2. I do not understand it to have been the intention of the Government that the Railway Company's officers should be called on to decide whether the provisions of Act I of 1858 should be put into force.

3. My view is that the duty of the company's engineers should, as a rule, be restricted to the company's property, and that it is practically impossible for them to report on outlying tanks. In my opinion it is a stretch of their legitimate functions when they represent that tanks, even near the line of railway, are in a dangerous condition. They cannot properly be held responsible to bring to notice all such cases.

Order—dated 7th September 1882, No. 556 R., Public Works.

In their order, dated 15th June 1882, No. 379 R., the Government did not intend that the officers of the Railway Company should be called on to decide whether the provisions of Act I of 1858 should be put in force in the case of any tank.

2. It is for the Collector, aided if necessary by the local officers of the Public Works department, to ascertain the facts, and for the Collector to apply the Act in question when necessary.

(True Extract.)

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

To the Consulting Engineer for Railways.
„ Chief Engineer for Irrigation.
„ Revenue department.
„ Board of Revenue.
„ Superintending Engineers, III, IV, V, and VI circles.

G.O., dated 16th August 1883, No. 873 R., Public Works.

Read—the following letter from Major R. A. SARGEAUNT, R.E., Officiating Under Secretary to the Government of India, Public Works department (Railway Construction), to the Secretary to the Government of Madras, Public Works department, dated Simla, 10th August 1883, No. 710 R.C.:—

I am directed to acknowledge the receipt of your endorsement, No. 379 R., of the 15th June 1882, regarding the inaction of the Zemindar at Kárvetnagar in respect to certain tanks in his zemindari which, through want of necessary repairs, have fallen into a condition which threaten injury to the Madras Railway.

2. Before passing orders on the question of special legislation to meet such cases, I am to request that the Government of India may be informed of the result of the application of the Madras Railway Company to the Civil District Court for an injunction to compel the Zemindar to execute necessary and reasonable repairs to the tanks in question.

Order—dated 16th August 1883, No. 873 R., Public Works.

Communicated to the Consulting Engineer for Railways for submission of the required information.

(True Extract.)

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

To the Consulting Engineer for Railways.
„ Judicial department.

G.O., dated 19th September 1883, No. 1005 R., Public Works.

Read—the following letter from the Consulting Engineer for Railways, dated Madras, 17th September 1883, No. 246:—

From the Agent and Manager, Madras Railway Company, to the Consulting Engineer for Railways, dated Madras, 12th September 1883, No. 599.

In reply to your letter of the 29th ultimo, No. 573, I have the honor to inform you that the Madras Railway Company has made no application to the Civil District Courts for an injunction to compel the Zemindar of Kárvetnagar to execute the necessary and reasonable repairs to certain tanks.

2. The information required to enable me to make such an application is not complete, as I have received no reply to my letter of the 11th September 1882, No. 645; and, moreover, I was advised in Proceedings of Government, No. 556 R., of the 7th of September 1882, that "it is for the Collector, aided, if necessary, by the local officers of the Public Works department, to ascertain the facts, and for the Collector to apply the Act in question when necessary."

Submitted for transmission to the Government of India, with reference to their letter, No. 710 R.C., dated Simla, 10th August 1883, embodied in Proceedings of Government, No. 873 R., dated 16th August 1883.

2. No application was made by the Madras Railway Company to the Civil District Court for an injunction to compel the Zemindar to execute necessary and reasonable repairs to the tanks in question.

Order—dated 19th September 1883, No. 1005 R., Public Works.

Ordered to be forwarded to the Government of India.

(Here enter No. 1006 R., dated 19th September 1883.)

(True Extract.)

(Signed) C. J. SMITH, Lieut.-Col., R.E.,
Ag. Joint Secy. to Govt., P.W.D., Railway Branch.

To the Consulting Engineer for Railways.
„ Judicial department.

Endorsement—dated 19th September 1883, No. 1006 R., Public Works.

Forwarded.

(Signed) C. J. SMITH, Lieut.-Col., R.E.,
Ag. Joint Secy. to Govt., P.W.D., Railway Branch.

G.O., dated 30th November 1883, No. 3418 W., Public Works.

Read—the following letter from Colonel W. S. TREVOR, R.E., Secretary to the Government of India, Public Works department (Railway Construction), to the Secretary to the Government of Madras, Public Works department, dated Simla, 12th October 1883, No. 917 R.C.:—

With reference to the correspondence ending with your endorsement, No. 1006 R., dated 19th September 1883, on the subject of the necessity for special legislation with a view to preventing risk to life and property by damage to railways arising from

neglect on the part of proprietors of private irrigation works, I am directed to state that His Excellency the Governor-General in Council would have no objection to legislate in the matter on the following principles:—

(1) The normal liability of a Zemindar for the maintenance of his tanks must not exceed the limits defined by the Privy Council in the case cited in the Proceedings furnished with Madras Government letter, No. 379 A.R., dated 15th June 1882.

(2) The construction of a railway or other similar work in the neighbourhood of an existing tank must not increase the proprietor's liability in respect of the tank.

(3) The State is justified in executing, or in authorizing the execution of such works as are, in its opinion, necessary for averting serious danger to life or property, or serious obstruction to public traffic.

(4) Where such works are executed on private land, the liability of the land-owner to contribute towards their expenses must be measured by his liability under ordinary circumstances for executing them.

(5) In estimating this liability, regard should be had to local customs.

2. Provision could also be made to employ, for the purpose of assessing liabilities, either the ordinary machinery of the civil courts or a commission consisting, say, of the District Judge, the Collector of the district and an Engineer other than the Engineer responsible for the condition of the railway.

3. I am further to inquire whether it would not be desirable to extend the proposed Act to cases of apprehended danger to roads and other works besides railways.

Order—dated 30th November 1883, No. 3418 W., Public Works.

Ordered that the following reply be addressed to the Government of India:—

(Here enter No. 3419 W., dated 30th November 1883.)

(True Extract.)

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

To the Consulting Engineer for Railways, with copy of letter.
„ Revenue department.
„ Judicial do.

G.O., dated 30th November 1883, No. 3419 W., Public Works.

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, dated Fort St. George, 30th November 1883, No. 3419 W., Public Works.

I am directed to acknowledge the receipt of your letter, No. 917 R.C., dated 12th October 1883, on the subject of the necessity for special legislation for the prevention of risk to life and property arising from neglect on the part of proprietors of private irrigation works.

2. In reply, I am to say that His Excellency the Governor in Council accepts the principles laid down by the Government of India for legislative action, and will be prepared to consider the matter further on the publication of the bill.

3. With respect to paragraph 3 of the letter under acknowledgment, His Excellency the Governor in Council does not consider it desirable to extend the proposed Act, at all events for the present, to cases of apprehended danger to roads and other works besides railways.

G.O., dated 7th April 1884, No. 943 W., Public Works.

Read—the following paper from Major R. A. SARGEAUNT, R.E., Officiating Under Secretary to the Government of India, Public Works department (Railway Construction), to the Secretary to the Government of Madras, Public Works department, dated Fort William, 14th March 1884, No. 212 R.C.:—

I am directed to acknowledge the receipt of your letter, No. 3419 W., of the 30th November 1883, on the subject of the necessity for special legislation for the prevention of risk to life and property arising from neglect on the part of proprietors of private irrigation works.

2. In reply, I am to state that His Excellency the Viceroy and Governor-General in Council desires to leave the question of legislation in the hands of the Government of Madras, as it does not at the present time appear desirable that such legislation should be general for the whole of India.

Order—dated 7th April 1884, No. 943 W., Public Works.

The papers will be transferred to the Legislative department, with a view to the necessary action being taken; the principles laid down by the Government of India in their letter, No. 917 R.C.,* dated 12th October 1883, being followed so far as possible.

* G.O., No. 3418 W., dated 30th November 1883.

2. Meanwhile, in the opinion of His Excellency the Governor in Council, the Madras Railway Company should follow the course prescribed in the Proceedings of Government, dated 15th June 1882, No. 379 R., by applying to the Civil District Court for an injunction to compel the Zemindar of Kárvetnagar to execute all necessary and reasonable repairs to the tanks which are said to endanger the line of railway.

(True Extract.)

(Signed) C. BOWEN, Major, R.E.,
Under Secy. to Govt., P.W.D.

To the Consulting Engineer for Railways.
„ Legislative department, with papers as specified, viz.:—

Notes by Honorable Members.
G.O., No. 379 R., 379 R.-A, dated 15th June 1882.
„ No. 556 R., dated 7th September 1882.
„ No. 873 R., dated 16th August 1883.
„ No. 1095-6 R., dated 19th September 1883.
„ No. 3418-19 W., dated 30th November 1883.

The Railway Line Protection Draft Bill prepared by the Under Secretary.

Preamble. Whereas it is expedient to provide for the prevention of injury to lines of railway from the escape and overflow of water from irrigation works situated upon the lands of landholders, it is hereby enacted as follows:—

Short title. 1. This Act may be called the "Railway Line Protection Act."

Local extent. It extends to the territories for the time being administered by the Governor in Council of Fort St. George.

2. In this Act, "landholders" means all persons holding under a *Sanad-i-muldkyat istimrar*, all other zemindars, shrotriemdars, jaghirdars, inamdars, and all persons farming the land revenue under Government, but shall not include holders of lands under raiyatwari settlement.

Interpretation clause.

3. It shall be the duty of all landholders to take such order as to the repair and maintenance of existing tanks, river-channels, sluices, weirs, revetments and other artificial works of a like description upon their lands, when such works shall be situated at such distance from any railway that such railway is likely to be injured from the escape or overflow of water from the said works.

Landholders bound to keep tanks in repair.

4. The Collector of the district wherein any of the works mentioned in the preceding section are situated may at any time enter on and inspect, or cause to be entered on and inspected, any such works whether completed or in progress under the control of any landholder.

Collector, &c., may inspect,

5. The Collector shall, at the close of such inspection made as aforesaid, report to Government the measures (if any) necessary with regard to the said works to secure the safety of any line of railway.

and report to Government measures necessary for safety of railway line.

6. The Governor in Council upon the receipt of the report mentioned in the preceding section may call upon the landholder under whose control the said irrigation works may be, by a notice in writing, to show cause, within a prescribed reasonable time, why he should not be directed to execute the said repairs.

Landholder may be called upon to show cause why he should not execute the repairs.

7. If the landholder shall not satisfy the Governor in Council that he has good cause for refusing to repair the said works, the Governor in Council may direct him by an order in writing to carry out the said repairs within a prescribed reasonable time. Such order shall specify the nature and amount of repairs deemed by the Governor in Council to be necessary to the said works.

If not satisfied with cause shown, Government may direct landholder to repair.

8. If, at any time, on report from the Collector, it appears to the Governor in Council that any landholder has made default in executing the repairs imposed upon him under section 7 of this Act, the Governor in Council may appoint some person to carry out such repairs and may direct by a notice in writing that the expense of carrying out the said repairs shall be paid by the landholder within such time as he may fix.

On default, Government may direct repairs to be executed at landholder's expense.

9. In cases of emergency, the Collector of any district, in which any of the works mentioned in section 1 is situated, may provide for the immediate execution of any repairs, the immediate execution of which is in his opinion necessary for averting serious danger to life or property or serious obstruction to public traffic on any railway, and may direct that the landholder having control over such works shall pay the expenses of executing such repairs.

In emergency, Collector competent to execute repairs necessary for averting serious consequences.

10. Whenever any landholder disputes his liability to pay any claim made upon him under sections 8, 9, or the amount of such claims, the Collector shall refer the matter for the determination of a competent civil court in the manner hereinafter appearing.

If landholder disputes, matter to be referred to competent civil court.

11. In making a reference under the preceding section the Collector shall state for the information of the court in writing under his hand—

Points to be stated for court's information.

(1) The situation of the work upon which repairs have been executed.
(2) The names of the persons who, he has reason to think, have control over such works.
(3) The sum sought to be recovered on account of the works executed under section 8 or 9.
(4) The grounds upon which the amount of the sum was determined.

12. The court shall thereupon proceed to decide the question in the manner provided by the Code of Civil Procedure for the hearing of regular suits, provided that in determining the liability of the landholder mentioned in the statement submitted by the Collector under section 9 the court shall take into consideration, among other things—

Points to be taken into consideration by court.

(1) The necessity for the execution of such works, arising from the extent of the danager to the railway.
(2) Any causes, if such were alleged by the landholder, under section 6 for the non-execution on his part of the said repairs.
(3) The interest of the persons named in the said irrigation works and their liability to contribute towards the maintenance of such works.

The liability for the expenses of the said repairs shall be measured by the liability of the said landholder for the execution of such works, regard being had to local customs and the tenure under which the land is held.

(4) The actual expenses incurred in the execution of the said repairs.

13. The cost of all proceedings taken under sections 10 and 14 shall, in the first instance, be paid by the Collector, provided that after hearing the suit the court shall have full power to give and apportion the costs of every application made and proceeding taken under this Act in any manner it thinks fit.

Costs by whom to be borne.

14. An appeal shall lie from all decisions passed by any civil court under this Act to the High Court. Every appeal under this section shall be presented within the time and in the manner provided by the Code of Civil Procedure for regular appeals in suits.

Appeal lies to the High Court from all decisions passed by any civil court.

15. If the landholder does not dispute the claim made upon him under sections 8 and 9, the amount of such claim shall be recovered from such landholder as an arrear of land revenue; if he does dispute the claim the amount finally awarded (if any) by the court shall be recovered as if the same had been awarded in a civil suit.

Amount due by landholder how to be recovered.

16. The notice mentioned in sections 6, 7 and 8 shall, if practicable, be served personally on the person to whom it is addressed; or, if he cannot be found, the notice may be left at his usual or last known place of abode with some adult member of his family, servant, or agent, or may be sent by a registered letter, or may be put upon some conspicuous part of his usual or last known place of abode, and shall thereby be deemed to have been duly presented or served.

Notice how to be served.

17. The Governor in Council may by a notification from time to time authorize any public officer to exercise any of the powers of a Collector under this Act, and may in like manner at any time withdraw or modify such authority.

Government may authorize any public officer to exercise powers of Collector.

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 officers 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 cause 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.

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

23*rd July* 1884.

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 ::^{n} 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.

14*th 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.)

M. HAMMICK,
Ag. Under Secy. to Govt.

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

Exd. J. Wright.

Govt. of (1884) Madras.

LEGISLATIVE.

Recorded.

(Signed)

Issued

Recd. Encl.

G.O., 20th September 1884, No. 210.

SEPTEMBER.

The Railway Line Protection Draft Bill.

Referring the papers connected with—to a committee in view to the submission of a revised bill.

To

The Consg. Engr: for Rys:

With order

7TH APRIL 1884, No. 943 W., PUBLIC WORKS.

GOVERNMENT OF MADRAS.

PUBLIC WORKS DEPARTMENT.

Buildings and Roads.
Civil Works.

READ—the following paper:—

From Major R. A. SARGEAUNT, R.E., Officiating Under Secretary to the Government of India, Public Works Department (Railway Construction), to the Secretary to the Government of Madras, Public Works Department, dated Fort William, 14th March 1884, No. 212 R.C.

I am directed to acknowledge the receipt of your letter, No. 3419 W., of the 30th November 1883, on the subject of the necessity for special legislation for the prevention of risk to life and property arising from neglect on the part of proprietors of private irrigation works.

2. In reply, I am to state that His Excellency the Viceroy and Governor-General in Council desires to leave the question of legislation in the hands of the Government of Madras, as it does not at the present time appear desirable that such legislation should be general for the whole of India.

ORDER—dated 7th April 1884, No. 943 W., Public Works.

The papers will be transferred to the Legislative Department, with a view to the necessary action being taken; the principles laid down by the Government of India, in their letter, No. 917 R.C.,* dated 12th October 1883, being followed so far as possible.

* G.O., No. 3418 W., dated 30th November 1883.

2. Meanwhile, in the opinion of His Excellency the Governor in Council, the Madras Railway Company should follow the course prescribed in the Proceedings of Government, dated 15th June 1882, No. 379 R., by applying to the Civil District Court for an injunction to compel the Zemindar of Kárvetnagar to execute all necessary and reasonable repairs to the tanks which are said to endanger the line of railway.

(True Extract.)

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

To the Consulting Engineer for Railways.
„ Legislative Department, with papers as specified, viz.—
Notes by Honorable Members.
G.O., No. 379 R., $\frac{379\text{ R.}}{\text{A}}$, dated 15th June 1882.
„ 556 R., dated 7th September 1882.
„ 873 R., dated 16th August 1883.
„ 1005-6 R., dated 19th September 1883.
„ 3418-19 W., dated 30th November 1883.

Exd. A. Aaron.
Spare Copies

BUILDINGS AND ROADS.
CIVIL WORKS.

Govt. of {1884} Madras.

PUBLIC WORKS

Dated April, 7th.

Recd. *Encl.*

G.O., 7th April 1884, No. 943 W.

APRIL.

Madras Railway

Ruined tanks in the Kárvetnagar Zemindari which threaten danger to the —. The Company advised to apply to the Civil District Court for an injunction to compel the Zemindar to execute repairs to the —, and papers transferred to the Legislative Department with a view to special legislation.

P. W. Department.

Read the following :—

Note by the Joint Secretary to Govt. P. W. Dep. Railway Branch, d/25th June 1884. re. Tanks Karvetnagar Zamindari

FOR ORDERS.

Lt Colonel R.E
Jt Secretary to Govt. P.W.D
Railway Branch.

FOR ORDERS.

Consg. Engr.'s No. 2.

25/ /19

Works

Consulting Engineer's Office,

Madras, 23 June 1874

Agent and Manager,

dated 21st

North Coast.

Ler

No 33,

Submitted for the orders of Government

Col. RE

always

to

date

pre

I

to

arrie

work

among the best and,

perhaps, longest lines

in India. Have I sufficiently

explained & accentuated

that danger exists of

not why not depute

an Engineer of the DPW

to examine the works

and report? If so

30/6

27 P. W. Department
Railway Branch
Ootacamund 4th July 1884.

Note.

The undersigned invites the attention of the Honourable Member to Proceedings of Government 3 & 28 W. dated 23d December 1882.

These orders provide for the inspection and bringing to notice of Collectors of faults affecting railways & dangerous condition.

It is questionable whether any action on the part of the Collector, in the absence of proper legislation, would be of any

avail

avail. –

Should the Collector, to whom however I observe Proceedings of Government 943 W. dated 7th April 1882, was not communicated, call upon the Railway Company to apply to the Civil Courts for an injunction, the Agent; if no reply is sent to his present letter, will refer to it and ask for instructions which could then be given with reference to a case in point. –

Proceedings of Government 943 W. dated 7th April 1882 is in opposition to Proceedings of Government 556 R dated 7th September 1882, but in my opinion, it is inexpedient to issue further orders. –

If the Agents letter now before Government is not answered he is bound to obey Proceedings of Government 943 W. dated 7th April 1882, or make further reference, which I think under the circumstances it is politic to await. –

C. L. Smith Lieut Col R.E.
Asst Engr to Govt. S.W.D. Ry Branch

Recorded

R.

Recorded

C.L.S.
16.7.4

R.

O.L.S 4/7.
Acc: 4/7.
Ret.

REVENUE BOARD OFFICE MADRAS

Proceedings of the Board of Revenue,

Dated 22nd November 1883.

No. 7295 Confl.

Read letter from the Collector of North Arcot,
dated 13th November 1883, No 572.

Resolution:-

Submitted to Government for favour of compliance.

(True Extract)

By Secretary

To
The Secretary to Government R.D.
with letter in original & file returned

Copy to
The Collector of North Arcot

a 1776 10-83 No 4202 [illegible]

| No 379-37A R 15-6 R
" - 1006 R 19-9 B
" - 1121 R 3-11 B

Rev: G.O. No 4745

Transferred to the Public Works Department Railway Branch, with reference to the order in that Dept, of 19th Sept. 1883, No 1005R.

[illegible]

Secy. to Govt

Fort Saint George } 28th November 1883

B No 1376 R of 5th Decr/83.

Copies of the under-mentioned Pros: will be furnished to the Collector of North Arcot through the Rev: departt

No 556 R of 7th Sept/82.
" 873 R " 16th Augt/83.
" 1006 R " 17th Septr/83.

[illegible]

6.12.3

To the Rev: departt with copies of the Pros: quoted

J 10/12

Revenue Department

No 1419

1883. [illegible]

Board of Revenue,

MADRAS.

To

The Secretary to Govt.

Revenue Department.

B No 1376 R of 5th Decr/83

[illegible] 3/11/83

Recd 23/11/83

R 23/11 [illegible]

Proceedings, dated 22nd November 1883.
No. 7295 Routine

Subject.

Submitting to Government for compliance application of Collector of North Arcot, for copies of certain correspondence relating to repair of ruined tanks in Karvetnuggur zemindary which threaten danger to Madras Railway.

W [illegible]

R

GOVERNMENT OF MADRAS
23 NOV 83
REVENUE DEPARTMENT

[illegible]

19 P. W. Department
24 Railway Branch

Note

The Agent of the Madras Railway deprecates on grounds which appear to me reasonable, his being called upon to apply to the Civil Court for an injunction to compel the Zemindar of Karvetnuggur to repair tanks said to endanger the Railway.

The Collector of North Arcot in reply to a communication from me states his opinion that such an application is uncalled for.

[illegible]

The Agents letter calls for no reply if Government are willing to let the matter drop - a course which I would recommend.

I have been given to understand that the Kawatuaa Estate is no longer under the administration of the Collector; recourse to the Civil Court is therefore now the only remedy, and in that case it would I conclude be obligatory on the Company to prove negligence, which in my opinion their Staff are not in a position, and ought not to be called upon, to undertake.-

C.L.S
23.6.4
R

Through Revenue Secretary and W.

21/ 2 25

The release of the Kawatuaa Estate from attachment & management under Act II of 1864 has been reported. The arrears have been paid in full. The Collector therefore can do nothing: but even if the estate was portion of it continued under management it seems doubtful whether he would be justified in spending Estate funds on works for the benefit of Railway (C.-E. Court) property.

Wd.
29/6

I have no remark to make - It appears to me that the legislation contemplated in G.O. dated 7-4-84. W. 943. must be awaited. When the question has been disposed by law, action can be taken.

W.
27.6.84

Sir

Rec[illegible] Lake [illegible] P. O. Que 42 02
in Board [illegible] Prince [illegible] 3235 d [illegible]
30th Idem, I have the honor to request
that you will be [illegible] so kind as to obtain
for me Copies [illegible] Correspondence
disposed of [illegible] R. as I do not know
to what it is [illegible] that my Accounts
should be direct [illegible] on my receiving
no Complaints [illegible] vexation of
any Kind from the [illegible] any au-
thority with the Assistant [illegible] of the
Executive Engineer already taken all
the steps I can think of that are practi-
cable for the protection of the Railway

I have the honor to be
Sir
Your Most obedient Servant

[illegible]

Collector

Revenue Department.

PROCEEDINGS OF THE MADRAS GOVERNMENT.

Read the following Proceedings, Proceedings
Department, dated 2nd October 1863, No. 2618, with
G.O. Public Works Dept. dated 19th Sept. 1863, No. 1005, K.
forwarding to the Govt. Copy of Circular Correspondence shewing
ing that no application was made to the Civil Court
Court for an injunction to compel the Zemindar of
Karuturagam to repair certain ruins on the Poreal
Threatened danger to the Madras Railway.

Communicate to the Revenue
Department.

Order thereon, 18th October 1863, No. 4202.

Communicate to the Board
of Revenue who will draw the Collector's attention
to para 2 of letter from the Agent and Manager
Madras Railway Company herein recorded.

True Extract

C. Turner
Major R.E.
Under Secy to Govt. to Pub. D.
for Secy to Govt.

To
The Board of Revenue
Public Works Dept.
Railway Branch

No 1221 Rdy 3rd Nov 83

Recorded

No 1221 Rdy 3-11-83

PUBLIC WORKS DEPARTMENT.

PROCEEDINGS OF THE MADRAS GOVERNMENT.

UNDER date the 6 August

READ the following

Pros. Legislative Dept No 127 dy 30.6.86.

Ordered that the following notification be published in the Fort St. George Gazette

"Madras Act IV of 1886. (an Act to provide for the prevention of injury to Railways from the escape or overflow of water from irrigation Works situated upon the lands of Zemindars or other Landholders) having received the assent

Assent of His Exy. the
Viceroy & Governor General
in Council, and having
become law, the Rt. Hon'ble
~~His Exy.~~
the Governor in Council
directs that the aforesaid
Act shall come into
force and take effect
from & after the 1st
September 1886.

To The Comsr. Surv. Genl Kys.
" Ch. E. for Irrigation
" Supt Surveys
" Supt. Govt W. T. & S.
" Rev. Dept
" Legislative Dept.

Copy of the notification sent
to the Supt: of Govt:
Press for publication. 6/8/86

5485.

Govt. of Madras.

PUBLIC WORKS.

3705 R

Dated

Read

Read

G.O. 6th August 1880, No. 1942.

Railway protection Act.

ordering it to be published in the Fort St George Gazette that the Madras Act IV of 1886 shall come into force from & after the 1st September '86.

240/15