

# MADRAS RECORD OFFICE.

Government of Madras.

*Revenue* . DEPARTMENT.

|                 |                        |                |
|-----------------|------------------------|----------------|
| G.O. No.        | 721                    | Press          |
| <u>425. 26.</u> |                        | <del>Mr.</del> |
| Dated           | 17 <sup>th</sup> March | 1869.          |

Not to be folded or roughly handled

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*Proceedings of the Madras Government, Revenue Department,  
17th March 1869.*

No. 425. Read the following Proceedings of the Board of Revenue, dated 4th January 1869, No. 2:—

Read the following Proceedings of the Madras Government, dated 20th August 1867, No. 1,946, Revenue Department.

ABSTRACT.—Forwarding, for the Board's opinion, draft of a bill to provide for the prevention of injury to Railway works by the bursting of tank embankments in Zemindary Estates.

In a Despatch, dated 9th January 1867, No. 1, the Secretary of State for India forwarded a complaint from the Directors of the Madras Railway Company, regarding the damage done to their works by the bursting of tanks, and Government in acknowledging the receipt of the same, observed that the tanks which had burst were in Zemindary Estates and not liable to the inspection of Government Officers, and that the only effectual remedy for the evil complained of was to be found in actions for damages against the Zemindars by the Railway Company. It was at the same time pointed out that no such injury had been caused by the bursting of Government tanks, the maintenance of which in safe condition was far from being overlooked by the Government, who had called upon the Superintending Engineers to pay especial attention to those tanks from which any danger to the Railway might arise.

2. The above remarks were contained in a Despatch No. 2 of 1867, forwarded through the Supreme Government, who in a letter, dated 7th June 1867, requested that the question might receive further consideration, and observed that it seemed "only fair and reasonable that the proprietors of land should be responsible for any harm or loss which may arise from damage caused by the bursting of artificial embankments which they or their ancestors have constructed." Suggesting further that "if there were any doubt upon this point" recourse should be had to legislation.

3. It was also pointed out that Government should have power, (which at present they have not,) to inspect such works as tanks and embanked rivers in the vicinity of Railways, and to recover from the landed proprietors any expenses which might be incurred by Government in repairs or protective works.

4. It was resolved accordingly that the papers relating to the subject should be referred to the Legislative Department, with instructions to prepare a draft of a "bill to provide for the prevention of injury to lines of Railway from the escape or overflow of water from irrigation works in Zemindary and other lands."

5. This has been prepared and was forwarded for the Board's report with the Proceedings of Government entered at the head of these Proceedings.

6. Before proceeding to discuss the provisions of the bill in detail, the Board beg to make the following general observations.

If a special law of this nature is to be enacted, it should, in the Board's opinion, be of general application, and not restricted to the protection of Railway Companies alone. Tanks and embankments frequently give way and cause loss of life and injury to public and private property, and these interests are no less deserving of consideration and protection. In some instances, the works of Railway Com-

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panies are themselves sources of danger to the property of others, as where a line is carried on an embankment across a tank. If the State is to interfere at all, it should do so equally and impartially for the protection of all.

It seems to the Board quite superfluous to enact that a party suffering an injury through the neglect of another, shall be at liberty to sue for damages, as Section II of the Act provides. There cannot be a doubt that this mode of redress exists and is open to all, as the law stands. What is needed is more expeditious and effective means than are now available for preventing injury, by requiring the owners of works to keep them in such condition as to render its occurrence reasonably unlikely, the interests of the owners being at the same time duly protected. The Board would vest the Magistrate of the district with power, on being satisfied that danger is to be apprehended from the present condition of any private work, and that it is just and reasonable that the expense of averting such danger should be incurred by the owner, to require him within a stated period to take order accordingly with his property. The owner should have the privilege of claiming that the question of danger, if not already certified by a Government Engineer of a certain standing, to be fixed by Government, shall be so certified. The question of ownership and liability might be referable to a jury by way of appeal. This procedure would meet all cases not of an emergent nature. Cases of this last kind must be dealt with exceptionally and summarily, but only to the extent actually necessary to prevent immediate injury. The Board would take power to Government to nominate Officers in each district, who should have the power of thus acting independently of the Magistrate, their acts so far as they entail liability for expenses incurred being left, with the question of the further measures necessary to ensure the permanent prevention of injury, for adjudication by the Magistrate as above proposed.

The board would further take power for Government to appoint Inspecting Officers with power *proprio motu*, or on the application of interested parties to inspect all works, and either directly move the Magistrate to order such work in the way of repairs or otherwise as may be necessary, or grant certificates enabling the parties interested to do so. But, as Government could not possibly undertake the duty of inspecting all private works, those interested in them should be at liberty to apply to the Magistrate without the intervention of any Government Officer. The expenses of inspection at the instance of private persons should be defrayed by them, and no responsibility should attach to Government in connection with the inspection of works or the refusal of the inspecting Officer to inspect any work.

7. An Act framed on these principles would, the Board think, meet the object in view, and at the same time afford proper protection to the owners of works.

8. The Board would prefer a law of this nature to that proposed, the details of which they will now discuss.

9. Section 1. This is far too sweeping in its terms. The expression "all land-holders paying revenue directly to Government" would include the whole body of Government ryots who would thus be saddled with a responsibility which attaches to Government to whom the works belong, and who receive the profits derived from them.

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10. As regards the works for which the persons mentioned are responsible, the definition is also too general. It would not be equitable, for example, to hold a Zemindar answerable for damage done by a large river passing through his property from which his estate derives little or no benefit, or a benefit disproportioned to the expense. Indeed, the wording of this Section would even throw on proprietors of the land responsibility for canals and reservoirs not belonging to them. Thus the proprietors of land in Kurnool would be answerable for the Irrigation Company's Canal, as being "upon and flowing through their lands". The responsibility should be limited to works belonging to, or under the management or control, of the persons to whom the Act is to apply, or which they are bound, by their tenure or by prescriptive usage, to keep in order.

11. The restriction of the Section to existing works is undesirable, as all future works (which might possibly be far more liable to cause damage) would be exempted.

12. Section 1 might, therefore, be altered and read as follows:—  
"It shall be the duty of Companies and persons being the proprietors of or having the management of or control over tanks, river and channel embankments, irrigation channels, sluices, weirs, revetments and other artificial works of a like description, to take such order therewith that the safety of Railway lines may not be endangered by the uncontrolled escape or overflow of water from such works."

13. Section 2 is liable to the same objection as Section 1, in respect of its enumeration of the persons to whom, and the works to which the Act is to apply.

14. Section 3. The Section does not state whether the expense of this measure is to be charged to the Railway Company or to the Proprietors of the works likely to cause damage, or to the Government.

15. With reference to Sections 4 and 5, and to the remarks thereon in Colonel Anderson's Memorandum, the Board would offer two suggestions: Section 4 might be altered thus "It shall be lawful for Government to authorise such Officers "to repair (omitting the words 'enlarge' and 'existing' in two places) works, and "to construct supplementary works, for the proper security of works, wherever the "same shall be necessary for the purpose of preventing the escape or overflow of "water as aforesaid upon the property of any Railway Company."

Section 5 might remain as it is, omitting "enlargement."

16. It appears right that, except in cases of extreme urgency, the proprietor should have the option of himself executing the necessary repairs, and that only in the event of his declining to do so, save, of course, in emergency, should Government execute the work which should be limited to what may be necessary for present security, such limitation, however, not interfering with an enlargement of the work should it be necessary.

No. 426.

ORDER THEREON, 17th March 1869, No. 721.

Miscellaneous.

1. The Right Honorable the Governor in Council concurs in the remarks of the Board of Revenue in paragraphs 6 and 7 of their Proceedings, and resolves to refer the papers to the Legislative Department.

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ment with instructions to make such modifications in the scope of the bill, in communication with the Consulting Engineer for Railways, as will adapt it for the purposes proposed as well as that for which it was originally intended.

2. In preparing the new draft bill, special attention should be paid to the Board's observations in paragraphs 9 to 16 of their Proceedings.

(True Extract.)

(Signed) R A. DALYELL,

*Acting Secretary to Government.*

To the Legislative Department.  
" the Board of Revenue.  
" the Public Works Department.

Ed. G. A. Turton.

Revenue Department

W-721-

PROCEEDINGS of the MADRAS GOVERNMENT.

Under date the 17<sup>th</sup> March/89.

Read the following.

Order of the 13<sup>th</sup> of 1889.

Remarking on draft  
of a bill to provide for prevention  
of injury to Railway works by  
bursting of tank embankments in  
Zemindari Estates.

(H. C. 1. Jan 2/89 to 2)

The Right Honorable  
the Governor in Council concurs  
in the remarks of the Board of  
Revenue in paras b and d of their  
proceedings, and resolves to refer the  
papers to the Legislative Dip<sup>t</sup>  
with instructions to make such  
modification in the scope of the  
bill, in communication with the  
Consulting Engineer for Railway,  
as will adapt it for the pur-  
poses proposed as well as that  
for which it was originally intended.

2. In preparing the new  
draft bill, special attention should  
be paid to the Board's observations.

Ord. of 1869 Bill.

REVENUE.

To

THE LEGISLATIVE DEPARTMENT.

Ac, Ac, &c

Dated March, 17th.

Recd.

Encl.

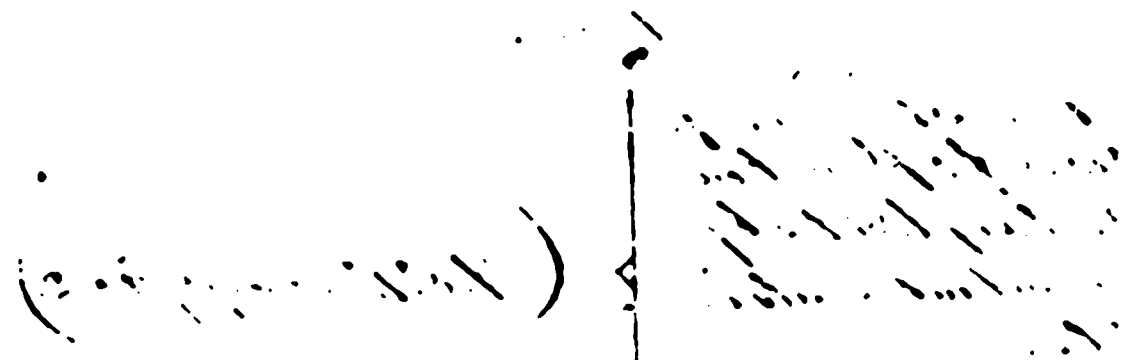
G. O. 17th March 1889. No. 721.

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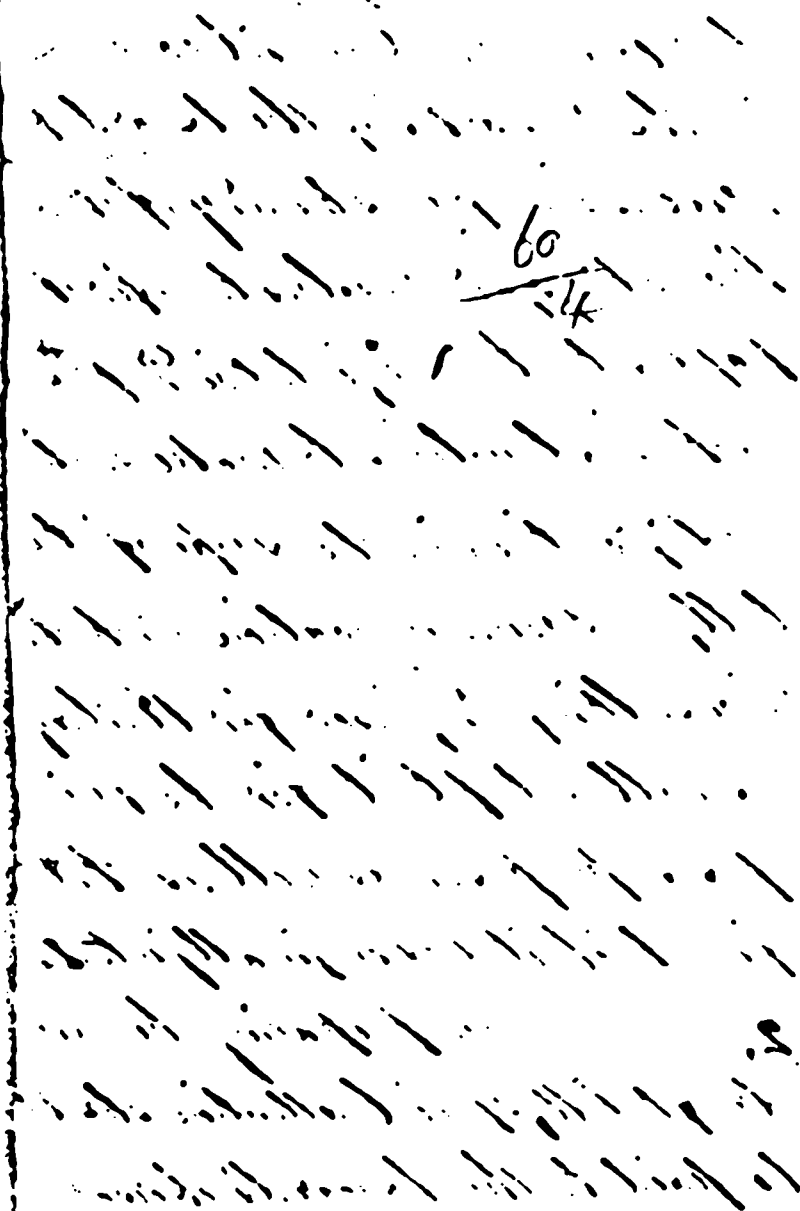
Nos. 425-426.

Injury to Railway works by bursting of  
tank embankments in Zemindari Estates.—  
Papers on the draft Bill to provide for its prevention,  
referred to Legislative Department for certain  
amendments in communication with the Railway  
Consulting Engineer.

in paras 9 to 16 of their  
Proceedings.



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