

Public Works (1897) Department.

— 346 —

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- 196 -

G.O., No. 644 R

DATED 11 September 1971

[Despatch Abstract.]

[Despatch Abstract.]

Offences by Railway Servants. Govt of India
Endorsement forwarding. Ctr of their letter to the
Director General of Railways on the subject of
the provision in the Indian Railways Act
for the punishment of — which are likely
to endanger life as well as those which
actually do so, Comd to the Agents, Madras,
S. I., and Nilgiri Railways.

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[P.W. 26.
6,000-50-11-36.]

21/9/97

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

CURRENT No. 8902

The Soul of India

Order No 644. Dated 11/9/97
Communicated to
the Agents Messrs, South
Indian & Bengal Railways
for information and
guidance.

No. 628 RT

Dated 9th August 1897

Received

Registered

Enclosures 3

Spare copies

SUBJECT.

Punishment of Offences,
by Railway Servants

7

The Congress for Boys

- 6. *Expositio* & *translatio*: *h. v. R.*

— 14 — Agent S. J. Ry

-2- Agent & Ch: Engr Nilgiri R

Copies supplied to all of them

Forwarding for information and guidance copy of its reply to D. G. R. on the subject of the desirability of amending Section 101 of the Indian Mys Act so as to provide for the — which are likely to endanger life as well as those which actually do so.

BACK PAPERS.

FURTHER PAPERS.

[Enclosure No. 1 to Government of India memo. No. 628 R. T. of 1897.]

No. 73T., dated 22nd February 1897.

From—The Director General of Railways,

From—The Director General of Railways,
To—The Secretary to the Government of India, Public Works Department.

I have the honour to forward, in original, the correspondence noted below regarding the interpretation of section 101 of the Indian Railways Act.

2. The case, which will be elucidated by the small sketch plan attached, is as follows:—

62 down goods, the running staff on which left Saidpur on the single line on the Northern Section, Eastern Bengal State railway, at about 22 hours on the 30th September 1896, after a sufficient interval of rest, left Phulbari at about 0-40 hours on the morning of the 1st October with line clear to Chorkai where the train was booked to arrive at 1-14 and stop to cross 21 up mail due to arrive there at 1-49. The train, which was running before time, arrived at 1-8; and the engine staff, being apparently all asleep, disregarded the signals and shouts of the station staff and ran on to Hili, where they arrived at 1-45.

3. The mail was running 6 minutes late, and the Station Master at Hili had not, therefore, obtained line clear from Chorkai, and accordingly detained the mail, which arrived at 1-32.

Under ordinary circumstances the Station Master, Hili, would have obtained line clear from Chorkai at 1-9 on departure of the mail from Panchabibi and before 62 down goods, due at Chorkai at 1-14, had arrived at that station, and despatched the mail train from Hili at 1-28. It was only the fortuitous coincidence of the early running of the goods train owing to the driver being asleep with the late running of the mail which prevented the line clear being so obtained before the arrival of the goods at Chorkai, and the mail train being permitted to leave Hili as usual, and a collision occurring between the two trains between Hili and Chorkai.

4. The Manager being of opinion that the driver had endangered the safety of the train staff by his disobedience of the rules, ordered his prosecution under section 101 of the Indian Railways Act, under which he might, if convicted, have been sentenced to two years' imprisonment; but the Deputy Magistrate before whom the case was tried, was of opinion that, owing to the action of the Station Master of Hili, the driver had not actually endangered the safety of any person, and sentenced him to pay a fine of Rs. 50 only, or suffer one month's simple imprisonment in default, for disobedience of a general rule framed under section 47 (2).

5. The Magistrate's judgment was referred by my orders to the Honourable, the Advocate-General, and the Standing Counsel for opinion, with a view to the necessary steps being taken to obtain a revision of the sentence on appeal, with the object of obtaining, if possible, an authoritative decision from the High Court on the interpretation of the section.

Both these officers agree that the driver did not in fact endanger the safety of any person, and that the Magistrate's judgment was therefore correct; and it may, therefore, I think, be fairly assumed that the High Court would in this case have ruled accordingly.

6. Owing to the large demand in India for mechanics trained to locomotive work, a fine, even if accompanied as it naturally would be by dismissal, is little, if any, deterrent in a case of this nature. It is, therefore, my deliberate opinion that, if the law is as stated, in order to prevent the disregard of rules framed in order to safeguard the public safety, section 101 of the Indian Railways Act should be revised at the earliest possible opportunity so as to provide that any breach of such rules which is likely to endanger the safety of any person should incur the same penalty as if life was actually endangered.

It will be observed that the Manager, Eastern Bengal State railway, expresses himself strongly in the same sense, and this view is supported by the recorded opinion of several of our leading Agents and Managers and held by all with whom I have discussed this question, which I now submit for the serious consideration of the Government of India.

[Annexure No. 1 to enclosure No. 1 to Government of India memo. No. 628 R. T. of 1897.]

No. 97 D. G. R., dated 30th January 1897.

From—The Manager, Eastern Bengal State Railway System,
To—The Director General of Railways.

With reference to your No. 641 T., dated 24th December 1896, I have the honour to forward herewith copies of the case stated by the Solicitor to the Government of India, and the opinions of the Advocate General and Standing Counsel thereon.

2. As both officers agree that an appeal is useless and that it is a matter for legislation, I refer the case again for your further orders in regard to obtaining a decision of the High Court by appeal, or for disposal, if alteration of the section by legislation is considered advisable.

[Annexure No. 2 to enclosure No. 1 to Government of India memo. No. 628 R. T. of 1897.]

CASE.

EMPRESS *versus* GUNPUT.

The accused in the above case was prosecuted before the Deputy Magistrate of Dinagepore under section 101 of the Railways Act for running through the Chorkai station on the northern section of the Eastern Bengal State railway on the 1st October 1896 without "line clear," and thereby endangering the safety of persons. There is no doubt on the facts that the driver neglected his duty, and for this the Magistrate fined him Rs. 50. It also appears from the facts of the case that no person's safety was in the present case endangered owing to precautions taken by others of the railway staff. The question is whether a railway servant who merely disobeys a rule which is necessary to secure the safety of persons on the line, thereby endangers their safety within the meaning of section 101.

The Honourable, the Advocate General, will please peruse the papers sent herewith, and advise whether in his opinion the Magistrate's view is correct; and if not, whether any and, if any, what steps should be taken to obtain an authoritative ruling on the interpretation of the section.

The case of *Reg. versus Manphool* (5 N.-W. P. Rep., All., 240) supports the Magistrate's view.

W. K. EDDIS,

Solicitor to the Government of India.

The 5th January 1897.

[Annexure No. 3 to enclosure No. 1 to Government of India memo. No. 628 R. T. of 1897.]

OPINION—By the HONOURABLE SIR G. C. PAUL, Advocate General Bengal, dated 6th January 1897.

I am of opinion that the decision of the Deputy Magistrate on the construction of section 101 of Act IX of 1890 is perfectly correct.

Whether a railway servant "endangers the safety of any person" is a question of fact which must be found in each case. In this case it is admitted that no person's safety was endangered owing to precautions taken by others of the railway staff, and therefore the

railway driver who neglected to obey a rule cannot be convicted under section 101 of Act IX of 1890. If any alteration in the law is desired, no good will come from appealing against or revising this decision, but recourse should be had to legislation.

[Annexure No. 4 to enclosure No. 1 to Government of India memo. No. 628 R. T. of 1897.]

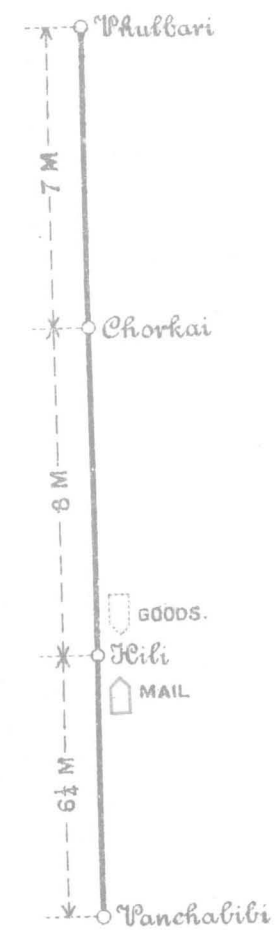
OPINION By—A. M. DUNNE, Esq., Standing Counsel to Government, dated 25th January 1897.

I don't think there is anything to add to what the Honourable, the Advocate General, has already said on this case. The question as to whether the act or omission of the driver "endangered the safety of any one" was a pure question of fact. As a fact it is agreed on all sides that it did not endanger any one's safety.

But it is said that it might have done so had it not been for the acts of third parties; that, however, is not what the section provides for. It does not say that he is to be punished for an act or omission, which might result in the safety of some one being endangered.

I think the Magistrate's decision was correct and that nothing further can be done in regard to it. If any alteration is required in the case it would have to be by legislation.

Enclosure No 2 to the Government of India memo:
No 628 W. J. of 1897.



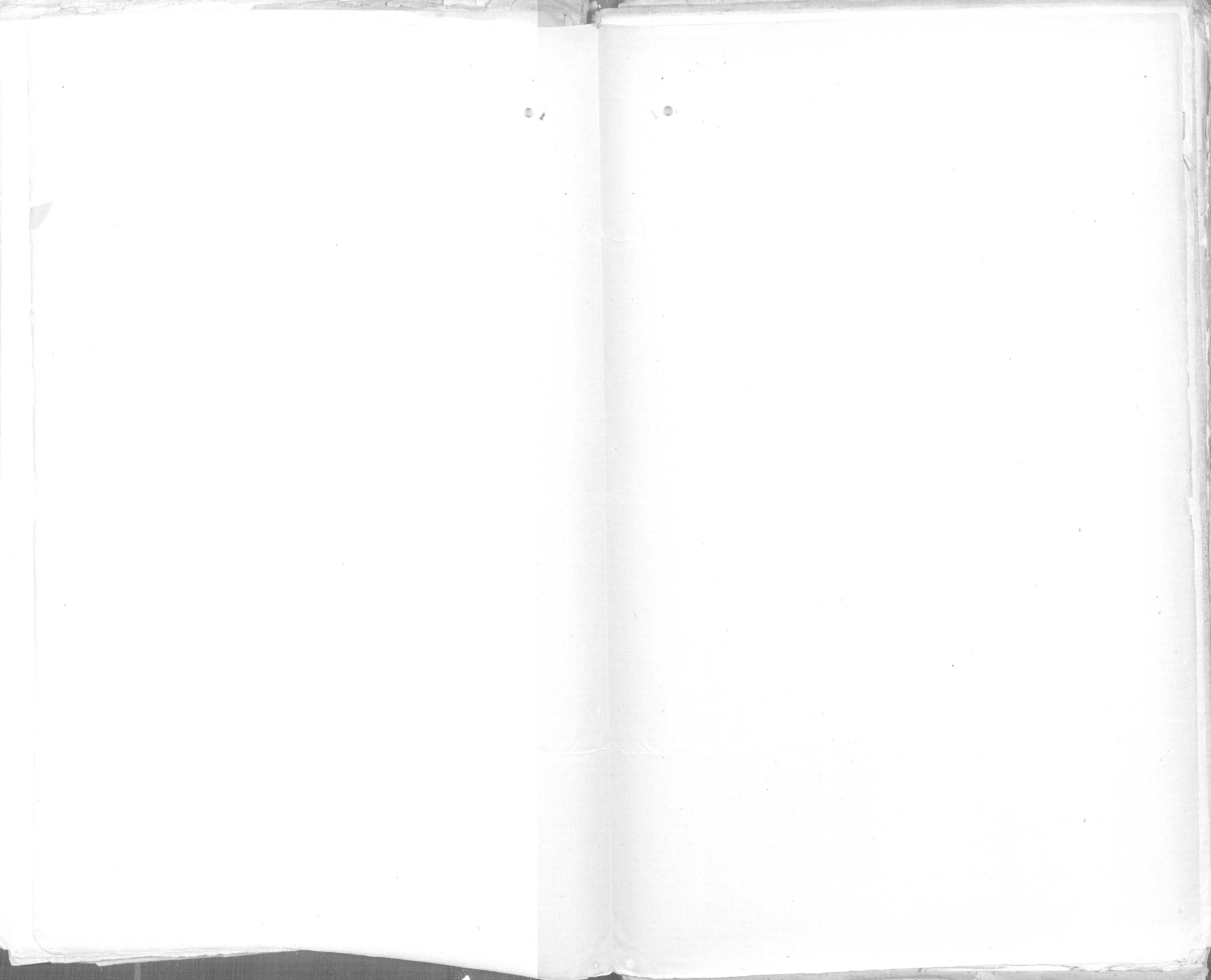
TIME TABLE

62 DOWN GOODS.

Phulbari	{ Arr. 0-41 Dep. 0-46
Chorkai	{ Arr. 1-14 Dep. 1-50
Teili	{ Arr. 2-22 Dep. 2-30
Panchalibi	{ Arr. 2-55 Dep. 3-0

21 UP DARJEELING MAIL.

{ Dep. 2-17 Arr. ...
{ Dep. 1-59 Arr. 1-49
{ Dep. 1-28 Arr. 1-26
{ Dep. 1-9 Arr. 1-3



[Enclosure No. 3 to Government of India memo. No. 628 R. T. of 1897].

No. 165 T., dated 23rd April 1897.

From—The Director General of Railways,

To—The Secretary to the Government of India, Public Works Department.

A case similar to that reported in my letter No. 73 T., dated 22nd February 1897, having occurred on the 5th March in which the train staff being asleep, 52 down goods ran through Baragaon station on the Oudh and Rohilkhand railway against signals without line clear.

In order to obtain legal advice on the question whether a prosecution would lie under section 129 of the Indian Railways Act, I directed the Manager, Oudh and Rohilkhand railway, to consult his legal adviser (the Legal Remembrancer to Government in the North-Western Provinces and Oudh); I enclose a copy of the Manager's reply and of the Legal Remembrancer's opinion which does not appear to materially advance matters.

2. As there appeared to be a doubt of the success of a prosecution, I instructed the Manager to deal with the matter departmentally.

3. I am still of opinion that it is absolutely necessary for the safety of the public that it should be made perfectly clear that railway servants who commit such rash acts as running through signals when against them and entering upon a block section of a railway without a line clear should be liable on conviction to a long term of imprisonment, whether life is actually endangered or not.

[Annexure No. 1 to enclosure No. 3 to Government of India memo. No. 628 R. T. of 1897.]

No. 165 D. G., dated 30th March 1897.

From—The Manager, Oudh and Rohilkhand railway,

To—The Director General of Railways.

No. 52 down goods train ran through Baragaon station against signals without stopping and taking line clear on the 5th March 1897.

With reference to your telegram No. 111 T., dated the 16th March 1897, enquiring whether a prosecution would lie against parties concerned in the above accident, I have the honour to forward herewith copy of the Legal Remembrancer's opinion in connection No. 2648 F.—720, dated 25th March 1897, with the prosecution of the driver and the guard implicated in the case, together with the proceedings of the officers' joint enquiry held into the accident.

2. The Legal Remembrancer's letter shows that for a prosecution to succeed it would be necessary to prove that the safety of some person was endangered, whereas this could not be established in this case as there was no train running in the opposite direction, although this fact was not known to the driver of No. 52 down goods train.

3. As there is unfortunately a weak point in the case and in the face of the Legal Remembrancer's opinion, I do not think it advisable to institute a prosecution, but propose to deal with the driver and the guard departmentally as provided for in the General Rules and Regulations.

4. I may add, however, that it would appear that the law, as it now stands, does not provide a punishment proportionate with the offence in a case of running through a station without picking up line clear when it cannot be proved that a servant's rash and negligent conduct did actually endanger the safety of others, and the only punishment that can be inflicted is a fine of Rs. 50 and dismissal with a month's pay in lieu of notice, as provided for in Rule 269 of the General Rules and Regulations.

Done

5902/97

5. The favour of return of the original proceedings is requested, together with your early orders in the matter, as the driver and the guard implicated in the case have been under suspension from the date of the occurrence, and it is advisable to deal with them without further delay.

[Annexure No. 2 to enclosure No. 3 to Government of India memo. No. 628 R. T. of 1897.]

No. 2648 F.—720, dated 25th March 1897.

From—The Legal Remembrancer to Government, North-Western Provinces and Oudh, Allahabad,

To—The Manager, Oudh and Rohilkhand railway, Lucknow.

With reference to your No. 82 L. G., dated 17th March 1897, I have the honour to say that for a prosecution under section 129, Act IX, 1890, it would be necessary to prove that "the act or omission was likely to endanger the safety of any person travelling or being upon a railway," and the papers sent by you say nothing about this. If this can be proved, a prosecution would lie, not otherwise. If the safety of any person was in fact endangered, section 101, Act IX of 1890, would appear to be the appropriate section to proceed under.

The enclosures of your letter are herewith returned.

No. 627 R. T.

GOVERNMENT OF INDIA.
PUBLIC WORKS DEPARTMENT.
RAILWAY TRAFFIC.



To

THE DIRECTOR GENERAL OF RAILWAYS.

Simla, the 9th August 1897.

SIR,

I am directed to acknowledge the receipt of your letters No. 73 T., dated the 22nd February 1897, and No. 165 T., dated 23rd April 1897, representing the desirability of the amendment of section 101 of the Indian Railways Act so as to provide for the punishment of offences by railway servants which are likely to endanger life as well as those which actually do so.

2. The cases referred to occurred on the Eastern Bengal and Oudh and Rohilkhand railways, and in both cases the offences were committed by drivers who ran through stations against signals without stopping to receive the line clear tickets. In the former case the prosecution under section 101 failed because the Court held that life had not actually been endangered—a view which also commended itself to the Honourable the Advocate General of Bengal and the Standing Counsel. In the latter case, being doubtful of the issue of a prosecution, you ordered the offenders to be punished departmentally.

3. In reply I am to point out that section 129, which is of general application to railway servants and the public alike, provides for the punishment of any act or omission, by whomsoever committed, by which the safety of persons being on or travelling upon a railway is likely to be endangered, and I am to state that the Government of India, as at present advised, are of opinion that had the offenders in the cases under reference been prosecuted under this section—sufficient evidence being adduced to show in what way the acts or omissions of which they were accused were likely to endanger the safety of the public—a conviction would have been obtained.

4. I am to request that, on the next occasion on which an offence of a similar nature is committed, this course may be followed and the result reported.

I have the honour to be,

SIR,

Your most obedient Servant,

G. A. ANDERSON,

Under Secretary.

Documents accompanying.

Nil.

No. 628 R. T., dated 9th August 1897.

Copy, with copy of correspondence replied to, forwarded to the Governments of Madras, Bombay, Bengal and Burma, the Chief Commissioner of Assam, the Resident at Hyderabad, the Agent to the Governor General for Rajputana and the Consulting Engineers to the Government of India for Railways, Calcutta, Lucknow and Assam, for information and guidance.

By order,

G. A. Anderson

Under Secretary.

G. C. Press, Simla.—No. 428P. W. D.—13-8-97.—480.

*with 50 copies of the
fewer per packet sent*
To The Joint Secretary to the Government of Madras,
Public Works Department, Railway Branch.

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