Public Works (1899) Department.

RAILWAY BRANCH.

G.O., No. 338-39. Rly.

DATED 25th March 1899

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[Despatch Abstract.]

Further Amendments of the Indian Rys Act IX of 1890

Ordered that the Correspondence containing suggestions for the — in order to provide for cases which have arisen in practice & are not governed by the existing amended Act, be forwarded to the Rep. I with reference to its enquiry

Forwarding copy of Pros. embodying correspondence containing suggestions for the — in order to provide for cases which have arisen in practice not governed by the existing amended Act.

[P. W. 98. 100—8-3-99.]

Indexed.

RAILWAY.

Government {1899} of Madras.

PUBLIC WORKS.

Read.	1899.	*Enclosures*
Regd.		*Spare copies*

G.O., Nos. 338, 339 Ry., 25th March 1899.

MARCH.

Further Amendments of the Indian Railways Act IX of 1890

Forwarding copy of proceedings embodying correspondence containing suggestions for the — in order to provide for cases which have arisen in practice and are not governed by the existing amended Act.

GOVERNMENT OF MADRAS.

PUBLIC WORKS DEPARTMENT.

Railway.

Read the following papers :—

From—The Secretary to the Government of India, Public Works Department.
To—The Joint Secretary to the Government of Madras, P.W. Dept., Ry. Branch.
Dated—Simla, 23rd September 1898, No. 1032 R.T.

With reference to the Indian Railways Act IX of 1890, as amended by Act IX of 1896, I am directed to enquire whether, in the event of a revision of the Act as amended being undertaken at any future time, the Government of Madras have any further amendments to suggest in order to provide for cases which have arisen in practice and are not considered to be covered by the existing amended Act.

—

No. 2787.

Copy forwarded to Agents, Madras and South Indian Railways, for favour of report.

—

From—The Agent and Manager, Madras Railway Company.
To—The Consulting Engineer for Railways, Madras.
Dated—30th January 1899, No. 10101/117.

With reference to your endorsement, No. 2787, dated the 10th October 1898, on Government of India letter, No. 1032, dated Simla, the 23rd September 1898, enquiring whether, in the event of a revision of the Indian Railways Act IX of 1890, as amended, being undertaken at any future time, this Railway has any further amendments to suggest, in order to provide for cases which have arisen in practice and are not considered to be covered by the existing amended Act, I have the honour to forward herewith copies of the marginally-noted letters from the Company's Locomotive Superintendent and Traffic Manager containing their suggestions.

Locomotive Superintendent's letter, No. B. 1560, dated 16th December 1898.
Traffic Manager's letter, No. C. 7686/34038 A. and M., dated 18th January 1899.
Traffic Manager's letter, No. C. 7686/34112 A. and M., dated 26th January 1899.

—

Enclosure.

From—The Locomotive Superintendent, Madras Railway.
To—The Agent and Manager, Madras Railway.
Dated—16th December 1898, No. B./1560.

Revision of Railway Act IX of 1890.

With reference to your endorsement dated 11th October 1898, on Consulting Engineer's No. 2787 of the 10th idem, the only points which, so far as I am aware, seem to call for reconsideration in the Act are as follows :—

Section 47 (2) *and* 99 *to* 104.—These clauses appear to be practically the only ones in the Act which deal with offences or misconduct of Railway servants and under them the Railway Company appears to be empowered to—

(*a*) deduct a sum equal to one month's pay from a servant for committing a breach of rules ; and

(*b*) inflict or cause to be inflicted fines of varying amounts for certain specified offences.

In the latter case it is not clear whether these fines would have to be inflicted by a Magistrate or Judge, or whether the Railway Administration is empowered to inflict them.

2. No provision appears to exist empowering the Railway Company to either suspend or summarily dismiss a man and I am certainly of opinion that such power should be given. There are many offences of which although no question exists but that a railway servant is or has been guilty, there would be difficulty in obtaining criminal prosecution, and unless the power of fine, suspension or summary dismissal is retained by the Administration, it would frequently occur that it would not be possible to punish men at all.

3. I would refer you to conversation that took place at the officers' meeting held on the 1st October 1897 with regard to G.O., No. 644 R., dated 11th September 1897. The note I made at the time was as follows :—

Prosecution of drivers guilty of acts likely to endanger life.—This question was discussed and it was considered that no further steps can be taken, but that in the event of prosecution action should be taken, as suggested, under section 129. Chief Prosecuting Inspector has been advised by the Traffic Manager on the matter.

In view of the facts reported in the Government Order quoted, it seems to me a question whether the wording of section No. 129 does not need modification.

—

From—The Traffic Manager, Madras Railway Company.
To—The Agent and Manager, Rayapuram.
Dated—18th January 1899, No. C. 7686/34038 A. and M.

Revision of Railway Act IX of 1890.

Your endorsement of the 11th October on Government of India letter No. 1032 R.T. of 23rd September 1898.

I enclose herewith for your information a memorandum giving particulars of the various points that have from time to time arisen in connection with the working of the Railway Act of 1890.

2. The question in paragraph 4 as to the infliction of imprisonment in cases where the passenger is unable or unwilling to pay the excess and penalty leviable under the Act has, I understand, been already represented to the Consulting Engineer under your No. 11178/544 of 15th June last. The question as to what power the Governor-General has to call for a Railway Commission and as to whether such a Commission can, under any circumstances, be legally constituted unless all the parties concerned are agreeable is being raised elsewhere.

—

Memorandum of points which have from time to time arisen in connection with the Railway Act IX of 1890.

Section 75—*Schedule* 2—*Silk parcels.*—There has been a good deal of doubt as to whether the silk alone must be of the value of Rs. 100 or the total value of the consignment containing the silk amount to that sum. The opinion of the Advocate-General, Bengal (as contained in Railway Conference papers of 1893) is as follows :—

"Assuming that the package contained (*a*) cloth manufactured entirely of cotton and (*b*) cloth manufactured either entirely of silk or of silk in combination with cotton. I am of opinion that the Company is liable for (*a*) irrespective of the value of (*b*) inasmuch as cloth manufactured entirely of cotton finds no place in the second schedule of Act IX of 1890 (see Treadwin, *v.* G.E. Railway Company, L.R. 3 C.P. 308).

"With regard to (*b*) I am of opinion that the Railway Company is not liable therefor if its value exceeds Rs. 100 and is liable therefor if its value is less than that amount."

The opinion of our Solicitors Messrs. Barclay, Morgan and Orr in the case of the loss of a parcel containing silk cloths referred to them in February 1892, ran as follows :—

"It seems to us that under section 75 of the Indian Railway Act of 1890 the liability of the Company for the parcel in question depends upon whether the value of the silk contained in the parcel exceeds Rs. 100 and not upon the total value of the whole contents of the parcel. If the value of such parcel of silk was over Rs. 100 the Company would not be liable but if the value is less than Rs. 100 the Company would, we think, be liable for the whole value of the parcel both silk and cotton.

"Before paying the claim the Company should therefore be satisfied as to the value of the silk contained in the parcel."

Our practice has always been to repudiate claims where the value of the parcel or consignment containing silk is in excess of Rs. 100 and our action has not hitherto been disputed in a court of law.

2. *Section* 55—*Recovery of undercharges after delivery of goods.*—In consequence of a decision by the District Judge, Ahmedabad, in August 1896, in a suit brought by the B.B. and C.I. Railway that undercharges could not be recovered after delivery of goods, the Government of India was moved to sanction a special clause in order to give Railway Administrations definite powers to this effect. The Government of India, however, under their 678 R.T., of 3rd September 1897, clearly refuse to sanction such a clause, stating that it was the express intention of the Act to limit the powers of railway companies to correction of charges before delivery and not afterwards. It is proposed to discuss the matter at the next conference (O. 12086—your endorsement No. 10101/A., of 11th October 1897, on G.O., No. 758 R., dated 1st idem, forwarding Government of India letter No. 678 R.T., of 3rd September 1897).

3. *Sections* 64, 109, 119 *and* 67—*Reserving first and second class compartments.*—A large amount of correspondence has taken place in regard to the extent to which a railway company was legally empowered to reserve a compartment higher than the lowest and ensure that it was not entered by persons for whose use it had not been reserved by the railway company.

Legal opinions on the question varied, and the matter was eventually referred to the Government of India by this company, urging the issue of a rule considered necessary by our Solicitors.

The Government of India consider (under G.O., No 1357 Ry., of 3rd November 1898) that the question turns on section 67 of the Act and decline to frame statutory rules to enable Railway Administrations to take action which they are competent to take at their own discretion until some case occurs to prove that such rules are indispensable (C.-52952—your endorsement No. 10508, of 11th November 1898, on G.O., No. 1357 Ry., of 3rd November 1898).

4. *Sections* 112, 113 *and* 68—*Passengers found travelling without ticket and unable to pay excess or fine.*—Under the ruling of the Allahabad High Court (criminal revision case No. 408 of 1897 before Mr. Justice Knox), travelling in a train by a passenger without having a proper ticket with him is not an "offence" under the Railway Act of 1890. He cannot legally be sentenced to imprisonment in default of payment of the excess charge and fare which may be recovered under the provisions of section 113, clause 4.

The Great Indian Peninsula Railway have asked Government that the Act may be so amended that imprisonment should be inflicted in such cases, and it is suggested that this company should do so also, should the decision of the Allahabad High Court be upheld (C. 67004—your No. 11178—13440, of 28th December 1898).

5. *Section* 101.—On the Eastern Bengal Railway a driver was prosecuted in October 1896 under the above section for running through a station against signals without stopping to receive the line-clear ticket. A similar case occurred on the Oudh and Rohilkund Railway. The Eastern Bengal case failed because the Court held that life had not actually been endangered. In the Oudh and Rohilkund case the issue of a prosecution being doubtful the offenders were dealt with departmentally. The matter was referred to Government of India with a view to section 101 being amended 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.

Government of India, however, under their 627 R.T., of 9th August 1897, point out that the prosecution should have been made under section 129 and are not prepared to make any amendment of the Act unless it found that a conviction in such cases cannot be obtained under that section (C. 44657—your No. 10101-A.-9841 of 15th September 1897).

6. Under the present reading of sections 101 and 129 of the Railway Act and under the General Rules of 1895, we are unable to prosecute in cases of neglect of duty not "endangering" or "likely to endanger" the safety of any person, and such cases (as for instance a watchman asleep on duty when in charge of loaded wagons) have to be dealt with departmentally. Under the General Rules of 1880, a conviction could and frequently was obtained under Rules 36 and 55.

From—The Traffic Manager, Madras Railway.
To—The Agent and Manager, Rayapuram.
Dated—Madras, 26th January 1899, No. C. 7686/34112 A. and M.

Revision of Railway Act IX of 1890.

In continuation of this office letter No. C. 7686 A. and M., of 18th instant, I beg to put before you the following example of the application by the High Court of sections 112 and 113 of the Railway Act: A man was prosecuted under the penal section for having entered the train at Erode at 12 o'clock in the day with a ticket for Totaipalaiyam, a distance of five miles, and having been subsequently detected in the train at Somanur, eight stations further on, it seems difficult to have a clearer case of fraudulent intention, and this was the view held by the 2nd-class Magistrate, Palladam, who tried the case, and who sentenced the accused to a fine of Rs. 15 in addition to the single railway fare, or in default 15 days' rigorous imprisonment. The case was called up by the High Court in revision when the Government Pleader appeared to support the conviction,

but the High Court held that the evidence was insufficient to show that the accused had a fraudulent intention, and they set aside the conviction under section 112 and directed payment of the fare and single excess fare under section 113. The enclosed copy of a letter, dated 21st instant, from the Company's Solicitors, explains how the matter was put before the Court. The case of 1896, referred to in that letter, was a conviction by the 2nd-class Magistrate of Allur under precisely similar circumstances which was upheld by the High Court and the production of the judgment in that case has enabled us to obtain many subsequent convictions.

The only remedy for such divergent views on the parts of the Courts would appear to be to so amend the Act as to place the onus of proving the absence of fraudulent intention under such circumstances as those stated above upon the accused person.

From—Messrs. BARCLAY, ORR and DAVID, Solicitors, Madras.
To—The Traffic Manager, Madras Railway.
Dated— 21st January 1899.

Criminal Revision Case No. 398 *of* 1898.

We are in receipt of your letter of yesterday's date. The question which the Court has to decide in determining whether the accused should be dealt with under sections 112 or 113 is whether he entered the railway carriage with a fraudulent intention or not. In criminal revision case No. 19 of 1896 the Chief Justice and Davies, J., were of opinion that the Magistrate was right in his finding that the accused had such a guilty intention. In the present case, however, Shephard and Subramania Iyer, J.J., were of opinion that the evidence was insufficient to justify the Magistrate's finding that the accused had a guilty intention. In our opinion the Judges are quite wrong as the evidence was particularly strong to show that there was such a guilty intention. The accused gave as his reason for not getting down at Totaipalaiyam that he had arranged for a man to see him there but that he did not turn up and that he had no time to get out to get a fresh ticket. No explanation was given as to why the man did not turn up, why he was not called to give evidence, why the fact of his not turning up prevented the accused from getting out to buy a ticket, nor why the fact of the man not turning up made it necessary for the accused to travel on to Somanur. The attention of the Judges was drawn to these points, but they attached no weight to them, contenting themselves with stating that it would be dangerous to hold that any one travelling beyond the station of destination mentioned in the ticket entered the carriage with a fraudulent intention. Had the case been heard by the Judge who disposed of the previous case, the result would probably have been different.

From—The Agent, South Indian Railway.
To—The Consulting Engineer for Railways, Madras.
Dated—Trichinopoly, 10th December 1898, No. 1109.

With reference to your endorsement No. 2787, dated 10th October 1898, regarding amendment of the Railway Act, I have the honour to forward a copy of letter, No. G. 7015, dated 16th November 1898, from the Traffic Manager, and to inform you that I have no further suggestions to offer.

Enclosure.

From—The Traffic Manager, South Indian Railway.
To—The Agent, South Indian Railway.
Dated—16th November 1898, No. G.-7015.

Revision of Indian Railway Act IX of 1890.

With reference to your letter No. F. 748/$\frac{4}{1859}$ of 15th October 1898, I beg to suggest the following amendments for consideration:—

Section 3, *clause* 6, *and sections* 77 *and* 140.—The words "and includes the Agent of the Company" may be added at the end of clause 6. The necessity for this addition arises on account of the objections often taken in the Mufassal Courts to the authority of the Agent to represent the Company. For instance, much difficulty was recently experienced in interpreting section 77 owing to this omission. It was contended that a railway administration, in the case of a railway administered by a Railway Company meant the Company itself (for definition of "Railway Company"—*vide* section 3, clause 5, and that notice of claims may be served upon any of the officers of the Company in India. The question whether the Agent was the only proper officer who represented the Company in India and whether notices referred to in section 77 could only be served upon him was referred to the High Court in a suit brought against the

Company in the Court of the Sub-Judge at Negapatam in connection with the loss of a parcel during the riot there. The High Court then held that the Agent in India was the only officer who could receive legally such notices. If the word Agent were added to this section, as suggested above, such difficulties would not arise.

Section 140.—In the above case it was also contended that the word "may" occurring in section 140 permits the service of notices either upon the Agent or upon any other officer. I therefore suggest that the word "shall" be substituted for "may."

Sections 66 *and* 67.—Under these sections a railway administration shall supply, upon payment of fares, tickets to passengers. There is nothing in the Act either expressly or impliedly sanctioning the sale of tickets by other persons than the Company's servants. It is, therefore, apparent that the transfer of tickets is not contemplated by the Act, but there is no penal clause made in the Act for the breach of the rule, although in the monthly guide we announce that tickets are not transferable.

Sections 70 *and* 114.—With regard to return and season tickets, it is laid down in section 70 that they are not transferable and section 114 forms the penal clause for the breach of the offence. I cannot understand why a distinction should be made between a single journey ticket and a return ticket. I therefore beg to put forward this case for such notice as may be deemed expedient.

Sections 68 *and* 112.—It is often contended in Magistrates' Courts that under these sections, the entry into the carriage and not the travelling constitutes the offence. I therefore suggest that the words "or travel" be inserted after the word "enter" in section 68 and in section 112, clause A "or travels" after the word "enters."

Section 100.—This section has been variously read—some have held that the words after "or" have no connection with the previous lines.

If it is to be understood that the greater penalty refers to a railway servant, who, in a state of intoxication, improperly performs *his* duty to the danger or safety of any person, &c.,—and this appears to be the right interpretation—then the section should be recast.

Section 101.—In section 100 the words "likely to endanger" appear but in section 101 there is only the word "endanger" so that according to the latter reading a railway servant would not be punishable under this section if he could prove that his action was only "*likely to* endanger," and he would not be punishable under section 100, as it might be argued that that section referred only to a railway servant in a state of intoxication.

He could, however, be prosecuted under section 129.

A case bearing upon this point was brought to the notice of the Government of India upon which G.O., No. 627 R.T., dated Simla, 9th August 1897, was issued.

In that order this was pointed out.

Section 118.—In this section there is no alternative punishment of imprisonment provided in the case of a passenger from whom the fares due to the Company cannot be recovered. The only remedy at present is to sell his property by issuing a distress warrant but in nearly every such case we find that there is no property to distrain upon. The Bombay and Madras High Courts have held that imprisonment cannot be awarded under this section. I therefore suggest that the defect may be remedied.

Section 113.—The Madras High Court have held that persons who are not passengers cannot be punished under this section. I therefore suggest that the word "passenger" be removed and the word "person" substituted.

Section 123.—The word "reasonable" may be omitted, otherwise it allows drivers and conductors to sue the Company in Courts of Law if they consider they have been unreasonably dealt with. The only remedy which should be left open to them is for them to make a representation of their grievances to the Railway authorities concerned and abide by their decision. This is the principle upon which suits against the Railway Companies in England have been held to be not maintainable. We have had two cases in which certain bandy-men were prosecuted under this section. One was in the Town Magistrate's Court at Kumbakonam and the other at Tirutturaippundi. The chief point taken up by the accused persons for their defence was that the order of the station master was unreasonable. In the first case the Magistrate acquitted them, but the District Magistrate, to whom it was referred, ordered a retrial when the accused were convicted and fined. There was great difficulty experienced in securing a conviction, also, in the second case, for the same reason.

Schedule 2, *Clause* 30.—I now beg to refer to a matter which is outside the Indian Railways Act IX of 1890, but which I take the opportunity of commenting upon here. Under article 30 of the Limitation Act, the period of limitation for suing carriers for compensation "for losing or injuring goods," is two years, but under clause 115 of the same Act, the period of limitation is three years.

In cases governed by the latter clause we cannot always be sure of finding the records required for defending the suit, after such a lengthened period, and it also frequently happens that the servants of the Company, whose evidence might be important, have left the service and their whereabouts are not known, the consequence being that we stand the risk of losing the case for want of proper evidence.

I therefore beg to suggest that the period of limitation be limited to two years invariably.

Note by the Consulting Engineer for Railways, Madras.

The replies received from the Agents of the Madras and South Indian Railways treat of the following subjects, and refer to the sections of the Railway Act specified in the following schedule:—

Number of subject.	Number of section of Act.	Subject.
1	75	Responsibility of Railway Companies as carriers, in respect of silk parcels item (*l*) in second schedule.
2	55	Lien for rates; recovery of under-charges after delivery of goods.
3	64 67 109 119	Reserving accommodation.
4	68 112 113 118	Travelling without a ticket.
5	66 67 70 114	Transfer of tickets.
6	3 77 140	Representation of Company by their Agent.
7	47 (2) 99—105 129	Offences of railway servants.
8	123	Disobedience of drivers of hack vehicles.

I now take up the subject in the order given in the above schedule.

No. 1. Responsibility for silk parcels.—The Madras Railway Company appear to be in the habit of repudiating responsibility for parcels whose *entire* value is in excess of Rs. 100 provided they contain, *inter alia*, any of the items in schedule 2, *e.g.*, silk. But section 75 clearly specifies that the railway may refuse responsibility if the value of the scheduled articles in the package exceeds Rs. 100. In this action the Company are not supported either by the Bengal Advocate-General or by their own Solicitors. The public, however, have never disputed their action in a Court of Law. The section seems to me to be clear enough and to need no revision.

No. 2. Lien for rates. Recovery of under-charges after the delivery of goods.—The recovery of under-charges after the delivery of goods is not contemplated in section 55, which is intended to apply only to failure to recover charges actually entered on the railway receipt. The ruling of the Government of India, in their letter to the Government of Bombay, No. 678 R.T., dated 3rd September 1897, appears to me to be an eminently reasonable ruling. Railway Administrations are afforded sufficient relief in being permitted, in the note on the railway receipt, to correct under-charges before the transaction is completed by delivery.

The Government of India may, however, see fit to make it more clear that section 55 does not refer to the recovery of under-charges for which railway servants' carelessness is responsible. This might be done by the addition of a sub-section No. 6 to the following effect, "Provided always that, after a consignment has been delivered, a railway administration may not recover under-charges caused by errors in rates or in classification made by its own servants."

No. 3. Reserving accommodation.—The Traffic Manager, Madras Railway, refers to the subject dealt with in this Government's Proceedings, No. 1357 Ry., dated 3rd November 1898. But I am of opinion that the question has been adequately treated in the Government of India's letter, No. 1007 R.T., dated 19th September 1898. In revising the Act the Government of India may, however, think it advisable to have the section about reserved accommodation and the rights of ticket purchasers so clearly expressed that in future neither the Railway administrations nor the public may have excuse for doubt as to the intention of the Law.

No. 4. Travelling without a ticket.—Certain Judges have held that it would be dangerous to assume that a person travelling beyond the destination mentioned in his ticket had entered the train with a fraudulent intention. The Madras Railway Company would wish to place on the traveller the onus of proving that his intention was not fraudulent. My own opinion coincides with that of the Judges referred to. I think that under all the circumstances of Indian Railway travelling, police, staff, etc., it would be a very dangerous thing to assume criminal intention. I think that the provisions of section 113 are on the whole sufficient, and that it would be wrong to place so large a number of people in a state of chronic potential danger for the sake of stopping a practice whose effects upon railway earnings must be infinitesimal.

The South Indian Railway Company complains that if a man has no property to distrain on, as is often the case with such travellers, there are no means of compelling him to pay up under section 113. Perhaps it might be well to provide a short term of simple imprisonment to meet such cases. Say one day per rupee. It probably would seldom have to be imposed.

In section 113 it would be as well, as pointed out by the South Indian Railway Company, to substitute the word "person" for "passenger," throughout, because if (2) he has only *attempted* to travel he is presumably not a "passenger."

I may note here that "Passenger" is nowhere defined. Does the act of buying a ticket or the act of entering a train make a person a passenger? I think that a person ought to be considered a "passenger" from the time when after buying his ticket he enters the train, until the time when either having left the train he parts with his ticket or having parted with his ticket he leaves the train. All others ought to be classed as "persons" in the Act.

No. 5. Transfer of tickets.—In section 70 it is specified that a return ticket or a season ticket shall not be transferable. But in section 114 provision is made for the punishment of persons who transfer return tickets. This provision was doubtless intended to apply also to season tickets which cover return journeys. But it might be as well for the sake of clearness to insert the words "or season" between the words "return" and "ticket" throughout section 114. But I would prefer to legislate so as to make the transfer of only season tickets penal, and to exempt return tickets.

The South Indian Railway Company would wish to see a similar punishment for the transfer of single tickets. But I am of opinion that as it makes absolutely no difference to the Railway administration whether they carry *A* for the whole journey or *A* for part of the journey and *B* for the remainder, provided a ticket be paid for, there is no need to make transfer of single tickets penal.

The case of season tickets is somewhat different, and I do not feel very sure of the necessity for restricting the use of both halves of a return ticket to one person. The Railway administration by selling such a ticket secure a return passenger, and that ought to suffice for them were it not for the risk involved in uncollected tickets being liable to be fraudulently used many times over.

No. 6. Representation of a Company by their Agent.—The Traffic Manager, South Indian Railway, thinks that there is some doubt as to how notices intended for a Railway Company may be served to ensure effectiveness of service. It appears that the Madras High Court has declared that the Agent in India is the only officer of the Company who can receive notices of claims for refunds and compensation under section 77. But an ignorant customer will usually know nothing about the Agent, and will naturally serve notice on the railway servant with whom he comes in direct contact. Indeed item 4 on the back of the *Goods Consignment Note*, now generally if not universally in use, specially provides that he must submit his claim to the clerk in charge of the station, and send a list of damages to the District Traffic officer. There would therefore seem to be no difficulty about notices of this sort. For other notices it seems to me that the provisions of section 140 are sufficient.

No. 7. Offences.—Under Rule 36 of the obsolete General Rules of 1880, railway servants were formerly liable to immediate dismissal or suspension. The new Rule 269 of 1895 allows of their being fined departmentally, but makes no mention of dismissal or suspension. I think that, as it is often better to get rid of a man promptly

than to fine him, Railway Administrations ought to be able to suspend or dismiss a man if necessary. This is not merely a question of the rules framed under Section 47 of the Act, but rather of Section 47 itself, which gives power to make rules for fining men, but not for otherwise punishing them.

Sections 99—105 deal with "Offences of Railway Servants"; Rules 106—130 deal with "Other offences." It seems clear on a perusal of the rules under these two headings that 99—105 are intended to treat of offences committed by railway servants in their capacity *as* railway servants; and that 106—130 are intended to treat of offences of persons other than railway servants, and also of offences committed by railway servants in their private, not official, capacity. Now it will be observed that in one of the first group, Section 101, the phrase "endangers the safety of any person" is used, whereas in the second group, Section 129, the phrase "likely to endanger the safety of any person" is used. The consequence, as pointed out by the Government of India in their letter, No. 627 R.T., dated 9th August 1897, is that railway servants who in the course of their duty do any act held to have, not necessarily endangered but, been likely to endanger the safety of persons on or travelling by railway, must be prosecuted under Section 129, that is under a rule not grouped with those rules which treat of offences committed by railway servants *as* such. I am of opinion that there would be less chance of miscarriage of justice if a section similar to 129 were inserted as a sub-section of Section 101.

No. 8. Disobedience of drivers of conveyances plying for hire.—I consider the suggestion of the South Indian Railway Company to be a good one that the word "reasonable" might be omitted from Section 123. If unreasonable orders are given, an appeal to the Agent or Manager, and the option of leaving the premises, are always open to the fly-man.

Suggested amendment of the Limitation Act.—I find no point in the suggestion of the South Indian Railway Company's Traffic Manager in regard to amending this Act, because item 115 of the second schedule of that Act provides for a breach of contract *not herein specially provided for*, whereas item 30 specially provides a limit of two years for carriers.

Madras,
20th February 1899.

Francis J. E. Spring,
Consulting Engineer for Railways.

Order—No. 338 Ry., dated 25th March 1899.

A copy of these Proceedings will be forwarded to the Government of India in reply to their letter, No. 1032 R.T., dated 23rd September 1898.

[Here enter No. 339 Ry., dated 25th March 1899.]

(True Extract.)

Francis J. E. Spring,
Joint Secretary.

To the Agent and Manager, Madras Railway.
" " South Indian Railway.
" Consulting Engineer for Railways.
" Judicial Department.

Endorsement—No. 339 Ry., dated 25th March 1899.

Forwarded.

(By order.)

Francis J. E. Spring,
Joint Secretary.

Exd. Shaik Karim.

Public Works (1898) Department.

Railway

CURRENT No. 1155

1057

From The Govt of India.

Order No: 2787 of 12-1-99.

Copy forwarded to Am & K for favour of Report.

No. 1032 RT

Dated 23rd Septr 98

Received } 4-10-98

Registered }

Enclosures

Spare copies

for Sec.

Reminder

No 2787 of 12-1-99. to Am.

1

Issd 14/1/99 12.1.99

10-14

Despatched on 10/10/98

SUBJECT.

Indian Railways Act

Inquiring whether in the event of a revision of the Act as amended being undertaken at any future time the Govt of Madras have any further amendments to suggest.

10/10/98.

BACK PAPERS.

No.	Date.

FURTHER PAPERS.

No.	Date.

CONSULTING ENGINEER FOR RAILWAYS
RECEIVED
4 - OCT. 1898
MADRAS.
SAVARIPALAYAM

No. 1032 R. T.

GOVERNMENT OF INDIA.

PUBLIC WORKS DEPARTMENT.

RAILWAY TRAFFIC.

To

(i) THE JOINT SECRETARY TO THE GOVERNMENT OF MADRAS, PUBLIC WORKS DEPARTMENT, RAILWAY BRANCH.

(ii) and (iii) THE SECRETARIES TO THE GOVERNMENTS OF BOMBAY AND BURMA, PUBLIC WORKS DEPARTMENT, RAILWAY BRANCH.

(iv) to (vi) THE SECRETARIES TO THE GOVERNMENTS OF BENGAL, THE NORTH-WESTERN PROVINCES AND OUDH, AND THE PUNJAB.

(vii) and (viii) THE CHIEF COMMISSIONERS OF THE CENTRAL PROVINCES AND ASSAM.

(ix) THE RESIDENT AT HYDERABAD.

(x) THE RESIDENT IN MYSORE.

(xi) to (xiii) THE AGENTS TO THE GOVERNOR GENERAL FOR RAJPUTANA, CENTRAL INDIA, AND BALUCHISTAN.

(xiv) to (xvi) THE CONSULTING ENGINEERS TO THE GOVERNMENT OF INDIA FOR RAILWAYS, CALCUTTA, LUCKNOW AND ASSAM.

(xvii) to (xx) THE MANAGERS OF THE NORTH WESTERN, OUDH AND ROHILKHAND, EASTERN BENGAL AND EAST COAST STATE RAILWAYS.

Simla, the 23rd September 1898.

SIR,

With reference to the Indian Railways Act IX of 1890, as amended by Act IX of 1896, I am directed to enquire whether, in the event of a revision of the Act as amended being undertaken at any future time, {(i) to (iv) the Government of Madras or the railway administration(s) under the control of the Local Government. / (v) and (vi)—the Government of ____ / (viii), (ix), (xi), and (xiv) to (xvi)—you or the administration(s) of the railway(s) under your control / (vii), (x), (xii), (xiii) and (xvii) to (xx)—you} have any further amendments to suggest in order to provide for cases which have arisen in practice and are not considered to be covered by the existing amended Act.

I have the honour to be,

SIR,

Your most obedient Servant,

W. McCrea Captain, R.E.,
Offg. Under Secretary.

G. C. Press, Simla.—No. 1176 P. W. D.—26-9-98.—518.

To,
The Joint Secretary to the Government of Madras,
Public Works Department, Railway Branch.

South Indian Railway.

Copy of a letter, No. GT 7015 , dated 16th November 1898.

from the Traffic Manager

to the Agent, South Indian Railway.

Print

12 S/

Indian Railway Act of 1890.

Revision.

Your No. F. 148/4/1859 of 15th October 1898.

With reference to your letter under reference, I beg to suggest the following amendments for consideration:—

Section 3. Clause 6. The words "And includes the Agent of the Company" may be added at the end of Clause 6.

Sections 77 and 140.

The necessity for this addition arises on account of the objections often taken in the mufussal Courts to the authority of the Agent to represent the Company. For instance, much difficulty was recently experienced in interpreting Section 77 owing to this omission. It was contended that a Railway administration, in the case of a Railway administered by a Railway Company meant the Company itself (for definition of "Railway Company" Vide Sec: 3 clause 5) and that notice of claims may be served upon any of the Officers of the Company in India. The question whether the Agent was the only proper Officer who represented the Company in India and whether notices referred to in Sec: 77 could only be served upon him was referred to the High Court in a suit brought against the Company in the Court of the Sub Judge at Negapatam in connection with the loss of a parcel during the riot there. The High Court then held that the Agent in India was the only Officer who could receive legally such notices.

If

AGENT'S OFFICE,
TRICHINOPOLY,
10th December 1898.

Accompaniment to the Agent's letter
No. 1109 of 10-12-1898

True copy.
H. Lemesurier
for Agent.

135/p

Copy continued.

If the word Agent were added to this Section, as suggested above Such difficulties would not arise.

In the above case it was also contended that

Section 140. the word "may" occurring in Section 140 permits the Service of notices either upon the Agent or upon any other Officer. I therefore, Suggest that the word "Shall" be Substituted for "may".

Under these Sections a Railway administration

Sections 66 & 67. Shall supply, upon payment of fares, tickets to passengers. There is nothing in the Act either expressly or impliedly Sanctioning the Sale of tickets by other persons than the Company's Servants. It is, therefore, apparent that the transfer of tickets is not contemplated by the Act but there is no penal clause made in the Act for the breach of the rule, although in the monthly Guide we announce that tickets are not transferable.

With regard to return and Season tickets, it

3 Sections 70 & 114: is laid down in Section 70 that they are not transferable and Section 114 forms the penal clause for the breach of the offence. I cannot understand why a distinction Should be made between a Single journey ticket and a return ticket. I, therefore, beg to put forward this case for such notice as may be deemed expedient.

It is often contended in Magistrate's Courts

4 Sections 68 & 112. that under these sections the entry into the Carriage and

AGENT'S OFFICE,
TRICHINOPOLY,
10th December 1898.

Accompaniment to the Agent's letter
No. 1109 of 10-12-1898

True copy.
for Agent.

and not the travelling constitutes the offence. I therefore suggest that the words "or travel" be inserted after the word "enter" in Section 68 and in Section 112 clause 4 "or travels" after the word "enters"

Section 100. This Section has been variously read - Some have held that the words after "or" have no connection with the previous lines.

If it is to be understood that the greater penalty refers to a railway Servant who, in a state of intoxication, improperly performs his duty to the danger or safety of any person &c - and this appears to be the right interpretation - then the Section should be recast.

Section 101. In Section 100 the words "likely to endanger" appear but in Section 101 there is only the word "endanger" So that according to the latter reading a railway Servant would not be punishable under this Section if he could prove that his action was only "likely to endanger", and he would not be punishable under Section 100, as it might be argued that that Section referred only to a railway Servant in a state of intoxication.

He could, however, be prosecuted under Section 129

A case bearing upon this point was brought to the notice of the Government of India upon which G.O. No. 627. R.T. dated Simla 9 August 1897 was issued.

In that order this was pointed out.

Section 118. In this Section there is no alternative punishment of imprisonment provided in the case of a passenger from

AGENT'S OFFICE,
TRICHINOPOLY,
10th December 1898.

Accompaniment to the Agent's letter
No. 1109 of 10-12-1898

True copy.
for Agent.

South Indian Railway.

15 Sep 4.

Copy continued.

from whom the fares due to the Company cannot be recovered. The only remedy at present is to sell his property by issuing a distress warrant but in nearly every such case we find that there is no property to distrain upon. The Bombay and Madras High Courts have held that imprisonment cannot be awarded under this section. I, therefore, suggest that the defect may be remedied.

(?) 7/15

Section ~~123~~ 113 — The Madras High Court have held that persons who are not passengers cannot be punished under this section. I, therefore, suggest that the word "Passenger" be removed and the word "Person" substituted.

Section 123. — The word "reasonable" may be omitted, otherwise it allows drivers and Conductors to sue the Company in Courts of law if they consider they have been unreasonably dealt with. The only remedy which should be left open to them is for them to make a representation of their grievances to the Railway authorities concerned and abide by their decision. This is the principle upon which suits against the Railway Companies in England have been held to be not maintainable. We have had two cases in which certain bandy-men were prosecuted under this Section. One was in the Town Magistrate's Court at Kumbakonam and the other at Tiruturaipundi. The chief point taken up by the accused persons for their defence was that the order of the Station Master was unreasonable. In the

AGENT'S OFFICE,
TRICHINOPOLY,
10th December 1898.

Accompaniment to the Agent's letter
No. 1109 of 10-12-1898.

True copy.
for Agent.

Copy continued.

the first case the Magistrate acquitted them, but the District Magistrate to whom it was referred ordered a retrial when the accused were convicted and fined. There was great difficulty experienced in securing a conviction, also, in the second case, for the same reason.

I now beg to refer to a matter which is
Schedule 2. outside the Indian Railways Act 9 of 1890.
Clause 30. but which I take the opportunity of comment-
ing upon here. Under article 30 of the
Limitation act the period of limitation for suing carriers for compensation "for losing or injuring goods", is two years, but under clause 115 of the same act the period of limitation is 3 years.

In cases governed by the latter clause we cannot always be sure of finding the records required for defending the suit, after such a lengthened period, and it also frequently happens that the servants of the Company, whose evidence might be important have left the service and their whereabouts are not known, the consequence being that we stand the risk of losing the case for want of proper evidence.

I, therefore, beg to suggest that the period of limitation be limited to 2 years invariably.

AGENT'S OFFICE,
TRICHINOPOLY,
10th December 1898.

Accompaniment to the Agent's letter
No. 1109 of 10-12-1898

True copy.
for Agent.

Enc. No. 1 to E. R's. C. No. 5826 of 1898
Letter No. 1109 D/ 10/12/98
Agent, S. I. Ry.

No. 1109

South Indian Railway Co., Ld.,

AGENT'S OFFICE,

TRICHINOPOLY, 10th December 1898.

C. No. 5826
Read. 12/12/98

CONSULTING ENGINEER FOR RAILWAYS
RECEIVED
12 DEC. 1898
MADRAS.

From

The AGENT,

SOUTH INDIAN RAILWAY,

To

The CONSULTING ENGINEER FOR RAILWAYS,

MADRAS

Sir,

With reference to your endorsement No. 2787 dated 10th October 1898, regarding amendment of the Railway Act, I have the honour to forward a copy of letter — No. G 7015 dated 16th November, 1898, from the Traffic — Manager, and to inform you that I have no further suggestions to offer.

I have the honor to be
Sir
Your most obedient Servant

W. Lespeaux
for Agent

1 Enclosure

Issued 12-12-98

From

The Agent,

South Indian Railway,

Trichinopoly,

To

The Consulting Engineer for

Railways,

Madras.

Dated

Received } 189

No.

Enclosure.

No.B./1560.

Madras Railway,

Locomotive Superintendent's Office,

Perambur Works.16th December.1898.

The Agent and Manager.

My dear Sir,

Revision of Ry: Act IX of 1890.

With reference to your endorsement dated 11th October 98 on Con-
-sulting Engineer's No.2787 of the 10th idem, the only points which, so far as I am aware, seem to call for reconsideration in the Act are as follows:-

Section 47 (2) and 99 to 104.

These clauses appear to be practically the only ones in the Act which deal with offences or misconduct of Railway Servants and under them the Railway Company appears to be empowered to

(a) Deduct a sum equal to one month's pay from a servant for com-
-mitting a breach of rules and

(b) Inflict or cause to be inflicted fines of varying amounts for certain specified offences.

In the latter case it is not clear whether these fines would have to be inflicted by a Magistrate or Judge, or whether the Railway Administration is empowered to inflict them.

2. No provision appears to exist empowering the Railway Company to either suspend or summarily dismiss a man and I am certainly of opinion that such power should be given. There are many offences of which although no question exists but that a Railway Servant is or has been guilty, there would be difficulty in obtaining criminal prosecution, and unless the power of fine, suspension or summary dismissal is retained by the Administration it would frequently occur that it would not be possible to punish men at all.

3. I would refer you to conversation that took place at the Officers' Meeting held on the 1st October 1897 with regard to G.O.No.644 R. dated 11th September 1897. The note I made at the time was as follows:-

Prosecution of drivers guilty of acts likely to endanger life. This question was discussed and it was considered that no further steps can be taken but that in the event of prosecution

4 to S/P

action should be taken, as suggested, under section 129. Chief Prosecuting Inspector has been advised by the Traffic Manager on the matter.

In view of the facts reported in the Government Order quoted, it seems to me a question whether the wording of Section No.129 does not need modification.

Yours faithfully,

(Signed) C. E. Phipps.

Loco: Superintendent.

(True Copy)

(No. 1.)

No.

5,000—14-11-85.

MADRAS RAILWAY.

AGENT AND MANAGER'S OFFICE,

MADRAS, _____ 188

From

Agent and Manager.

To

Consulting Engineer for Railways.

SIR,

Engg 2 585 1899
From Aur 117 30-1-99

MADRAS RAILWAY.

From The Agent and Manager.

To The Consulting Engineer for Railways.

Dated 188

Recd.

No.

No.C.7686 A & M.
34038

5330

Madras Railway Company,
Traffic Manager's Office,
Central Station, Madras. 18th January 1899

Print

The Agent and Manager,
Rayapuram.

Dear Sir,

Revision of Railway Act IX of 1890

Your endorsement of the 11th October on Government of India letter No.1032 R.T. of 23rd September ' 98.

I enclose herewith for your information a memorandum giving particulars of the various points that have from time to time arisen in connection with the working of the Railway Act of 1890.

2. The question in para 4 as to the infliction of imprisonment in cases where the passenger is unable or unwilling to pay the excess and penalty leviable under the Act has I understand been already repre-sented to the Consulting Engineer under your 11173/544 of 15th June last. The question as to what power the Governor General has to call for a Railway Commission and as to whether such a Commission can under any circumstances be legally constituted unless all the parties concern-ed are agreeable is being raised elsewhere.

Yours faithfully,
(Sd) F. W. R e a d .
Traffic Manager.

(True Copy)

(No. 1.)

No.

MADRAS RAILWAY.

AGENT AND MANAGER'S OFFICE,

MADRAS, _____ 188

From

Agent and Manager.

To

Consulting Engineer for Railways.

SIR,

5,000—14-11-85.

Memorandum of points which have from time to time arisen in connection with the Railway Act IX of 1890.

1. Section 75. Schedule 2. Silk Parcels.

There has been a good deal of doubt as to whether the silk alone must be of the value of Rs.100 or the total value of the consignment con-
-taining the silk amount to that sum. The opinion of the Advocate General Bengal (as contained in Railway Conference Papers of 1893) is as follows

" Assuming that the package contained (a) cloth manufactured en-
" -tirely of cotton and (b) cloth manufactured either entirely of
" silk or of silk in combination with cotton. I am of opinion that
" the Company is liable for (a) irrespective of the value of (b)
" in as much as cloth manufactured entirely of cotton finds no
" place in the second schedule of Act IX of 1890 (see Treadwin-v-
" G.E.Railway Company L. R. 3. C. P. 308).

" With regard to (b) I am of opinion that the Railway Company
" is not liable therefor if its value exceeds Rs.100 and is liable
" therefor if its value is less than that amount".

The opinion of our Solicitors Messrs Barclay Morgan and Orr in the case of the loss of a parcel containing silk cloths referred to them in Febru-
-ary 1892 ran as follows:-

" It seems to us that under Section 75 of the Indian Railway
" Act of 1890 the liability of the Company for the parcel in question
" depends upon whether the value of the silk contained in the parcel
" exceeds Rs.100 and not upon the total value of the whole contents
" of the parcel. If the value of such parcel of silk was over Rs.100
" the Company would not be liable but if the value is less than Rs.100
" the Company would we think be liable for the whole value of the par-
" -cel both silk and cotton.
" Before paying the claim the Company should therefore be satisfied
" as to the value of the silk contained in the parcel".

O u r practice has always been to repudiate claims where the value of the parcel or consignment containing silk is in excess of Rs.100 and our action has not hitherto been disputed in a court of law.

(No. 1.)

No.

MADRAS RAILWAY.

AGENT AND MANAGER'S OFFICE,

MADRAS, _____ 188

From

Agent and Manager.

To

Consulting Engineer for Railways.

SIR,

5,000—14-11-86.

2. Section 55- Recovery of undercharges after delivery of goods

In consequence of a decision by the District Judge, Ahmedabad in August 1896 in a suit brought by the B.B.& C.I. Railway that under charges could not be recovered after delivery of goods the Government of India was moved to sanction a special clause in order to give Railway administrations definite powers to this effect. The Government of India however under their 678RT. of 3rd September 1897 clearly refuse to sanc-tion such a clause - stating that it was the express intention of the Act to limit the powers of Railway Companies to correction of charges be-fore delivery and not afterwards. It is proposed to discuss the matter at the next Conference (O.12086- Your endorsement No.10101/A of 11th October 1897 on G.O.No.758 R. dated 1st idem forwarding Government of India letter No.678 R.T. of 3rd September 1897).

3. Sections 64, 109, 119 & 67- Reserving 1st and 2nd class compartment

A large amount of correspondence has taken place in regard to the extent to which a Railway Company was legally empowered to reserve a compartment higher than the lowest and ensure that it was not entered by persons for whose use it had not been reserved by the Railway Company.

Legal opinions on the question varied and the matter was eventually referred to the Government of India by this Company urging the issue of a rule considered necessary by our Solicitors.

The Government of India consider (under G.O.No.1357 Ry of 3rd November 1898) that the question turns on section 67 of the Act and decline to frame statutory rules to enable Railway administrations to take action which they are competant to take at their own discretion until some case occurs to prove that such rules are indispensable (C-52952. Your endorsement No.10508 of 11th November 1898 on G.O.No. 1357 Ry. of 3-11-98)

4. Sections 112, 113 & 68.

Passengers found travelling without ticket and unable to pay excess or fine. Under the ruling of the Allahabad High Court (Criminal Revision Case No.408 of 1897 before Mr. Justice Knox) travelling in a train by a passenger without having a proper ticket with him is not an

Ent. 3 585 99
117 30-1-99
From Am.

MADRAS RAILWAY.

From The Agent and Manager.

To The Consulting Engineer for Railways.

Dated 188

Recd.

No.

C.7686 A & M
34112

9 S/P

Madras Railway Company,
Traffic Manager's Office,
Central Station, Madras. 26th January 1899.

Print

The Agent and Manager,
Rayapuram.

Dear Sir,

Revision of Railway Act IX of 1890.

In continuation of this office letter No.C.7686 A & M of 18th instant, I beg to put before you the following example of the application by the High Court of Sections 112 and 113 of the Railway Act. A man was prosecuted under the penal section for having entered the train at Erode at 12 o'clock in the day with a ticket for Totiapallayam a distance of five miles and having been subsequently detected in the train at Somanur 8 stations further on, It seems difficult to have a clearer case of fraudulent intention and this was the view held by the second class Magistrate, Palladam, who tried the case and who sentenced the accused to a fine of Rs.15/ in addition to the single railway fare or in default 15 days rigorous imprisonment . The case was called up by the High Court in revision when the Government Pleader appeared to support the conviction, but the High Court held that the evidence was insufficient to show that the accused had a fraudulent intention and they set aside the conviction under section 112, and directed payment of the fare and single excess fare under section 113. The enclosed copy of a letter dated 21st instant from the Company's Solicitors explains how the matter was put before the Court. The case of 1896 referred to in that letter was a conviction by the second class Magistrate of Allur under precisely similar circumstances which was upheld by the High Court and the production of the judgment in that case has enabled us to obtain many subsequent convictions.

The only remedy for such divergent views on the parts of the Courts would appear to be to so amend the Act as to place the onus of proving the absence of fraudulent intention under such circumstances as those stated above, upon the accused person.

(True Copy)

Yours faithfully,
(Sd) F. W. Read.
Traffic Manager.

(No. 1.)

No.

MADRAS RAILWAY.

AGENT AND MANAGER'S OFFICE,

MADRAS, _____ 188

From

Agent and Manager.

To

Consulting Engineer for Railways.

SIR,

5,000—14-11-85.

1895

Copy of letter dated 21st January 99 from Messrs Barclay Orr and David, Solicitors, Madras to the Traffic Manager, Madras Railway.

Criminal Revision Case No.598 of '98.

We are in receipt of your letter of yesterday's date. The ques-tion which the Court has to decide in determining whether the accused should be dealt with under Section 112 or 113 is whether he entered the Railway carriage with a fraudulent intention or not. In criminal Revi-sion Case No.19 of 1898 the Chief Justice and Davies J were of opinion that the Magistrate was right in his finding that the accused had such a guilty intention. In the present case however, Shephard and Subramania Iyer J.J. were of opinion that the evidence was insufficient to justify the Magistrate's finding that the accused had a guilty intention. In our opinion the judges are quite wrong as the evidence was particularly strong to show that there was such a guilty intention . The accused gave as his reason for not getting down at Totiapolaiyam that he had arranged for a man to see him there but that he did not turn up and that he had no time to get out to get a fresh ticket. No explanation was given as to why the man did not turn up, why he was not called to give evidence, why the fact of his not turning up prevented the accused from getting out to buy a ticket, nor why the fact of the man not turning up made it neces-sary for the accused to travel on to Somanur. The attention of the judges was drawn to these points but they attached no weight to them contenting themselves with stating that it would be dangerous to hold that any one travelling beyond the station of destination mentioned in the ticket, entered the carriage with a fraudulent intention. Had the case been heard by the judge who dispcsed of the previous case, the result would probably have been different.

(True Copy)

Do.

Encls. 3.

MADRAS RAILWAY.

From

The Agent and Manager,

M. R. Co.,

To

The Consulting Engineer

for Railways.

Dated 188

Recd. .....

No.

Office of Consulting Engineer for Railways

MADRAS,

..... 189 .

Print in full underscore in small type.

Read Govt. of India Circular No. 1032 - R.T. 23rd Sept 98

Agent M.R. Ltr No. 10101/117 - 30th Jany 99.

Agent S.I.R. Ltr No. 1109 - 10th Dec. 99

Read also the following Note of the Con. Engr for Rys. Madras.

The replies received from the Agents of the Madras and South Indian Railway Cos in the following subjects, and reports to the Sections of the Railway Act specified, with following schedule

~~Each of the subjects in the schedule below~~.

No. of Subject	No. of section of Act	Subject.
1	75	Responsibility of Ry. Co. as carriers, in respect of bills parcels item (2) in second schedule.
2	55	Lien for rates: recovery of under-charges after delivery of goods.
3	64 67 109 119	Reserving accommodation.
4	68 112 113 118	Travelling without a ticket.
5	66 67 70 114	Transfer of tickets
6	3 77 140	Representation of Company by their Agent
7	47(2) 99 — 105 123 129	Offences of Railway Servants.

Office of Consulting Engineer for Railways,
MADRAS,

19

189

No. 4. Travelling without a ticket. Certain Judges have held that it would be dangerous to assume that a person travelling beyond the distance mentioned in his ticket had entered the train with a fraudulent intention. The Madras R.C. would wish to place on the traveller the onus of proving that his intention was not fraudulent. My own opinion coincides with that of the Judges referred to. I think that under the circumstances of Indian railway travelling, police, staff, &c. it would be a very dangerous thing to assume criminal intention. I think that the provision of Sect 113 are on the whole sufficient, and that it would be wrong to place so large a number of people in a state of chronic potential danger for the sake of stopping a practice whose effects upon railway earnings must be infinitesimal.

The S.I.R.C. complains that if a man has no property to distrain on, as is often the case with such travellers, there is no means of compelling him to pay up under Sect 113. An American conductor would, I am told, stop and drop him on the prairie. Perhaps it might be well to provide a short term of simple imprisonment to meet such cases. Say one day for repeaters. It would probably seldom have to be imposed.

In Sect. 113 it would be as well, as pointed out by the S.I.R.C. to substitute the word "person" for "passenger" throughout, because if (2) he has only attempted to travel he is presumably not a "passenger".

I may not here that "Passenger" is nowhere defined. Does the act of buying a ticket or the act of entering a train make a person a passenger? I think that a person ought to be considered a "passenger" from the time when after buying his ticket, he enters the train until the time when either having left the train he parts with his ticket or having parted with his ticket he leaves the train. All others ought to be classed as "persons" in the Act.

I am,
Sir,
Your obedient Servant,

No. 7. Offences of Railway Servants. Under Rule 36 of the absolute General Rules of 1880, railway servants were formerly liable to immediate dismissal or suspension. The new Rule 269 of 1895, ~~Rule No. 269~~ allows of their being fined departmentally, & makes no mention of dismissal or suspension. ~~It has been suggested that power of dismissal or suspension should be retained~~ I think that as it often better to get rid of a man promptly than to fine him, ~~a~~ Railway Administrations ~~ought to be able to~~ ought to be able to suspend or dismiss a man if necessary. This is not merely a question of the Rules framed under Sect 47 of the Act, but rather of Sect 47 itself, which gives power to make rules for fining men but not for otherwise punishing them.

228

Sections 99–105 deal with "Offences of Railway Servants"; while 106–130 deal with "other offences". These two headings are not very discriminating; but it seems clear on a Journal & then that 99–105 are intended to treat of offences committed by Railway servants in their capacity as railway servants; & that 106–130 are intended to treat of offences of persons other than railway servants, and also of offences committed by railway servants in their private, not official, capacity. Now it will be observed that in one of the first group, Sect 101, the phrase "endanger the safety of any person" is used, whereas in the second group, Sect 129, the phrase "likely to endanger the safety of any person" is used. The consequence is, as pointed out by the first of Rule in their letter No. 627. R.T. dated 9th Aug 97, that railway servants who in the course of their duty do any act held to have, not necessarily endangered but, been likely to endanger the safety of persons on or travelling by railway, must be prosecuted under Sect 129, that is under a rule not grouped with those rules which treat of offences committed by railway servants as such. I am of opinion that there would be less chance of miscarriage of justice if a Section similar to 129 were inserted as a sub-section of Sect. 101.

No. 8. Distribution of threats of consequence relying for basis. I consider the suggestion of the S.I.R.C. to be good one that the word "reasonable" might be omitted from Sect 123. If unreasonable orders are given there is always an appeal to the Agent or Manager, and the option of leaving the premises, are always open to the fly-man.

I find no point in the Suggested amendment of the Limitation Act. ^ suggestion of the S.I.R.Cs ^ Traffic Manager

in regard to amending this Act. because item 115 of the Second Schedule of that Act provides for ~~would appear on the face of it to be unwise~~ a breach of contract not herein specially provided for, whereas item 30 specially provides a limit of 2 years for carriers.

Rec'd
20-2-99

238

JHS
E.R.

Order No. Date.

A copy of these Proceedings will be forwarded to the Govt. of India in reply to their letter No. 1032. R.T. dated 23rd Sept. 98.

JHS

No. Date

Forwarded
JHS

[G. 75]

1,000—21-11-98.

NOTE FOR THE Secr.

There do not appear to be any points upon which Judicial need consult.

Sir
3/3/99

Imm.

J. J. E.

No 643, dy 7-3-99.
P. M.G. D.F.W. wo.

J. J. E.

May issue
JL
8.3/99.

P.C. for 1073

2nd proof Rr 27/2/99.

RAILWAY.

Government (1899) of Madras.

PUBLIC WORKS.

Ry Dept
Press 23/2

Please send a clean copy for circulation
Press
7/3

Recd.
Regd. } 1899.

Enclosures
Spare copies

G.O., Nos. 338, 39 Ry., 15th February 1899.

FEBRUARY.

To the Judicial Dept. w.o.
for any remarks it may
have to offer.

1/3/99.

GOVERNMENT OF MADRAS.

PUBLIC WORKS DEPARTMENT.

Railway.

Read the following papers :—

From—The Secretary to the Government of India, Public Works Department.
To—The Joint Secretary to the Government of Madras, P.W. Dept., Ry. Branch.
Dated—Simla, 23rd September 1898, No. 1032 R.T.

With reference to the Indian Railways Act IX of 1890, as amended by Act IX of 1896, I am directed to enquire whether, in the event of a revision of the Act as amended being undertaken at any future time, the Government of Madras have any further amendments to suggest in order to provide for cases which have arisen in practice and are not considered to be covered by the existing amended Act.

No. 2787.

Copy forwarded to Agents, Madras and South Indian Railways, for favour of report.

From—The Agent and Manager, Madras Railway Company.
To—The Consulting Engineer for Railways, Madras.
Dated—30th January 1899, No. 10101/117.

With reference to your endorsement, No. 2787, dated the 10th October 1898, on Government of India letter, No. 1032, dated Simla, the 23rd September 1898, enquiring whether, in the event of a revision of the Indian Railways Act IX of 1890, as amended, being undertaken at any future time, this Railway has any further amendments to suggest, in order to provide for cases which have arisen in practice and are not considered to be covered by the existing amended Act, I have the honour to forward herewith copies of the marginally-noted letters from the Company's Locomotive Superintendent and Traffic Manager containing their suggestions.

Locomotive Superintendent's letter, No. B. 1560, dated 16th December 1898.
Traffic Manager's letter, No. C. 7686/34038 A. and M., dated 18th January 1899.
Traffic Manager's letter, No. C. 7686/34112 A. and M., dated 26th January 1899.

Enclosure.

From—The Locomotive Superintendent, Madras Railway.
To—The Agent and Manager, Madras Railway.
Dated—16th December 1898, No. B./1560.

Revision of Railway Act IX of 1890.

With reference to your endorsement dated 11th October 1898, on Consulting Engineer's No. 2787 of the 10th idem, the only points which, so far as I am aware, seem to call for reconsideration in the Act are as follows :—

Section 47 (2) *and* 99 *to* 104.—These clauses appear to be practically the only ones in the Act which deal with offences or misconduct of Railway servants and under them the Railway Company appears to be empowered to—

(*a*) deduct a sum equal to one month's pay from a servant for committing a breach of rules ; and

(*b*) inflict or cause to be inflicted fines of varying amounts for certain specified offences.

In the latter case it is not clear whether these fines would have to be inflicted by a Magistrate or Judge, or whether the Railway Administration is empowered to inflict them.

2. No provision appears to exist empowering the Railway Company to either suspend or summarily dismiss a man and I am certainly of opinion that such power should be given. There are many offences of which although no question exists but that a railway servant is or has been guilty, there would be difficulty in obtaining criminal prosecution, and unless the power of fine, suspension or summary dismissal is retained by the Administration, it would frequently occur that it would not be possible to punish men at all.

3. I would refer you to conversation that took place at the officers' meeting held on the 1st October 1897 with regard to G.O., No. 644 R., dated 11th September 1897. The note I made at the time was as follows :—

Prosecution of drivers guilty of acts likely to endanger life.—This question was discussed and it was considered that no further steps can be taken, but that in the event of prosecution action should be taken, as suggested, under section 129. Chief Prosecuting Inspector has been advised by the Traffic Manager on the matter.

In view of the facts reported in the Government Order quoted, it seems to me a question whether the wording of section No. 129 does not need modification.

From—The Traffic Manager, Madras Railway Company.
To—The Agent and Manager, Ravapuram.
Dated—18th January 1899, No. C. 7686/34038 A. and M.

Revision of Railway Act IX of 1890.

Your endorsement of the 11th October on Government of India letter No. 1032 R.T. of 23rd September 1898.

I enclose herewith for your information a memorandum giving particulars of the various points that have from time to time arisen in connection with the working of the Railway Act of 1890.

2. The question in paragraph 4 as to the infliction of imprisonment in cases where the passenger is unable or unwilling to pay the excess and penalty leviable under the Act has, I understand, been already represented to the Consulting Engineer under your No. 11178/544 of 15th June last. The question as to what power the Governor-General has to call for a Railway Commission and as to whether such a Commission can, under any circumstances, be legally constituted unless all the parties concerned are agreeable is being raised elsewhere.

Memorandum of points which have from time to time arisen in connection with the Railway Act IX of 1890.

Section 75—*Schedule* 2—*Silk parcels.*—There has been a good deal of doubt as to whether the silk alone must be of the value of Rs. 100 or the total value of the consignment containing the silk amount to that sum. The opinion of the Advocate-General, Bengal (as contained in Railway Conference papers of 1893) is as follows :—

"Assuming that the package contained (*a*) cloth manufactured entirely of cotton and (*b*) cloth manufactured either entirely of silk or of silk in combination with cotton. I am of opinion that the Company is liable for (*a*) irrespective of the value of (*b*) inasmuch as cloth manufactured entirely of cotton finds no place in the second schedule of Act IX of 1890 (see Treadwin, *v.* G.E. Railway Company, L.R. 3 C.P. 308).

"With regard to (*b*) I am of opinion that the Railway Company is not liable therefor if its value exceeds Rs 100 and is liable therefor if its value is less than that amount."

The opinion of our Solicitors Messrs. Barclay, Morgan and Orr in the case of the loss of a parcel containing silk cloths referred to them in February 1892, ran as follows :—

"It seems to us that under section 75 of the Indian Railway Act of 1890 the liability of the Company for the parcel in question depends upon whether the value of the silk contained in the parcel exceeds Rs. 100 and not upon the total value of the whole contents of the parcel. If the value of such parcel of silk was over Rs. 100 the Company would not be liable but if the value is less than Rs. 100 the Company would, we think, be liable for the whole value of the parcel both silk and cotton.

"Before paying the claim the Company should therefore be satisfied as to the value of the silk contained in the parcel."

Our practice has always been to repudiate claims where the value of the parcel or consignment containing silk is in excess of Rs. 100 and our action has not hitherto been disputed in a court of law.

2. *Section* 55—*Recovery of undercharges after delivery of goods.*—In consequence of a decision by the District Judge, Ahmedabad, in August 1896, in a suit brought by the B.B. and C.I. Railway that undercharges could not be recovered after delivery of goods, the Government of India was moved to sanction a special clause in order to give Railway Administrations definite powers to this effect. The Government of India, however, under their 678 R.T., of 3rd September 1897, clearly refuse to sanction such a clause, stating that it was the express intention of the Act to limit the powers of railway companies to correction of charges before delivery and not afterwards. It is proposed to discuss the matter at the next conference (O. 12086—your endorsement No. 10101/A., of 11th October 1897, on G.O., No. 758 R., dated 1st idem, forwarding Government of India letter No. 678 R.T., of 3rd September 1897).

3. *Sections* 64, 109, 119 *and* 67—*Reserving first and second class compartments.*—A large amount of correspondence has taken place in regard to the extent to which a railway company was legally empowered to reserve a compartment higher than the lowest and ensure that it was not entered by persons for whose use it had not been reserved by the railway company.

Legal opinions on the question varied, and the matter was eventually referred to the Government of India by this company, urging the issue of a rule considered necessary by our Solicitors.

The Government of India consider (under G.O., No 1357 Ry., of 3rd November 1898) that the question turns on section 67 of the Act and decline to frame statutory rules to enable Railway Administrations to take action which they are competent to take at their own discretion until some case occurs to prove that such rules are indispensable (C -52952—your endorsement No. 10508, of 11th November 1898, on G.O., No. 1357 Ry., of 3rd November 1898).

4. *Sections* 112, 113 *and* 68—*Passengers found travelling without ticket and unable to pay excess or fine.*—Under the ruling of the Allahabad High Court (criminal revision case No. 408 of 1897 before Mr. Justice Knox), travelling in a train by a passenger without having a proper ticket with him is not an "offence" under the Railway Act of 1890. He cannot legally be sentenced to imprisonment in default of payment of the excess charge and fare which may be recovered under the provisions of section 113, clause 4.

The Great Indian Peninsula Railway have asked Government that the Act may be so amended that imprisonment should be inflicted in such cases, and it is suggested that this company should do so also, should the decision of the Allahabad High Court be upheld (C. 67004—your No. 11178—1340, of 28th December 1898).

5. *Section* 101.—On the Eastern Bengal Railway a driver was prosecuted in October 1896 under the above section for running through a station against signals without stopping to receive the line-clear ticket. A similar case occurred on the Oudh and Rohilkund Railway. The Eastern Bengal case failed because the Court held that life had not actually been endangered. In the Oudh and Rohilkund case the issue of a prosecution being doubtful the offenders were dealt with departmentally. The matter was referred to Government of India with a view to section 101 being amended 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.

Government of India, however, under their 627 R.T., of 9th August 1897, point out that the prosecution should have been made under section 129 and are not prepared to make any amendment of the Act unless it found that a conviction in such cases cannot be obtained under that section (C. 44657—your No. 10101-A.-9841 of 15th September 1897).

6. Under the present reading of sections 101 and 129 of the Railway Act and under the General Rules of 1895, we are unable to prosecute in cases of neglect of duty not "endangering" or "likely to endanger" the safety of any person, and such cases (as for instance a watchman asleep on duty when in charge of loaded wagons) have to be dealt with departmentally. Under the General Rules of 1880, a conviction could and frequently was obtained under Rules 36 and 55.

From—The Traffic Manager, Madras Railway.
To—The Agent and Manager, Rayapuram.
Dated—Madras, 26th January 1899, No. C. 7686/34112 A. and M.

Revision of Railway Act IX of 1890.

In continuation of this office letter No. C. 7686 A. and M., of 18th instant, I beg to put before you the following example of the application by the High Court of sections 112 and 113 of the Railway Act: A man was prosecuted under the penal section for having entered the train at Erode at 12 o'clock in the day with a ticket for Totaipalaiyam, a distance of five miles, and having been subsequently detected in the train at Somanur, eight stations further on, it seems difficult to have a clearer case of fraudulent intention, and this was the view held by the 2nd-class Magistrate, Palladam, who tried the case, and who sentenced the accused to a fine of Rs. 15 in addition to the single railway fare, or in default 15 days' rigorous imprisonment. The case was called up by the High Court in revision when the Government Pleader appeared to support the conviction,

but the High Court held that the evidence was insufficient to show that the accused had a fraudulent intention, and they set aside the conviction under section 112 and directed payment of the fare and single excess fare under section 113. The enclosed copy of a letter, dated 21st instant, from the Company's Solicitors, explains how the matter was put before the Court. The case of 1896, referred to in that letter, was a conviction by the 2nd-class Magistrate of Allur under precisely similar circumstances which was upheld by the High Court and the production of the judgment in that case has enabled us to obtain many subsequent convictions.

The only remedy for such divergent views on the parts of the Courts would appear to be to so amend the Act as to place the onus of proving the absence of fraudulent intention under such circumstances as those stated above upon the accused person.

From—Messrs. BARCLAY, ORR AND DAVID, Solicitors, Madras.
To—The Traffic Manager, Madras Railway.
Dated— 21st January 1899.

Criminal Revision Case No. 398 *of* 1898.

We are in receipt of your letter of yesterday's date. The question which the Court has to decide in determining whether the accused should be dealt with under sections 112 or 113 is whether he entered the railway carriage with a fraudulent intention or not. In criminal revision case No. 19 of 1896 the Chief Justice and Davies, J., were of opinion that the Magistrate was right in his finding that the accused had such a guilty intention. In the present case, however, Shephard and Subramania Iyer, J.J., were of opinion that the evidence was insufficient to justify the Magistrate's finding that the accused had a guilty intention. In our opinion the Judges are quite wrong as the evidence was particularly strong to show that there was such a guilty intention. The accused gave as his reason for not getting down at Totaipalaiyam that he had arranged for a man to see him there but that he did not turn up and that he had no time to get out to get a fresh ticket. No explanation was given as to why the man did not turn up, why he was not called to give evidence, why the fact of his not turning up prevented the accused from getting out to buy a ticket, nor why the fact of the man not turning up made it necessary for the accused to travel on to Somanur. The attention of the Judges was drawn to these points, but they attached no weight to them, contenting themselves with stating that it would be dangerous to hold that any one travelling beyond the station of destination mentioned in the ticket entered the carriage with a fraudulent intention. Had the case been heard by the Judge who disposed of the previous case, the result would probably have been different.

From—The Agent, South Indian Railway.
To—The Consulting Engineer for Railways, Madras.
Dated—Trichinopoly, 10th December 1898, No. 1109.

With reference to your endorsement No. 2787, dated 10th October 1898, regarding amendment of the Railway Act, I have the honour to forward a copy of letter, No. G. 7015, dated 16th November 1898, from the Traffic Manager, and to inform you that I have no further suggestions to offer.

ENCLOSURE.

From—The Traffic Manager, South Indian Railway.
To—The Agent, South Indian Railway.
Dated—16th November 1898, No. G.-7015.

Revision of Indian Railway Act IX of 1890.

With reference to your letter No. F. 748/$\frac{4}{1859}$ of 15th October 1898, I beg to suggest the following amendments for consideration:—

Section 3, *clause* 6, *and sections* 77 *and* 140.—The words "and includes the Agent of the Company" may be added at the end of clause 6. The necessity for this addition arises on account of the objections often taken in the Mufassal Courts to the authority of the Agent to represent the Company. For instance, much difficulty was recently experienced in interpreting section 77 owing to this omission. It was contended that a railway administration, in the case of a railway administered by a Railway Company meant the Company itself (for definition of "Railway Company"—*vide* section 3, clause 5, and that notice of claims may be served upon any of the officers of the Company in India. The question whether the Agent was the only proper officer who represented the Company in India and whether notices referred to in section 77 could only be served upon him was referred to the High Court in a suit brought against the

Company in the Court of the Sub-Judge at Negapatam in connection with the loss of a parcel during the riot there. The High Court then held that the Agent in India was the only officer who could receive legally such notices. If the word Agent were added to this section, as suggested above, such difficulties would not arise.

Section 140.—In the above case it was also contended that the word "may" occurring in section 140 permits the service of notices either upon the Agent or upon any other officer. I therefore suggest that the word "shall" be substituted for "may."

Sections 66 *and* 67.—Under these sections a railway administration shall supply, upon payment of fares, tickets to passenger. There is nothing in the Act either expressly or impliedly sanctioning the sale of tickets by other persons than the Company's servants. It is, therefore, apparent that the transfer of tickets is not contemplated by the Act, but there is no penal clause made in the Act for the breach of the rule, although in the monthly guide we announce that tickets are not transferable.

Sections 70 *and* 114.—With regard to return and season tickets, it is laid down in section 70 that they are not transferable and section 114 forms the penal clause for the breach of the offence. I cannot understand why a distinction should be made between a single journey ticket and a return ticket. I therefore beg to put forward this case for such notice as may be deemed expedient.

Sections 68 *and* 112.—It is often contended in Magistrates' Courts that under these sections, the entry into the carriage and not the travelling constitutes the offence. I therefore suggest that the words "or travel" be inserted after the word "enter" in section 68 and in section 112, clause A "or travels" after the word "enters."

Section 100.—This section has been variously read—some have held that the words after "or" have no connection with the previous lines.

If it is to be understood that the greater penalty refers to a railway servant, who, in a state of intoxication, improperly performs *his* duty to the danger or safety of any person, &c.,—and this appears to be the right interpretation—then the section should be recast.

Section 101.—In section 100 the words "likely to endanger" appear but in section 101 there is only the word "endanger" so that according to the latter reading a railway servant would not be punishable under this section if he could prove that his action was only "*likely to* endanger," and he would not be punishable under section 100, as it might be argued that that section referred only to a railway servant in a state of intoxication.

He could, however, be prosecuted under section 129.

A case bearing upon this point was brought to the notice of the Government of India upon which G.O., No. 627 R.T., dated Simla, 9th August 1897, was issued.

In that order this was pointed out.

Section 118.—In this section there is no alternative punishment of imprisonment provided in the case of a passenger from whom the fares due to the Company cannot be recovered. The only remedy at present is to sell his property by issuing a distress warrant but in nearly every such case we find that there is no property to distrain upon. The Bombay and Madras High Courts have held that imprisonment cannot be awarded under this section. I therefore suggest that the defect may be remedied.

Section 113.—The Madras High Court have held that persons who are not passengers cannot be punished under this section. I therefore suggest that the word "passenger" be removed and the word "person" substituted.

Section 123.—The word "reasonable" may be omitted, otherwise it allows drivers and conductors to sue the Company in Courts of Law if they consider they have been unreasonably dealt with. The only remedy which should be left open to them is for them to make a representation of their grievances to the Railway authorities concerned and abide by their decision. This is the principle upon which suits against the Railway Companies in England have been held to be not maintainable. We have had two cases in which certain bandy-men were prosecuted under this section. One was in the Town Magistrate's Court at Kumbakonam and the other at Tirutturaippundi. The chief point taken up by the accused persons for their defence was that the order of the station master was unreasonable. In the first case the Magistrate acquitted them, but the District Magistrate, to whom it was referred, ordered a retrial when the accused were convicted and fined. There was great difficulty experienced in securing a conviction, also, in the second case, for the same reason.

Schedule 2, *Clause* 30.—I now beg to refer to a matter which is outside the Indian Railways Act IX of 1890, but which I take the opportunity of commenting upon here. Under article 30 of the Limitation Act, the period of limitation for suing carriers for compensation "for losing or injuring goods," is two years, but under clause 115 of the same Act, the period of limitation is three years.

In cases governed by the latter clause we cannot always be sure of finding the records required for defending the suit, after such a lengthened period, and it also frequently happens that the servants of the Company, whose evidence might be important, have left the service and their whereabouts are not known, the consequence being that we stand the risk of losing the case for want of proper evidence.

I therefore beg to suggest that the period of limitation be limited to two years invariably.

Note by the Consulting Engineer for Railways, Madras.

The replies received from the Agents of the Madras and South Indian Railways treat of the following subjects, and refer to the sections of the Railway Act specified in the following schedule:—

Number of subject.	Number of section of Act.	Subject.
1	75	Responsibility of Railway Companies as carriers, in respect of silk parcels item (*l*) in second schedule.
2	55	Lien for rates; recovery of under-charges after delivery of goods.
3	64, 67, 109, 119	Reserving accommodation.
4	68, 112, 113, 118	Travelling without a ticket.
5	66, 67, 70, 114	Transfer of tickets.
6	3, 77, 140	Representation of Company by their Agent.
7	47 (2), 99—105, 129	Offences of railway servants.
8	123	Disobedience of drivers of hack vehicles.

I now take up the subject in the order given in the above schedule.

No. 1. Responsibility for silk parcels.—The Madras Railway Company appear to be in the habit of repudiating responsibility for parcels whose *entire* value is in excess of Rs. 100 provided they contain, *inter alia*, any of the items in schedule 2, *e.g.*, silk. But section 75 clearly specifies that the railway may refuse responsibility if the value of the scheduled articles in the package exceeds Rs. 100. In this action the Company are not supported either by the Bengal Advocate-General or by their own Solicitors. The public, however, have never disputed their action in a Court of Law. The section seems to me to be clear enough and to need no revision.

No. 2. Lien for rates. Recovery of under-charges after the delivery of goods.—The recovery of under-charges after the delivery of goods is not contemplated in section 55, which is intended to apply only to failure to recover charges actually entered on the railway receipt. The ruling of the Government of India, in their letter to the Government of Bombay, No. 678 R.T., dated 3rd September 1897, appears to me to be an eminently reasonable ruling. Railway Administrations are afforded sufficient relief in being permitted, in the note on the railway receipt, to correct under-charges before the transaction is completed by delivery.

The Government of India may, however, see fit to make it more clear that section 55 does not refer to the recovery of under-charges for which railway servants' carelessness is responsible. This might be done by the addition of a sub-section No. 6 to the following effect, "Provided always that, after a consignment has been delivered, a railway administration may not recover under-charges caused by errors in rates or in classification made by its own servants."

No. 3. Reserving accommodation.—The Traffic Manager, Madras Railway, refers to the subject dealt with in this Government's Proceedings, No. 1357 Ry., dated 3rd November 1898. But I am of opinion that the question has been adequately treated in the Government of India's letter, No. 1007 R.T., dated 19th September 1898. If revising the Act the Government of India may, however, think it advisable to have the section about reserved accommodation and the rights of ticket purchasers so clearly expressed that in future neither the Railway administrations nor the public may have excuse for doubt as to the intention of the Law.

No. 4. Travelling without a ticket.—Certain Judges have held that it would be dangerous to assume that a person travelling beyond the destination mentioned in his ticket had entered the train with a fraudulent intention. The Madras Railway Company would wish to place on the traveller the onus of proving that his intention was not fraudulent. My own opinion coincides with that of the Judges referred to. I think that under all the circumstances of Indian Railway travelling, police, staff, etc., it would be a very dangerous thing to assume criminal intention. I think that the provisions of section 113 are on the whole sufficient, and that it would be wrong to place so large a number of people in a state of chronic potential danger for the sake of stopping a practice whose effects upon railway earnings must be infinitesimal.

The South Indian Railway Company complains that if a man has no property to distrain on, as is often the case with such travellers, there are no means of compelling him to pay up under section 113. ~~An American conductor would, I am told, stop and drop him on the prairie.~~ Perhaps it might be well to provide a short term of simple imprisonment to meet such cases. Say one day per rupee. It probably would seldom have to be imposed.

In section 113 it would be as well, as pointed out by the South Indian Railway Company, to substitute the word "person" for "passenger," throughout, because if (2) he has only *attempted* to travel he is presumably not a "passenger."

I may note here that "Passenger" is nowhere defined. Does the act of buying a ticket or the act of entering a train make a person a passenger? I think that a person ought to be considered a "passenger" from the time when after buying his ticket he enters the train, until the time when either having left the train he parts with his ticket or having parted with his ticket he leaves the train. All others ought to be classed as "persons" in the Act.

No. 5. Transfer of tickets.—In section 70 it is specified that a return ticket or a season ticket shall not be transferable. But in section 114 provision is made for the punishment of persons who transfer return tickets. This provision was doubtless intended to apply also to season tickets which cover return journeys. But it might be as well for the sake of clearness to insert the words "or season" between the words "return" and "ticket" throughout section 114. But I would prefer to legislate so as to make the transfer of only season tickets penal, and to exempt return tickets.

The South Indian Railway Company would wish to see a similar punishment for the transfer of single tickets. But I am of opinion that as it makes absolutely no difference to the Railway administration whether they carry *A* for the whole journey or *A* for part of the journey and *B* for the remainder, provided a ticket be paid for, there is no need to make transfer of single tickets penal.

The case of season tickets is ~~distinctly~~ different, and I ~~am~~ not ~~so~~ sure of the necessity for restricting the use of both halves of a return ticket to one person. The Railway administration by selling such a ticket secure a return passenger, and that ought ~~I think~~ to suffice for them. ~~I do not believe that the restriction imposed on the~~ sale of return tickets will survive very long in any country.

No. 6. Representation of a Company by their Agent.—The Traffic Manager, South Indian Railway, thinks that there is some doubt as to how notices intended for a Railway Company may be served to ensure effectiveness of service. It appears that the Madras High Court has declared that the Agent in India is the only officer of the Company who can receive notices of claims for refunds and compensation under section 77. But an ignorant customer will usually know nothing about the Agent, and will naturally serve notice on the railway servant with whom he comes in direct contact. Indeed item 4 on the back of the *Goods Consignment Note*, now generally if not universally in use, specially provides that he must submit his claim to the clerk in charge of the station, and send a list of damages to the District Traffic officer. There would therefore seem to be no difficulty about notices of this sort. For other notices it seems to me that the provisions of section 140 are sufficient.

No. 7. Offences.—Under Rule 36 of the obsolete General Rules of 1880, railway servants were formerly liable to immediate dismissal or suspension. The new Rule 269 of 1895 allows of their being fined departmentally, but makes no mention of

dismissal or suspension. It hink that, as it is often better to get rid of a man promptly than to fine him, Railway Administrations ought to be able to suspend or dismiss a man if necessary. This is not merely a question of the rules framed under Section 47 of the Act, but rather of Section 47 itself, which gives power to make rules for fining men, but not for otherwise punishing them.

Sections 99—105 deal with "Offences of Railway Servants"; Rules 106—130 deal with "Other offences." It seems clear on a perusal of the rules under these two headings that 99—105 are intended to treat of offences committed by railway servants in their capacity *as* railway servants; and that 106—130 are intended to treat of offences of persons other than railway servants, and also of offences committed by railway servants in their private, not official, capacity. Now it will be observed that in one of the first group, Section 101, the phrase "endangers the safety of any person" is used, whereas in the second group, Section 129, the phrase "likely to endanger the safety of any person" is used. The consequence, as pointed out by the Government of India in their letter, No. 627 R.T., dated 9th August 1897, is that railway servants who in the course of their duty do any act held to have, not necessarily endangered but, been likely to endanger the safety of persons on or travelling by railway, must be prosecuted under Section 129, that is under a rule not grouped with those rules which treat of offences committed by railway servants *as* such. I am of opinion that there would be less chance of miscarriage of justice if a section similar to 129 were inserted as a sub-section of Section 101.

No. 8. Disobedience of drivers of conveyances plying for hire.—I consider the suggestion of the South Indian Railway Company to be a good one that the word "reasonable" might be omitted from Section 123. If unreasonable orders are given, an appeal to the Agent or Manager, and the option of leaving the premises, are always open to the fly-man.

Suggested amendment of the Limitation Act.—I find no point in the suggestion of the South Indian Railway Company's Traffic Manager in regard to amending this Act, because item 115 of the second schedule of that Act provides for a breach of contract *not herein specially provided for*, whereas item 30 specially provides a limit of two years for carriers.

Madras,
20th February 1899.

Francis J. E. Spring,
Consulting Engineer for Railways.

Order—No. Ry., dated February 1899.

A copy of these Proceedings will be forwarded to the Government of India in reply to their letter, No. 1032 R.T., dated 23rd September 1898.

[Here enter No. Ry., dated February 1899.]

(True Extract.)

Francis J. E. Spring,
Joint Secretary.

Endorsement—No. Ry., dated February 1899.

Forwarded.

(By order.)

Joint Secretary.

Exd. Shaik Karim.

To the Agent and Manager Madras Ry
" S. I. Ry
" Comptroller &c &c
" Judicial Deptt

3 proof 13/3/99

RAILWAY.

Government {1899} of Madras.

PUBLIC WORKS.

Read. } 1899. *Enclosures*

Regd. } *Spare copies*

G.O., Nos. 338, 339 Ry., 25th March 1899.

MARCH.

To His Excellency the Governor
The Right Hon. A. T. Arundel C.S.I
The Right Hon. H. M. Winterbotham

14.3.99 Circulated for perusal.

and approved.
Seen and signed.
H.H
15.3.99

14.3.99. 20.3.99 20.3.99 20-3-99 22.3.99 22/3 11/3

GOVERNMENT OF MADRAS.

PUBLIC WORKS DEPARTMENT.

Railway.

Read the following papers :—

From—The Secretary to the Government of India, Public Works Department.
To—The Joint Secretary to the Government of Madras, P.W. Dept., Ry. Branch.
Dated—Simla, 23rd September 1898, No. 1032 R.T.

With reference to the Indian Railways Act IX of 1890, as amended by Act IX of 1896, I am directed to enquire whether, in the event of a revision of the Act as amended being undertaken at any future time, the Government of Madras have any further amendments to suggest in order to provide for cases which have arisen in practice and are not considered to be covered by the existing amended Act.

No. 2787.

Copy forwarded to Agents, Madras and South Indian Railways, for favour of report.

From—The Agent and Manager, Madras Railway Company.
To—The Consulting Engineer for Railways, Madras.
Dated—30th January 1899, No. 10101/117.

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Enclosure.

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To—The Agent and Manager, Madras Railway.
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Section 47 (2) *and* 99 *to* 104.—These clauses appear to be practically the only ones in the Act which deal with offences or misconduct of Railway servants and under them the Railway Company appears to be empowered to—

(*a*) deduct a sum equal to one month's pay from a servant for committing a breach of rules ; and

(*b*) inflict or cause to be inflicted fines of varying amounts for certain specified offences.

In the latter case it is not clear whether these fines would have to be inflicted by a Magistrate or Judge, or whether the Railway Administration is empowered to inflict them.

2. No provision appears to exist empowering the Railway Company to either suspend or summarily dismiss a man and I am certainly of opinion that such power should be given. There are many offences of which although no question exists but that a railway servant is or has been guilty, there would be difficulty in obtaining criminal prosecution, and unless the power of fine, suspension or summary dismissal is retained by the Administration, it would frequently occur that it would not be possible to punish men at all.

3. I would refer you to conversation that took place at the officers' meeting held on the 1st October 1897 with regard to G.O., No. 644 R., dated 11th September 1897. The note I made at the time was as follows :—

Prosecution of drivers guilty of acts likely to endanger life.—This question was discussed and it was considered that no further steps can be taken, but that in the event of prosecution action should be taken, as suggested, under section 129. Chief Prosecuting Inspector has been advised by the Traffic Manager on the matter.

In view of the facts reported in the Government Order quoted, it seems to me a question whether the wording of section No. 129 does not need modification.

From—The Traffic Manager, Madras Railway Company.
To—The Agent and Manager, Rayapuram.
Dated—18th January 1899, No. C. 7686/34038 A. and M.

Revision of Railway Act IX of 1890.

Your endorsement of the 11th October on Government of India letter No. 1032 R.T. of 23rd September 1898.

I enclose herewith for your information a memorandum giving particulars of the various points that have from time to time arisen in connection with the working of the Railway Act of 1890.

2. The question in paragraph 4 as to the infliction of imprisonment in cases where the passenger is unable or unwilling to pay the excess and penalty leviable under the Act has, I understand, been already represented to the Consulting Engineer under your No. 11178/544 of 15th June last. The question as to what power the Governor-General has to call for a Railway Commission and as to whether such a Commission can, under any circumstances, be legally constituted unless all the parties concerned are agreeable is being raised elsewhere.

Memorandum of points which have from time to time arisen in connection with the Railway Act IX of 1890.

Section 75—*Schedule* 2—*Silk parcels.*—There has been a good deal of doubt as to whether the silk alone must be of the value of Rs. 100 or the total value of the consignment containing the silk amount to that sum. The opinion of the Advocate-General, Bengal (as contained in Railway Conference papers of 1893) is as follows :—

" Assuming that the package contained (*a*) cloth manufactured entirely of cotton and (*b*) cloth manufactured either entirely of silk or of silk in combination with cotton. I am of opinion that the Company is liable for (*a*) irrespective of the value of (*b*) inasmuch as cloth manufactured entirely of cotton finds no place in the second schedule of Act IX of 1890 (see Treadwin, *v.* G.E. Railway Company, L.R. 3 C.P. 308).

" With regard to (*b*) I am of opinion that the Railway Company is not liable therefor if its value exceeds Rs. 100 and is liable therefor if its value is less than that amount."

The opinion of our Solicitors Messrs. Barclay, Morgan and Orr in the case of the loss of a parcel containing silk cloths referred to them in February 1892, ran as follows :—

" It seems to us that under section 75 of the Indian Railway Act of 1890 the liability of the Company for the parcel in question depends upon whether the value of the silk contained in the parcel exceeds Rs. 100 and not upon the total value of the whole contents of the parcel. If the value of such parcel of silk was over Rs. 100 the Company would not be liable but if the value is less than Rs. 100 the Company would, we think, be liable for the whole value of the parcel both silk and cotton.

" Before paying the claim the Company should therefore be satisfied as to the value of the silk contained in the parcel."

Our practice has always been to repudiate claims where the value of the parcel or consignment containing silk is in excess of Rs. 100 and our action has not hitherto been disputed in a court of law.

2. *Section* 55—*Recovery of undercharges after delivery of goods.*—In consequence of a decision by the District Judge, Ahmedabad, in August 1896, in a suit brought by the B.B. and C.I. Railway that undercharges could not be recovered after delivery of goods, the Government of India was moved to sanction a special clause in order to give Railway Administrations definite powers to this effect The Government of India, however, under their 678 R.T., of 3rd September 1897, clearly refuse to sanction such a clause, stating that it was the express intention of the Act to limit the powers of railway companies to correction of charges before delivery and not afterwards. It is proposed to discuss the matter at the next conference (O. 12086—your endorsement No. 10101/A., of 11th October 1897, on G.O., No. 758 R., dated 1st idem, forwarding Government of India letter No. 678 R.T., of 3rd September 1897).

3. *Sections* 64, 109, 119 *and* 67—*Reserving first and second class compartments.*—A large amount of correspondence has taken place in regard to the extent to which a railway company was legally empowered to reserve a compartment higher than the lowest and ensure that it was not entered by persons for whose use it had not been reserved by the railway company.

Legal opinions on the question varied, and the matter was eventually referred to the Government of India by this company, urging the issue of a rule considered necessary by our Solicitors

The Government of India consider (under G.O., No 1357 Ry., of 3rd November 1898) that the question turns on section 67 of the Act and decline to frame statutory rules to enable Railway Administrations to take action which they are competent to take at their own discretion until some case occurs to prove that such rules are indispensable (C -52952—your endorsement No. 10508, of 11th November 1898, on G.O., No. 1357 Ry., of 3rd November 1898).

4. *Sections* 112, 113 *and* 68—*Passengers found travelling without ticket and unable to pay excess or fine.*—Under the ruling of the Allahabad High Court (criminal revision case No. 408 of 1897 before Mr. Justice Knox), travelling in a train by a passenger without having a proper ticket with him is not an "offence" under the Railway Act of 1890. He cannot legally be sentenced to imprisonment in default of payment of the excess charge and fare which may be recovered under the provisions of section 113, clause 4.

The Great Indian Peninsula Railway have asked Government that the Act may be so amended that imprisonment should be inflicted in such cases, and it is suggested that this company should do so also, should the decision of the Allahabad High Court be upheld (C. 67004—your No. 11178—13/40, of 28th December 1898).

5. *Section* 101.—On the Eastern Bengal Railway a driver was prosecuted in October 1896 under the above section for running through a station against signals without stopping to receive the line-clear ticket. A similar case occurred on the Oudh and Rohilkund Railway. The Eastern Bengal case failed because the Court held that life had not actually been endangered. In the Oudh and Rohilkund case the issue of a prosecution being doubtful the offenders were dealt with departmentally. The matter was referred to Government of India with a view to section 101 being amended 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.

Government of India, however, under their 627 R.T., of 9th August 1897, point out that the prosecution should have been made under section 129 and are not prepared to make any amendment of the Act unless it found that a conviction in such cases cannot be obtained under that section (C. 44657—your No. 10101-A.-9841 of 15th September 1897).

6. Under the present reading of sections 101 and 129 of the Railway Act and under the General Rules of 1895, we are unable to prosecute in cases of neglect of duty not "endangering" or "likely to endanger" the safety of any person, and such cases (as for instance a watchman asleep on duty when in charge of loaded wagons) have to be dealt with departmentally Under the General Rules of 1880, a conviction could and frequently was obtained under Rules 36 and 55.

From—The Traffic Manager, Madras Railway.
To—The Agent and Manager, Ravapuram.
Dated—Madras, 26th January 1899, No. C. 7686/34112 A. and M.

Revision of Railway Act IX of 1890.

In continuation of this office letter No. C. 7686 A. and M., of 18th instant, I beg to put before you the following example of the application by the High Court of sections 112 and 113 of the Railway Act: A man was prosecuted under the penal section for having entered the train at Erode at 12 o'clock in the day with a ticket for Totaipalaiyam, a distance of five miles, and having been subsequently detected in the train at Somanur, eight stations further on, it seems difficult to have a clearer case of fraudulent intention, and this was the view held by the 2nd-class Magistrate, Palladam, who tried the case, and who sentenced the accused to a fine of Rs. 15 in addition to the single railway fare, or in default 15 days' rigorous imprisonment. The case was called up by the High Court in revision when the Government Pleader appeared to support the conviction,

but the High Court held that the evidence was insufficient to show that the accused had a fraudulent intention, and they set aside the conviction under section 112 and directed payment of the fare and single excess fare under section 113. The enclosed copy of a letter, dated 21st instant, from the Company's Solicitors, explains how the matter was put before the Court. The case of 1896, referred to in that letter, was a conviction by the 2nd-class Magistrate of Allur under precisely similar circumstances which was upheld by the High Court and the production of the judgment in that case has enabled us to obtain many subsequent convictions.

The only remedy for such divergent views on the parts of the Courts would appear to be to so amend the Act as to place the onus of proving the absence of fraudulent intention under such circumstances as those stated above upon the accused person.

From—Messrs. BARCLAY, ORR AND DAVID, Solicitors, Madras.
To—The Traffic Manager, Madras Railway.
Dated— 21st January 1899.

Criminal Revision Case No. 398 *of* 1898.

We are in receipt of your letter of yesterday's date. The question which the Court has to decide in determining whether the accused should be dealt with under sections 112 or 113 is whether he entered the railway carriage with a fraudulent intention or not. In criminal revision case No. 19 of 1896 the Chief Justice and Davies, J., were of opinion that the Magistrate was right in his finding that the accused had such a guilty intention. In the present case, however, Shephard and Subramania Iyer, J.J., were of opinion that the evidence was insufficient to justify the Magistrate's finding that the accused had a guilty intention. In our opinion the Judges are quite wrong as the evidence was particularly strong to show that there was such a guilty intention. The accused gave as his reason for not getting down at Totaipalaiyam that he had arranged for a man to see him there but that he did not turn up and that he had no time to get out to get a fresh ticket. No explanation was given as to why the man did not turn up, why he was not called to give evidence, why the fact of his not turning up prevented the accused from getting out to buy a ticket, nor why the fact of the man not turning up made it necessary for the accused to travel on to Somanur. The attention of the Judges was drawn to these points, but they attached no weight to them, contenting themselves with stating that it would be dangerous to hold that any one travelling beyond the station of destination mentioned in the ticket entered the carriage with a fraudulent intention. Had the case been heard by the Judge who disposed of the previous case, the result would probably have been different.

From—The Agent, South Indian Railway.
To—The Consulting Engineer for Railways, Madras.
Dated—Trichinopoly, 10th December 1898, No. 1109.

With reference to your endorsement No. 2787, dated 10th October 1898, regarding amendment of the Railway Act, I have the honour to forward a copy of letter, No. G. 7015, dated 16th November 1898, from the Traffic Manager, and to inform you that I have no further suggestions to offer.

ENCLOSURE.

From—The Traffic Manager, South Indian Railway.
To—The Agent, South Indian Railway.
Dated—16th November 1898, No. G.-7015.

Revision of Indian Railway Act IX of 1890.

With reference to your letter No. F. 748/$\frac{4}{1859}$ of 15th October 1898, I beg to suggest the following amendments for consideration :—

Section 3, *clause* 6, *and sections* 77 *and* 140.—The words "and includes the Agent of the Company" may be added at the end of clause 6. The necessity for this addition arises on account of the objections often taken in the Mufassal Courts to the authority of the Agent to represent the Company. For instance, much difficulty was recently experienced in interpreting section 77 owing to this omission. It was contended that a railway administration, in the case of a railway administered by a Railway Company meant the Company itself (for definition of "Railway Company"—*vide* section 3, clause 5, and that notice of claims may be served upon any of the officers of the Company in India. The question whether the Agent was the only proper officer who represented the Company in India and whether notices referred to in section 77 could only be served upon him was referred to the High Court in a suit brought against the

Company in the Court of the Sub-Judge at Negapatam in connection with the loss of a parcel during the riot there. The High Court then held that the Agent in India was the only officer who could receive legally such notices. If the word Agent were added to this section, as suggested above, such difficulties would not arise.

Section 140.—In the above case it was also contended that the word "may" occurring in section 140 permits the service of notices either upon the Agent or upon any other officer. I therefore suggest that the word "shall" be substituted for "may."

Sections 66 *and* 67.—Under these sections a railway administration shall supply, upon payment of fares, tickets to passengers. There is nothing in the Act either expressly or impliedly sanctioning the sale of tickets by other persons than the Company's servants It is, therefore, apparent that the transfer of tickets is not contemplated by the Act, but there is no penal clause made in the Act for the breach of the rule, although in the monthly guide we announce that tickets are not transferable.

Sections 70 *and* 114.—With regard to return and season tickets, it is laid down in section 70 that they are not transferable and section 114 forms the penal clause for the breach of the offence. I cannot understand why a distinction should be made between a single journey ticket and a return ticket. I therefore beg to put forward this case for such notice as may be deemed expedient.

Sections 68 *and* 112.—It is often contended in Magistrates' Courts that under these sections, the entry into the carriage and not the travelling constitutes the offence. I therefore suggest that the words "or travel" be inserted after the word "enter" in section 68 and in section 112, clause A "or travels" after the word "enters."

Section 100.—This section has been variously read—some have held that the words after "or" have no connection with the previous lines.

If it is to be understood that the greater penalty refers to a railway servant, who, in a state of intoxication, improperly performs *his* duty to the danger or safety of any person, &c.,—and this appears to be the right interpretation—then the section should be recast.

Section 101.—In section 100 the words "likely to endanger" appear but in section 101 there is only the word "endanger" so that according to the latter reading a railway servant would not be punishable under this section if he could prove that his action was only "*likely to* endanger," and he would not be punishable under section 100, as it might be argued that that section referred only to a railway servant in a state of intoxication.

He could, however, be prosecuted under section 129.

A case bearing upon this point was brought to the notice of the Government of India upon which G.O., No. 627 R.T., dated Simla, 9th August 1897, was issued.

In that order this was pointed out.

Section 118.—In this section there is no alternative punishment of imprisonment provided in the case of a passenger from whom the fares due to the Company cannot be recovered. The only remedy at present is to sell his property by issuing a distress warrant but in nearly every such case we find that there is no property to distrain upon. The Bombay and Madras High Courts have held that imprisonment cannot be awarded under this section. I therefore suggest that the defect may be remedied.

Section 113.—The Madras High Court have held that persons who are not passengers cannot be punished under this section. I therefore suggest that the word "passenger" be removed and the word "person" substituted.

Section 123.—The word "reasonable" may be omitted, otherwise it allows drivers and conductors to sue the Company in Courts of Law if they consider they have been unreasonably dealt with. The only remedy which should be left open to them is for them to make a representation of their grievances to the Railway authorities concerned and abide by their decision. This is the principle upon which suits against the Railway Companies in England have been held to be not maintainable. We have had two cases in which certain bandy-men were prosecuted under this section. One was in the Town Magistrate's Court at Kumbakonam and the other at Tirutturaippundi. The chief point taken up by the accused persons for their defence was that the order of the station master was unreasonable. In the first case the Magistrate acquitted them, but the District Magistrate, to whom it was referred, ordered a retrial when the accused were convicted and fined. There was great difficulty experienced in securing a conviction, also, in the second case, for the same reason.

Schedule 2, *Clause* 30.—I now beg to refer to a matter which is outside the Indian Railways Act IX of 1890, but which I take the opportunity of commenting upon here. Under article 30 of the Limitation Act, the period of limitation for suing carriers for compensation "for losing or injuring goods," is two years, but under clause 115 of the same Act, the period of limitation is three years.

In cases governed by the latter clause we cannot always be sure of finding the records required for defending the suit, after such a lengthened period, and it also frequently happens that the servants of the Company, whose evidence might be important, have left the service and their whereabouts are not known, the consequence being that we stand the risk of losing the case for want of proper evidence.

I therefore beg to suggest that the period of limitation be limited to two years invariably.

Note by the Consulting Engineer for Railways, Madras.

The replies received from the Agents of the Madras and South Indian Railways treat of the following subjects, and refer to the sections of the Railway Act specified in the following schedule:—

Number of subject.	Number of section of Act.	Subject.
1	75	Responsibility of Railway Companies as carriers, in respect of silk parcels item (*l*) in second schedule.
2	55	Lien for rates; recovery of under-charges after delivery of goods.
3	64 67 109 119	Reserving accommodation.
4	63 112 113 118	Travelling without a ticket.
5	66 67 70 114	Transfer of tickets.
6	3 77 140	Representation of Company by their Agent.
7	47 (2) 99—105 129	Offences of railway servants.
8	123	Disobedience of drivers of hack vehicles.

I now take up the subject in the order given in the above schedule.

No. 1. Responsibility for silk parcels.—The Madras Railway Company appear to be in the habit of repudiating responsibility for parcels whose *entire* value is in excess of Rs. 100 provided they contain, *inter alia*, any of the items in schedule 2, *e.g.*, silk. But section 75 clearly specifies that the railway may refuse responsibility if the value of the scheduled articles in the package exceeds Rs. 100. In this action the Company are not supported either by the Bengal Advocate-General or by their own Solicitors. The public, however, have never disputed their action in a Court of Law. The section seems to me to be clear enough and to need no revision.

No. 2. Lien for rates. Recovery of under-charges after the delivery of goods.—The recovery of under-charges after the delivery of goods is not contemplated in section 55, which is intended to apply only to failure to recover charges actually entered on the railway receipt. The ruling of the Government of India, in their letter to the Government of Bombay, No. 678 R.T., dated 3rd September 1897, appears to me to be an eminently reasonable ruling. Railway Administrations are afforded sufficient relief in being permitted, in the note on the railway receipt, to correct under-charges before the transaction is completed by delivery.

The Government of India may, however, see fit to make it more clear that section 55 does not refer to the recovery of under-charges for which railway servants' carelessness is responsible. This might be done by the addition of a sub-section No. 6 to the following effect, "Provided always that, after a consignment has been delivered, a railway administration may not recover under-charges caused by errors in rates or in classification made by its own servants."

No. 3. Reserving accommodation.—The Traffic Manager, Madras Railway, refers to the subject dealt with in this Government's Proceedings, No. 1357 Ry., dated 3rd November 1898. But I am of opinion that the question has been adequately treated in the Government of India's letter, No. 1007 R.T., dated 19th September 1898. In revising the Act the Government of India may, however, think it advisable to have the section about reserved accommodation and the rights of ticket purchasers so clearly expressed that in future neither the Railway administrations nor the public may have excuse for doubt as to the intention of the Law.

No. 4. Travelling without a ticket.—Certain Judges have held that it would be dangerous to assume that a person travelling beyond the destination mentioned in his ticket had entered the train with a fraudulent intention. The Madras Railway Company would wish to place on the traveller the onus of proving that his intention was not fraudulent. My own opinion coincides with that of the Judges referred to. I think that under all the circumstances of Indian Railway travelling, police, staff, etc., it would be a very dangerous thing to assume criminal intention. I think that the provisions of section 113 are on the whole sufficient, and that it would be wrong to place so large a number of people in a state of chronic potential danger for the sake of stopping a practice whose effects upon railway earnings must be infinitesimal.

The South Indian Railway Company complains that if a man has no property to distrain on, as is often the case with such travellers, there are no means of compelling him to pay up under section 113. Perhaps it might be well to provide a short term of simple imprisonment to meet such cases. Say one day per rupee. It probably would seldom have to be imposed.

In section 113 it would be as well, as pointed out by the South Indian Railway Company, to substitute the word "person" for "passenger," throughout, because if (2) he has only *attempted* to travel he is presumably not a "passenger."

I may note here that "Passenger" is nowhere defined. Does the act of buying a ticket or the act of entering a train make a person a passenger? I think that a person ought to be considered a "passenger" from the time when after buying his ticket he enters the train, until the time when either having left the train he parts with his ticket or having parted with his ticket he leaves the train. All others ought to be classed as "persons" in the Act.

No. 5. Transfer of tickets.—In section 70 it is specified that a return ticket or a season ticket shall not be transferable. But in section 114 provision is made for the punishment of persons who transfer return tickets. This provision was doubtless intended to apply also to season tickets which cover return journeys. But it might be as well for the sake of clearness to insert the words "or season" between the words "return" and "ticket" throughout section 114. But I would prefer to legislate so as to make the transfer of only season tickets penal, and to exempt return tickets.

The South Indian Railway Company would wish to see a similar punishment for the transfer of single tickets. But I am of opinion that as it makes absolutely no difference to the Railway administration whether they carry *A* for the whole journey or *A* for part of the journey and *B* for the remainder, provided a ticket be paid for, there is no need to make transfer of single tickets penal.

The case of season tickets is somewhat different, and I do not feel very sure of the necessity for restricting the use of both halves of a return ticket to one person. The Railway administration by selling such a ticket secure a return passenger, and that ought to suffice for them were it not for the risk involved in uncollected tickets being liable to be fraudulently used many times over.

No. 6. Representation of a Company by their Agent.—The Traffic Manager, South Indian Railway, thinks that there is some doubt as to how notices intended for a Railway Company may be served to ensure effectiveness of service. It appears that the Madras High Court has declared that the Agent in India is the only officer of the Company who can receive notices of claims for refunds and compensation under section 77. But an ignorant customer will usually know nothing about the Agent, and will naturally serve notice on the railway servant with whom he comes in direct contact. Indeed item 4 on the back of the *Goods Consignment Note*, now generally if not universally in use, specially provides that he must submit his claim to the clerk in charge of the station, and send a list of damages to the District Traffic officer. There would therefore seem to be no difficulty about notices of this sort. For other notices it seems to me that the provisions of section 140 are sufficient.

No. 7. Offences.—Under Rule 36 of the obsolete General Rules of 1880, railway servants were formerly liable to immediate dismissal or suspension. The new Rule 269 of 1895 allows of their being fined departmentally, but makes no mention of dismissal or suspension. I think that, as it is often better to get rid of a man promptly

than to fine him, Railway Administrations ought to be able to suspend or dismiss a man if necessary. This is not merely a question of the rules framed under Section 47 of the Act, but rather of Section 47 itself, which gives power to make rules for fining men, but not for otherwise punishing them.

Sections 99—105 deal with "Offences of Railway Servants"; Rules 106—130 deal with "Other offences." It seems clear on a perusal of the rules under these two headings that 99—105 are intended to treat of offences committed by railway servants in their capacity *as* railway servants; and that 106—130 are intended to treat of offences of persons other than railway servants, and also of offences committed by railway servants in their private, not official, capacity. Now it will be observed that in one of the first group, Section 101, the phrase "endangers the safety of any person" is used, whereas in the second group, Section 129, the phrase "likely to endanger the safety of any person" is used. The consequence, as pointed out by the Government of India in their letter, No. 627 R.T., dated 9th August 1897, is that railway servants who in the course of their duty do any act held to have, not necessarily endangered but, been likely to endanger the safety of persons on or travelling by railway, must be prosecuted under Section 129, that is under a rule not grouped with those rules which treat of offences committed by railway servants *as* such. I am of opinion that there would be less chance of miscarriage of justice if a section similar to 129 were inserted as a sub-section of Section 101.

No. 8. Disobedience of drivers of conveyances plying for hire.—I consider the suggestion of the South Indian Railway Company to be a good one that the word "reasonable" might be omitted from Section 123. If unreasonable orders are given, an appeal to the Agent or Manager, and the option of leaving the premises, are always open to the fly-man.

Suggested amendment of the Limitation Act.—I find no point in the suggestion of the South Indian Railway Company's Traffic Manager in regard to amending this Act, because item 115 of the second schedule of that Act provides for a breach of contract *not herein specially provided for*, whereas item 30 specially provides a limit of two years for carriers.

MADRAS,
20th February 1899.

FRANCIS J. E. SPRING,
Consulting Engineer for Railways.

ORDER—No. 338 Ry., dated 25th March 1899.

A copy of these Proceedings will be forwarded to the Government of India in reply to their letter, No. 1032 R.T., dated 23rd September 1898.

[Here enter No. 339 Ry., dated 25th March 1899.]

(True Extract.)

FRANCIS J. E. SPRING,
Joint Secretary.

To the Agent and Manager, Madras Railway.
" " South Indian Railway.
" Consulting Engineer for Railways.
" Judicial Department.

ENDORSEMENT—No. 339 Ry., dated 25th March 1899.

Forwarded.

(By order.)

Joint Secretary.

Exd. Shaik Karim.

Despatched on 6/4/99