



SUPPLEMENT
TO THE
BOMBAY GOVERNMENT GAZETTE
CONTAINING
BILLS OF THE GOVERNMENT OF INDIA.

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Separate Paging is given to these Supplements, in continuation from one to the other, that the Bills may be collected into a separate Compilation.

HOME DEPARTMENT (Legislative).

The following Bill was introduced into the Council of the Governor-General of India for the purpose of making Laws and Regulations on the 26th November 1862, and was referred to a Select Committee, who will make a report thereon after the 1st March 1863:—

No. 56 of 1862.

A Bill to provide for taking Land for works of public utility to be constructed by private persons or Companies, and for regulating the construction and use of works on land so taken.

Whereas it is expedient to enable the Government to take land for the construction of works of public utility by private persons or Companies; and whereas it is proper at the same time to protect the rights of all persons from whom land shall be so taken or be proposed to be taken, and also to determine the manner in which such works may be undertaken and shall be managed after their construction, as well as to secure to the public under suitable regulations the use of works constructed on land so taken: It is enacted as follows:—

AS TO THE CONSTRUCTION OF THE ACT.

I. The following words and expressions shall have the several meanings hereby assigned to them, unless when a contrary intention appears from the context.

Words in the singular number shall include the plural, and words in the plural shall include the singular.

Number.

Words importing the masculine gender shall include females.

The words "the work" shall signify the public work proposed to be undertake.

The words "the Government" shall mean the Local Government, or the head of the Executive Administration of the Province in which the public work is proposed to be constructed.

The words "the Collector" shall include any officer exercising by authority of Government the duties of a Collector of Land Revenue by whatever name his office may be designated.

The words "the promoters" shall mean the person or persons who propose to construct the work, or are empowered to construct it, whether a single person or a Company.

The words "work under this Act" shall imply a work definitively registered as hereinafter provided by this Act.

The words "the Owner" or "the Company" shall signify the parties in charge of any public work under this Act, or referred to in this Act, whether as promoters, proprietors, lessees, agents, assignees or otherwise, and whether a single person or a Company.

The word "Lands" shall include messuages, lands, tenements, and hereditaments of any tenure.

"Lands."

The word "Conditions" shall signify the special conditions of agreement between the promoters and

"Conditions."

owners of a work under this Act and the Government referred to in Section XI. of this Act.

The word "Toll" shall include any rate or charge or other payment to be made for any use of

"Toll."

a work under this Act, or for any service performed in connexion with the use of any such work.

II. A work of public utility within this Act shall be held to mean any

What to be deemed works of public utility.

bridge, road, railroad, tramroad, canal for irrigation

or navigation, tank, work for the improvement of a river or harbour, dock, quay, jetty, water-work, gaswork, mine, iron or copper work, drainage work or electric telegraph; also all works subsidiary to any such work. It shall be lawful for the Governor-General in Council, from time to time, by a declaration to be made to that effect and published in the Official Gazette, to order that any other class of works other than those named above shall be included among works of public utility within this Act.

AS TO THE PRELIMINARY PROCEEDINGS TO BE TAKEN AND THE REGISTRATION OF WORKS.

III. The promoters of any work of public utility who shall desire to proceed under this Act shall make a preliminary application in writing to

Promoters to make a preliminary application accompanied by statement.

the Government explaining the general object and nature of the work, and its intended locality.

Every such application shall further be accompanied by a statement of the estimated cost of the construction of the said work, and the mode in which the promoters propose to provide the funds for constructing, maintaining, and working the same.

IV. If the Government shall not be satisfied with any such application

Government may reject application or call for further information, &c.

or statement it may reject it, or it may call on the promoters to supply any further information, or to amend such application or statement on any point on which such further information or amendment shall to the Government seem requisite.

V. If the promoters shall desire to undertake any preliminary survey on account of the proposed work before preparing and submitting the statement

Government may issue certificate to authorize preliminary survey.

aforsaid, they shall declare the same in their preliminary application, and it shall be lawful for the Government, if satisfied of the expediency of permitting such survey, to issue a certificate authorising the same. Such certificate shall declare the names of the persons entitled to use it, the time for which it shall be in force, and the district or districts or locality for which it shall be valid, and shall contain such further regulations for the guidance of the persons using the said certificate as to the Government shall from time to time seem fit. The persons named in such certificate shall be authorised to enter upon any lands in the manner and for the time declared in such certi-

ficite to undertake any survey or other investigation necessary for the proper prosecution of the proposed work and while acting under the authority given in the said certificate, such persons shall be deemed to be public servants whose duty is to make a survey under Clause 10 of Section 21 of the Indian Penal Code. Provided that such persons shall not be authorised to enter any house or building or the curtilage of any house or enclosed garden without the assent of the occupier, or to cut down any tree or otherwise injure or destroy any property.

VI. It shall be lawful for the Government, before issuing a certificate as aforesaid, to call on the promoters to deposit, as caution money, such sum and in such manner as the Government shall in each case determine to be applied by the Government to make good any damage done in the course of such survey by the persons using the said certificate. And any surplus remaining in the hands of the Government after the payment of any claims for damage which shall have been proved to the satisfaction of the Government shall be repaid to the promoters on their demand within three months after the expiry of such certificate.

Deposit of caution money by promoters, before issue of certificate to authorise preliminary survey.

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the Government shall in each case determine to be applied by the Government to make good any damage done in the course of such survey by the persons using the said certificate. And any surplus remaining in the hands of the Government after the payment of any claims for damage which shall have been proved to the satisfaction of the Government shall be repaid to the promoters on their demand within three months after the expiry of such certificate.

VII. The promoters shall, with all convenient despatch after the submission to the Government of their preliminary application, publish the same, but

Preliminary application to be published by promoters.

not the statement that accompanies it, unless they so wish, in the Official Gazette, and also, if possible, in at least two Newspapers (one of which shall be printed in English) in some Town in the Province in which the work is proposed to be executed, and shall repeat such publication at least six times within a period of two months from the date of submission of such application to the Government; and shall further cause to be delivered within the same period to the Collector of every district in which any part of such work is proposed to be constructed or such other Officer as the Government shall from time to time direct, six copies of such application with a faithful translation of the same into the vernacular language of the country; and shall in like manner publish from time to time and deliver as aforesaid copies and translations of any amended applications submitted to the Government.

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VIII. The Collector or other officer as aforesaid shall, on receipt of such copies of the preliminary application, make public its contents in the localities where the work is proposed to be constructed in such manner as to him seems best.

And copies of the same by Collector.

such copies of the preliminary application, make

public its contents in the localities where the work is proposed to be constructed in such manner as to him seems best.

IX. At any time not sooner than three months after the receipt of the said application and statement or of any amended application or statement, the Government, on being satisfied by the promoters that the above conditions have been complied with shall be authorised to consider finally such application, and any objections that shall have been raised against the construction of the proposed work, and to declare whether the said work may be provisionally registered under this Act or not.

Government to decide as to provisional registry of work or not.

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Government, on being satisfied by the promoters that the above conditions have been complied with shall be authorised to consider finally such application, and any objections that shall have been raised against the construction of the proposed work, and to declare whether the said work may be provisionally registered under this Act or not.

X. Provided that

Procedure before provisional registry of a Railway or tramway in continuation of an existing line or a branch thereof.

ing line, or being a line that might reasonably be expected to be united with any existing railway either as a continuation or a branch, and at the same time being at some one point within 50 miles distance of such existing railway, the Government shall afford to the owners of such existing line reasonable time and opportunity to declare whether they offer any opposition to the proposed line, and on a full consideration of such opposition and of the application of the promoters and of any objections aforesaid and of the relative public advantages of all proposals made in the matter, the Government shall be authorised to declare its decision on the said application.

XI. Provided further that before declaring its

Government may impose special conditions on promoters.

the Government shall consider it necessary to impose on them, having regard to the special circumstances of each case in respect to the provision of the land for the proposed work, the construction, maintenance, or working of the same, the regulation of the use of the said work as regards the security and convenience of the public, and such other matters as to the Government may from time to time seem right.

XII. The Government, on causing a work to

Duration of provisional, and right of definitive registry.

months, such registry shall be in force. And at any time within such period the promoters may claim to have the registry made definitive as hereinafter provided.

XIII. Unless for any cause the Government

Promoters to deposit caution money before definitive registry.

posit with the Government, in such manner as shall be approved by the Government, a sum not exceeding 10 per cent. on the whole estimated cost of the said work as caution money to be disposed of in the manner agreed in the said conditions, unless it be otherwise dealt with as hereinafter provided. And any sum remaining in the hands of the Government from any caution money lodged under Section VI of this Act shall be held to be a payment in part of the caution money required under this Section.

XIV. The promoters, before such claim for

And to complete agreement under special conditions.

State for India in Council through the Government under the conditions aforesaid, or under such other conditions as may be agreed between the said promoters and the Government. And thereupon the

previously to declaring that any work may be provisionally registered under this Act, being a railway or tramway in continuation of or forming a branch of any existing

decision as aforesaid, the Government shall inform the promoters of any special conditions that

Government shall inform the promoters of any special conditions that

be provisionally registered under this Act, shall determine for what period, being not less than six

shall otherwise determine, the promoters, before they

are entitled to claim the definitive registry of the proposed work, shall deposit with the Government, in such manner as shall be approved by the Government, a sum not exceeding 10 per cent. on the whole estimated cost of the said work as caution money to be disposed of in the manner agreed in the said conditions, unless it be otherwise dealt with as hereinafter provided. And any sum remaining in the hands of the Government from any caution money lodged under Section VI of this Act shall be held to be a payment in part of the caution money required under this Section.

admitted, shall further complete an agreement with the Secretary of

Government shall cause such agreement with the conditions thereof to be published in the Official Gazette, and shall declare that the work is definitively registered as a public work under this Act.

Publication of agreement, and definitive registry of work.

XV. It shall be lawful for the Government,

Definitive registry of works already in operation, &c.

on the application of a Company, to cause to be definitively registered under this Act any public work undertaken by such Company under an agreement with the Secretary of State or the Government, whether it be already in operation or in course of construction or contemplated before the passing of this Act, as though such work had been proposed to be undertaken under the provisions of this Act hereinbefore contained.

Provided that, at the time of so registering any work the Government shall cause the said contract to be published in the Official Gazette with all the conditions attaching thereto, and declare that the said work has been so registered definitively.

XVI. It shall be lawful for the Government

Government may apply any public land, &c. for purposes of any public work to be constructed by private persons.

any private person or Company. Provided that

every such work shall be held to be a public work under this Act, and shall be definitively registered accordingly, and that the conditions under which such work is undertaken shall be published in the Official Gazette; also that the prosecution and construction of every such work shall be subject to the provisions of Section X. of this Act.

XVII. The Government may from time to

Government may vary conditions under Section XI.

to under Section XI. of this Act. Provided that

such variation shall forthwith be published in the Official Gazette, and that after such publication the amended conditions shall be in force in supersession of those first made.

XVIII. After the definitive registry of any work

Issue of certificate for Government, authorising entry on lands and surveys after registry.

under this Act, it shall be lawful for the Government from time to time in such wise as to it shall appear fit, to issue certificates to authorise the Company, their servants, and agents to enter upon any lands and to undertake such surveys or levels or other examinations as may be necessary for the proper prosecution of the said work; also to dig and bore into the subsoil, and to indicate the intended boundaries of the land to be taken and the positions of the proposed works, by suitable land marks, and to perform all other necessary preliminary acts of the like nature, and such certificates shall declare the names of the persons entitled to use them, the time for which they shall be in force, and the districts or locality for which they shall be valid, and shall contain such further regulations for the guidance of the persons using them as to the

Government shall from time to time seem fit. And while acting under the authority given in the said certificate, such persons shall be deemed to be public servants whose duty it is to make a survey under Clause 10 of Section 21 of the Indian Penal Code. Provided, however, that such persons shall not enter any house or building or the curtilage of any house or enclosed garden without giving 24 hours' notice, or without the assent of the occupier thereof, nor shall they cut down any tree or otherwise injure or destroy any property unless the same be essentially necessary.

XIX. The Company shall, on the completion of the necessary surveys and the like, submit to the Government such drawings, maps, and plans, of the proposed work, as well as of the land required for it, as the Government shall in each case require. And thereupon the Government shall appoint one or more Commissioners, who may be Government Officers, to examine the said drawings, maps, and plans, and to determine finally, in concert with the agents of the Company, the exact position of the work or of the parts thereof, as well as the boundaries of the land to be taken for the said work, and shall notify such appointment in the Official Gazette, and shall cause such notification to be published in the district where the work is proposed to be undertaken in such manner as shall seem best to the Government.

XX. The Commissioners appointed as aforesaid shall proceed at any time, but not sooner than 30 days after such notification, to settle, in concert with the agents of the Company, the exact position of the work or of the parts thereof, and thereafter with all practicable despatch to examine the boundaries of the land proposed to be taken for the work, and the said Commissioners may call upon the Company to make any variation in their project and in the position of the works or any part of them and in the boundaries of the land proposed to be taken, that may to the said Commissioners seem necessary to secure the safety or convenience of the public, or to prevent any undue interference with private property, or for any other reasonable cause, and any such variation if agreed to by the Company shall thereon be considered to be finally adopted; but if the Company shall not agree, the question in dispute shall be submitted to the Government, and the decision of the Government shall be final, provided that the Company shall not be bound to carry out the proposed work if any variation be insisted upon by the Government to which the Company will not assent.

XXI. The Government shall be authorised to extend the periods allowed for giving any notices or for performing any acts required under the foregoing Sections as from time to time may seem to it proper.

Government may extend time for giving notices, &c. under foregoing Sections.

AS TO THE TAKING LANDS, THE TITLE THEREIN, AND THE PAYMENT THEREOF.

XXII. When the boundaries of the land required for the work shall have been settled as aforesaid, and the Company shall have caused the said

land to be measured and suitable land-plans to be prepared of the same, the Government shall cause a declaration to be made under the signature of a Secretary to the Government, or some Officer duly authorised to certify the orders of the Government, that the land aforesaid is required for the said work, and such declaration shall be conclusive that the land may be taken under this Act. After making such declaration the Government may proceed to take any such land as though it had been required to be taken at the public expense and for a public purpose, and as though a declaration had been made as required under Act VI of 1857 (for the acquisition of land for public purposes).

XXIII. The boundaries as determined by the Commissioners, and the plans and measurements aforesaid of the said land when verified and found to be correct or when

duly corrected by the Collector or other Officer appointed to proceed under the said Act VI of 1857, shall be held to be the boundaries, plans, and measurements required under Section IV of the said Act, so far as the said lands are concerned.

XXIV. If at any time land shall be required for any necessary or reasonable extension of or addition to any work under this Act, it shall be lawful for the Government

to make all requisite declarations for the purpose of obtaining such land under this Act, after such and only such of the preliminary proceedings and inquiries hereinbefore required as to the Government shall in each case seem sufficient for the protection of the rights of the public and of individuals concerned. Provided that nothing shall be done contrary to the provisions of Section X. of this Act, and that all proceedings for the actual taking possession of the land shall be conducted in accordance with the provisions of the said Act VI of 1857.

XXV. Land may be taken under this Act for a temporary purpose in like manner as under the said Act VI of 1857.

XXVI. All land taken under this Act shall vest absolutely in the Government as though it had been taken for a public purpose under the said Act VI of 1857, and it shall be lawful for the Government to dispose of any land taken under this Act in any manner that it may think fit. The Government alone shall be responsible for the payment of all claims on account of such land to all persons whatever, and the Company shall in no wise be responsible for any such payment otherwise than to the Government, and then only as is herein declared and provided and as shall be specially agreed in the conditions aforesaid.

XXVII. When all the conditions as aforesaid shall be applicable to the transfer of the land to the Company shall have been fully complied with, and not till then, the Government shall cause the Company to be placed in possession of such land in accordance with such conditions,

What to be deemed the boundaries, plans, and measurements required under Act VI of 1857.

Subsequent declaration by Government for obtaining land in extension of a work.

Land to vest absolutely in Government who will be responsible for payment of all claims.

Promoters when to be placed in possession of land.

and the title of the Government or of the Company to such land shall not be liable to be questioned on account of any informality in any proceeding taken under this Act.

XXVIII. All expenses attending the proceedings of the Commissioners

Payment of certain expenses by Company. to be appointed under Section XIX. of this Act, and all expenses incurred by the Government in taking up the land required for the Company under the said Act VI of 1857, shall be paid by the said Company, unless otherwise specially agreed; and the Government shall determine the sum due on account of such expenses, and shall be authorised to deduct such amount from any sum lodged as caution money as aforesaid if it be not otherwise paid by the Company; and any sum remaining unpaid both as aforesaid, and on account of land or compensation for which the Company are liable under the said conditions, may on the order of the Government to that effect be levied by distress and sale on the said Company, in the manner provided for distress and sale under Civil process.

XXIX. The Company shall further be liable

Company further liable for damage done in preliminary operations. for all damage done in any of their preliminary operations, and shall duly satisfy and pay all claims of this description; and if at the time of taking possession of the land required for the Company it shall appear that any such claim remains unsatisfied, the Collector or other Officer acting under the said Act VI of 1857 in respect of such land shall be authorised to determine all such claims summarily as though they had been claims arising under the said Act, and all payments on account of such claims shall be made good by the Company as under the last preceding Section.

AS TO THE PUBLIC USE OF WORKS.

XXX. Every work under this Act shall be

Works under this Act to be available for public use. available for the use of the public in accordance with and to the extent provided by the conditions aforesaid or any Act at the time being in force but not otherwise; and after the publication of the conditions relating to any such works in the Official Gazette, all Courts may take judicial notice of the same, and it shall be lawful for any person whatsoever to sue the owners of such work for any damage he may incur by reason of any neglect of the said conditions by the said owners in respect of any such public use of such work as though such person had been a party to the said conditions.

XXXI. The owners of any work under this Act shall be authorised to

Levy of tolls by owners for use of their works. levy such tolls in such manner as shall be fixed in accordance with the conditions aforesaid, also to refuse the use of such work and to refuse to perform any service in connexion therewith unless such tolls shall be paid in the manner fixed aforesaid, as well as to detain any thing or animal on which such tolls shall be due, and to sell the same if the said tolls shall remain unpaid after a reasonable time has been allowed to elapse for the payment of the same. Provided that no such tolls shall be demanded or taken at any place unless proper tables and lists of such tolls be exhibited at such place in the manner fixed aforesaid.

AS TO THE CONSTRUCTION OF THE WORKS AND THE INSPECTION OF THE SAME.

XXXII. The Government may appoint Inspectors to inspect any work under this Act, also all things appertaining thereto and to the working of the same; but not books or documents otherwise than as shall be provided in the conditions aforesaid. The owners of such work and all persons authorised by them to use the same in connection with any public use of the said work, and their servants and agents, shall be bound to afford to such Inspectors all reasonable facility for their inspection, and all such information as may be reasonably required by them.

Appointment of Inspectors.

XXXIII. If it appear to the Government upon the report of any Inspector, that the use of any work under this Act cannot be continued without danger to the public or to the persons employed thereon, or that rules adequate to the protection of the public under the provisions of this Act, have not been framed and put in force, or that the conditions agreed upon under Section XI. of this Act have not been carried out, the Government may order that all defects shall be made good within a reasonable specified time; and in default of the owners of such work complying with such order within such time or such further time as the Government shall appoint, the Government shall be empowered to direct that the use of such work shall be stopped and discontinued until the defects aforesaid shall be remedied to the satisfaction of the Government.

Government may, on report of inspector, order use of any work to be stopped until defects are remedied.

XXXIV. The Government may, at any time on the report of an inspector during the construction of any work under this Act, direct the Company to construct in connection therewith such culverts, bridges, tunnels, drains, or other works as may be considered by the Government to be necessary to continue to the public any roads, or rights of way, or easements, or the use of any water theretofore available, and to make due provision for the irrigation and drainage of the country so as to prevent the same from being impeded or unnecessarily altered by the construction of the said work. If default be made in complying with any directions given under the provisions of this Section, the Government may order the prosecution of the work to be stopped until such directions shall be complied with to the satisfaction of the Government.

Government may order construction of Bridges, Tunnels, &c.

XXXV. Nothing in the last preceding Section shall be construed to render the Company liable to construct any work, or to undertake any thing at variance with the special conditions of agreement under Section XI of this Act.

XXXVI. The owners of every Railway under this Act being of the gauge of five feet six inches shall be bound, unless specially exempted by the Governor-General in Council, to erect all the fixed structures and to construct all the rolling stock in conformity with the standard dimensions determined in that behalf from time to time by the Governor-General in Council, and it shall be lawful for the Government to order the

Proviso.

Fixed structures, &c. on Railway of 5 feet 6 inches gauge to be according to standard dimensions.

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said owners to make good all defects in such structures or rolling stock and to prohibit their use until such defects shall be made good to the satisfaction of the Government.

XXXVII. The provisions of Act XVIII of 1854 (relating to Railways in India) shall apply to all Railways under this Act; provided that in respect of such Railways the Government shall be authorised to determine from time to time the extent to which fences shall be constructed under Section XX of the said Act XVIII of 1854, and that the owners of such Railways shall not be liable to maintain fences under the said Section otherwise than as shall be so declared and ordered in each case by the Government.

Decision of Government final on questions as to provision for public rights of way, &c.

XXXVIII. In case any doubt shall at any time arise as to the necessity for constructing or altering any work to ensure the safety of the public, or to provide for established public rights of way, or other public rights of any sort in connexion with any work under this Act, the decision of the Government on such subject shall be final, and shall not be liable to be called in question in any Court of Justice.

XXXIX. If the owners of a Railway under this Act shall desire to form a connexion with any existing Railway of the same gauge, the owners of the new line shall be authorised to call on the owners of the old line to effect the junction, and if the owners of the old line shall not proceed to effect the junction within a reasonable time, the Government, on being satisfied that the junction may be made with safety to the public and without injury to the existing Railway, or detriment to the traffic thereon, may authorise the owners of the proposed line to form the junction, and to do all necessary acts in that behalf, and to lay down such additional lines of rails, points and crossings as may be necessary for the purpose, at such time and in such manner as the Government shall direct. Provided that if the junction be effected by the owners of the previously existing Railway, the expense of forming the junction, of supplying all necessary works and of keeping in repair and renewing the same shall be paid by the owners of the new line.

XL. If any difference shall arise as to the terms on which the traffic of a branch or junction line of Railway under this Act shall pass over or upon any other line with which it shall be connected, or as to the manner and times of conducting the traffic or of regulating the same over the two lines or either of them, or as to any matter touching any line under this Act used in common by two or more Companies, the Government shall be authorised on the application of either or any one of the said Companies, to hear and determine all such differences, and any order given by the Government in such a case shall be final and binding on all parties, provided that no order shall be so given at variance with any condition of any agreement between the Government and any of the said Companies that shall be applicable to the said lines of Railway.

AS TO THE MAKING OF BYE-LAWS.

XLII. It shall be lawful for the owners of any work under this Act to make Bye-Laws and Regulations for the guidance of their servants and agents and of persons employed by them, and for the maintenance of order in the use of such work, and to provide for the safety and convenience of the public or of the persons employed on such work: and all such Bye-Laws and Regulations shall be subject to the approval of the Governor-General in Council, and when so approved all Courts and Magistrates shall take judicial notice of the same, and the Governor-General in Council shall be authorised to cause any alterations to be made in them as shall to him from time to time seem proper. Provided that such Bye-Laws and Regulations be not repugnant to any Law in force in the British Territories in India, for the time being, and that no penalty shall be attached to the infringement of any such Bye-Law or Regulation exceeding a fine of fifty Rupees.

XLIII. The substance of such Bye-laws and Regulations affecting the public shall be published or notified in such places on the said work and in such manner as the Government shall from time to time approve or direct, and no penalty shall be recoverable under such Bye-Laws or Regulations unless the same shall have been published and kept published as aforesaid.

XLIV. No penalty shall be recoverable from any person under any Bye-Laws or Regulations prescribed to regulate the conduct of the agents and servants and persons employed by the owners of any such work unless a copy of such Bye-Laws or Regulations shall have been previously given to such person, or unless proof be given that the Bye-law or Regulations for the infringement of which a penalty is so sought to be enforced was explained to such person before such infringement occurred.

XLV. In the case of a Railway under this Act being of the gauge of five feet and six inches, it is further provided that the Bye-Laws and Regulations shall, unless the Governor-General in Council shall otherwise permit, conform in every respect to the Regulations for Railway Companies under the said Act XVIII of 1854.

AS TO THE LIEN OF THE GOVERNMENT ON ANY WORK.

XLV. No lands taken or supplied by the Government for any work under this Act; no tree, building, or structure standing on such lands; no machinery nor permanent way fixed to the soil on such lands; nor anything whatsoever on which the Government shall be entitled to re-enter, or of which it shall be entitled to take possession which payment on the determination from any cause of the agreement between the Government and the Company under the conditions aforesaid, shall be liable to be seized or applied in satisfaction of any debts or liabilities of any sort of the Company, nor shall the Company alienate the same or any part thereof in any

way not provided for or consonant with such agreement or condition.

XLVI. If the owners of a work under this Act shall voluntarily determine to wind up their affairs, or shall be so directed by an order of Court, or shall abandon or determine to abandon such work, or shall commit an act of Bankruptcy or Insolvency, it shall be lawful for the Government thereupon to terminate all contracts then existing between it and the Company in respect of such work, and to re-enter upon and take possession of all things whatsoever to which the Government shall be so entitled under the conditions of such contracts; also of all lands taken at the public expense or supplied to the said Company free of cost, together with all trees, buildings and structures standing on such lands, as well as all machinery and permanent way fixed to the soil on such lands, provided that nothing shall be so taken which shall be expressly excluded from such liability under the conditions aforesaid. But the

Government shall be bound to surrender to a lawful claimant all moveable property of which it shall at any time obtain possession from the Company otherwise than by purchase, which shall not have been fully paid for by the Company, or in lieu of such surrender, if the Government shall so determine, to satisfy all just outstanding claims on account of such property; provided that no such surrender shall be obligatory and no such claim shall be entertained in respect of any thing that shall have been delivered to the said Company more than twelve months before the date of such surrender being required of or such claim being made known to the Government.

AS TO MINES NEAR ANY WORK.

XLVII. Whenever land shall be taken under this Act for the construction of any work, the taking thereof shall not be held to convey or include the right to any mine of coal or other minerals lying under such land, except only such part thereof as shall be necessary to be dug or carried away or used in the construction of the works, unless compensation for the same shall have been expressly allowed in the award made in favour of the persons interested in the land.

XLVIII. If the owner, lessee, or occupier of any mine of coal or of any other mineral lying immediately under any work under this Act, or within forty yards therefrom, shall work the same, it shall be competent to the Government, on the application of the Company, to require such person to abandon such working, or so to work the same as not to endanger the said work, and to construct the works necessary to make it safe. Provided that compensation shall be awarded to such owner, lessee, or occupier in the manner provided for in the said Act VI of 1857, for any loss sustained by him from being compelled to abandon, or alter his mode of working the mine, and also for any necessary works constructed by him (when so required as aforesaid) in order to prevent damage to the

saide work, but all damage or loss to, the Company arising from any improper working of such mines shall be at the risk of the owners, lessees, or occupiers of the said mines, and shall be made good by them.

AS TO OFFENCES AND THE RECOVERY OF PENALTIES.

XLIX. Whoever shall obstruct or commit any contempt of the lawful authority of any public servant in the discharge of any function or in the performance of any thing undertaken under this Act, or shall commit mischief by destroying, defacing, or removing any land-mark fixed by the authority of any such public servant shall be punishable under the provisions of the Indian Penal Code.

L. All penalties for offences under the Bye-Laws and Regulations aforesaid shall be recoverable in the manner provided for offences punishable by fine only in the said Act XVIII of 1854.

STATEMENT OF OBJECTS AND REASONS.

In the early part of the year the late Mr. Ritchie obtained leave to bring in a Bill to provide for the construction by Companies and private persons of Branch Railways, Iron Tram-roads, common Roads or Canals, as feeders to public Railways, High-roads, navigable Rivers or Canals. It was Mr. Ritchie's intention to bring in a Bill substantially the same, in so far as the details were concerned, as the Bill introduced, with a similar object, into the late Legislative Council, though with a somewhat wider scope. The Bill introduced into the Legislative Council was not proceeded with in consequence of the abolition of that Council.

The Bill, framed as intended by Mr. Ritchie, having been considered by the Government in the Public Works Department, it was thought that the scope of the proposed legislation might, with great public benefit, be extended even beyond what was advised by Mr. Ritchie, and that any Bill introduced, instead of being confined in its application to Branch Railways, Iron Tram-roads, common Roads, or Canals, as feeders to other works, might properly embrace many other works of public utility. Section II of the Bill defines the works of public utility to which it is intended that the provisions of the Bill should apply, to be Bridges, Roads, Rail-roads, Tram-roads, Canals for irrigation or navigation, Tanks, Works for the improvement of Rivers or Harbours, Docks, Quays, Jetties, Water-works, Gas-works, Mines, Iron or Copper-works, Drainage-works, or Electric Telegraphs, and also all works subsidiary to such works. The same Section of the Bill further gives power to the Governor-General in Council from time to time by a declaration to be made to that effect, and published in the Official Gazette, to order that any class of works other than those named shall be included among works of public utility within the Act.

It was also considered that the details of the Bill, as proposed by Mr. Ritchie, might be greatly improved, and that they should be made to assimilate more nearly to the laws of the same nature which are in force at home. These considerations have led to an entire remodelling of the Bill.

In framing the Bill it had to be considered whether the Bill should be of general application,

that is, whether its provisions should apply to all India, or whether the application of the Bill should be confined to those parts of India for which the Council of the Governor-General alone can legislate. As a general rule, there can be no doubt that the Government of India should not legislate for the local Governments which have Legislative Councils of their own, on any matters in respect of which those Governments are competent to legislate for themselves. The part of the Indian Councils Act of last year, which relates to legislation, was evidently framed on this principle. But when a law is required for the Empire at large, and whether the law is to be the work of a single Legislature or of several distinct Legislatures, the general principles observed in framing it, and the more essential details, must be the same, I venture to think that there must be a great public convenience in having a single law for all India passed by the Government of India which alone is competent to pass a general law, instead of two or more laws passed by different Legislatures acting independently of one another.

The fact that there are, at the present time, two Branch Railway and other Public Works Bills pending, one before the Council of the Governor of Bombay and the other before the Council of the Lieutenant-Governor of Bengal, the provisions of which differ little, if at all, from the Bill proposed by Mr. Ritchie, and that Mr. Ritchie considered that a Bill such as was proposed by him, was all that was required for the entire country, would seem clearly to show that the legislation needed at this time is of the general character above described, and that consequently there can be no necessity for separate Acts for the different Presidencies, or for the different parts of the same Presidency.

In addition to what I have already mentioned in favour of a general Bill, I may repeat what was stated by Mr. Ritchie in the remarks with which he prefaced his motion for leave to introduce the Bill proposed by him, namely, that as a Railroad for which feeders are to be provided (and the same observation applies to Canals, High-roads, and other public works) may pass through several Districts or different Presidencies, two different Acts might be objectionable.

(Sd.) H. B. HARRINGTON.

The 5th November 1862.

M. WYLLIE,
Deputy Secy. to the Govt. of India,
Home Department.

THE following Bill was introduced into the Council of the Governor-General of India for the purpose of making laws and Regulations on the 26th November 1862, and was referred to a Select Committee with instructions to make their report thereon in six weeks:—

No. 58 of 1862.

A Bill to amend the Law for regulating the Police of the several Stations of the Settlement of Prince of Wales' Island, Singapore, and Malacca.

Whereas it is expedient to amend the law for regulating the Police of the several Stations of the Settlement of Prince of Wales' Island, Singapore, and Malacca: It is enacted as follows:—

I. Section III of Act XLVIII of 1860 (to amend Act XIII of 1856, Section III of Act XLVIII of 1860 repealed. *for regulating the Police of the Towns of Calcutta, Madras, and Bombay, and the several Stations of the Settlement of Prince of Wales' Island, Singapore, and Malacca*) shall cease to have any effect in any of the said Stations from the time when this Act shall come into operation, provided that nothing in this Section shall be held to revive the operation of Section XV of the said Act XIII of 1856.

II. No person shall be enrolled a member of the Police Force in any of the said Stations who shall not sign a declaration, in the form provided in the Schedule to this

Act, that he will serve as a member of such Force for such period, not exceeding five years, as shall be fixed by the Governor of the said Settlement, and no person who shall have signed such declaration shall be at liberty to resign his office, or to withdraw himself from the duties thereof, except with the permission of the Governor of the said Settlement, to be granted on a Certificate of ill health from a Medical Officer of Government, or on a special recommendation of the Commissioner of Police. Provided that nothing in this Section shall interfere with the power of the Commissioner of Police, under Section X of the said Act XIII of 1856, to suspend or dismiss any member of the Police Force whom he shall think remiss or negligent in the discharge of his duty, or otherwise unfit for the same.

III. Every member of the Police Force in any of the said Stations, who shall have signed the declaration hereinbefore mentioned, and who shall desert or withdraw himself from such Police Force, by absenting himself from duty without reasonable excuse for a period exceeding twenty-four hours, or otherwise, shall, on conviction before a Magistrate, forfeit all arrears of pay and allowances that may be due to him at the time of such desertion or withdrawal, and be liable to a fine not exceeding six months' pay and allowances, and on failure of payment thereof to imprisonment, with or without hard labour, for a period not exceeding one month if such fine be not sooner paid; or to imprisonment, with or without hard labour, for a period not exceeding three months; or to both fine and imprisonment.

IV. Whoever in any of the Stations of the Straits Settlement has or keeps any Hotel, Tavern, Punch-house, Ale-house, Arrack or Toddy-shop, or place for the sale or consumption of Gunja, Chundoo, or other preparation of Opium, Hemp, or other intoxicating drug, plant, or substance, or any Eating-house, Coffee-house, Boarding-house, Lodging-house, or other place of public resort and entertainment, wherein provisions, liquors, or refreshments are sold or consumed (whether the same be kept or retailed therein or procured elsewhere), without a license from the Commissioner of Police of such Station, shall be liable to a fine not exceeding fifty rupees for every day that such unlicensed house or place of any

kind is kept open, or that such unlicensed sale is continued; provided that nothing in this Section shall apply to the sale, in reasonable quantities, of any drug, plant, or substance in any Druggist's or Chemist's shop for medicinal purposes only.

V. The Commissioner of Police in each of the

Licenses by Commissioner of Police for keeping Taverns and places of public entertainment.

as aforesaid in the said Stations respectively, and upon such conditions, to be inserted in every such license, as he, with the sanction of the local Government, from time to time, shall order, for securing the good behaviour of the keepers of the said houses or places of public resort and entertainment, and the prevention of drunkenness and disorder among the persons frequenting or using the same, and the said licenses may be granted

Licenses to be granted only to persons who have taken out the requisite Abkaree licenses.

Commissioner to grant a license to open, or establish, or keep open, any house of public entertainment in which any provisions, liquors, or refreshments of any kind, or in which any Gunja, Chundoo, or other preparation of Opium, Hemp, or other intoxicating drug, plant, or substance, may be sold or consumed, to any person who has not taken out a license for the retail sale of such articles, if a license be necessary, under the Abkaree or Excise Laws for the time being in force; and any such license granted by the Commissioner shall be come void whenever the license necessary under the Abkaree or Excise Laws shall terminate or be recalled. And every holder of such license may be required by the Commissioner to fix, in a conspicuous part of the house or place specified in the license, a board, on which shall be legibly painted, in the English and Vernacular languages, the name of the holder, and the articles he is licensed to deal in. For every

Fees on licenses.

license granted under this Section there shall be levied a fee of one Dollar.

VI. A breach of the conditions of a license

Penalty for breach of license.

granted under the last preceding Section shall, besides forfeiture of the license, be punishable by a fine not exceeding fifty dollars, and such fine shall be recovered from the person licensed, notwithstanding that such breach may have been owing to the default or carelessness of the servant or other person in charge of the shop or place of sale.

VII. This Act shall be read and taken as part of the said Act XIII of 1856.

Construction of Act.

SCHEDULE.

FORM OF DECLARATION.

I, A. B, do hereby declare that in consideration of my being enrolled a member of the Police Force of I will serve in such Force for a period of years.

(Signed) A. B.

Witnesses

C. D.

E. F.

STATEMENT OF OBJECTS AND REASONS.

This Bill is introduced in consequence of a representation from the Governor of the Straits Settlement, who has brought to notice the great inconvenience experienced in that Settlement, owing to there being no law authorising enlistment in the Police Force for a stated period of service, and from the omission of the Straits Settlement from so much of the Police Act of 1860 for regulating the Police in the Presidency Towns of Calcutta, Madras, and Bombay, and the Straits Settlement, as relates to the control over Ale-houses, Coffee-houses, Boarding-houses, Lodging-houses, and the like. The parts of Act XLVIII of 1860 referred to are Sections XI, XII, and XIII. These Sections, as they were originally drawn, were intended to apply to the Straits Settlement. Why the Straits Settlement was afterwards excluded from their operation I have not been able to discover. There seems no ground for their exclusion, and the Governor of the Straits Settlement appears to have shown good and sufficient reason for the extension of the Sections, for which the Bill makes provision, to the Stations under his government.

With regard to the other point noticed in the representation from the Governor of the Straits Settlement it may be observed that no such law as that asked for exists in the Presidency Towns, or, I believe, at home. But the Governor of the Straits Settlement points out that the circumstances of that Settlement and of the Presidency Towns are very different. In the Presidency Towns the rate of pay offered is found sufficient to induce the natives enlisting in the Force to remain in it, and when any member of the Force takes his discharge, his place is easily supplied. In the Straits Settlement, on the contrary, the greatest difficulty is experienced in maintaining the Police Force at its prescribed strength, and the Commissioners complain very much of the constant changes that are taking place, and which render nugatory their exertions to keep the Police Force in an efficient state. The Governor notices that in the Colony of Hong-Kong it has been found necessary, in framing a law to regulate the Police, to require that every Inspector, subordinate Officer, and Peon, shall enlist for five years, previously to the expiration of which period no one entering the Force is at liberty to resign his office, or to withdraw himself from the duties thereof, except with the permission of the Governor, granted on a certificate of ill-health from the Colonial Surgeon, or on a special representation from the Captain Superintendent. It is considered that great advantage would result from the extension of similar provisions to the Straits Settlement, and the first two Sections of the Bill have been framed with a view to a modification of the existing law, in so far as it extends to the Straits Settlement, in the direction recommended by the Governor.

(Signed) H. B. HARRINGTON.

The 12th November 1862.

From the Governor of the Straits Settlement, to the Secretary to the Government of India, Home Department, No. 115, dated Singapore, the 21st August 1862.

SIR,—I have the honour to enclose, for submission to His Excellency the Governor-General in Council, copy of a representation, No. 58, dated

the 30th ultimo, from the Commissioner of Police at Singapore, on the subject of his want of control over Ale-houses, Coffee-houses, Boarding and Lodging-houses, &c., as exercised by the Commissioners of Police at the Presidency Towns in India.

2. There can be no doubt that this control is urgently needed in the Straits, more especially at Singapore. The necessity for its being granted was brought prominently to the notice of the Legislative Council in paragraph 3 of my letter, No. 204 of the 18th October 1860, and I certainly have been at a loss to discover the grounds upon which a power it has been considered advisable to vest in the Commissioners of Police at Calcutta, Madras, and Bombay, has been withheld from the same authority at Singapore, a large sea port, generally crowded with shipping of all nations, and consequently containing a large seafaring population, for whose benefit it is so essential that proper supervision should be exercised over all houses and places of public resort and entertainment.

3. Another question alluded to in my communication above mentioned was, the expediency of modifying the rules under which men are entertained for service in the Police, and authorising their being enlisted for a term of years. This may not be deemed a matter of any great importance in the Presidency Towns, where the pay offered is a sufficient inducement for a Native to remain in the Force, and should he take his discharge, his place can be immediately supplied, but it is far different in the Straits Settlement, where there is considerable difficulty in maintaining the Force at its prescribed strength, and Commissioners complain sadly of the constant changes that are taking place, rendering all their exertions to keep the Police in an efficient state perfectly nugatory; at the sister Colony of Hong-Kong it has been found requisite in framing the Law for the regulation of the Police, to require every Inspector, subordinate Officer, and Peon on entering the Force to bind himself to serve for the period of five years, previous to the expiration of which he is precluded from resigning his office, or withdrawing himself from the duties thereof, except under the permission of His Excellency the Governor, accorded on a certificate of ill-health from the Colonial Surgeon, or on a special representation from the Captain Superintendent. In the event of any further amendment of the Police Act, the introduction of a clause to the above effect as regards the Police in the Straits would be a great boon to the Settlement.

I have, &c.

(Sd.) ORFEUR CAVENAGH, *Colonel,*
Governor.

From the Commissioner of Police, Singapore, to the Secretary to Government, Straits Settlement, Singapore, No. 53, dated Singapore, the 30th July 1862.

SIR,—I have the honour to bring to your notice a nuisance which has existed for years, but which has been represented even so long ago as Governor Butterworth's time; it is Beer-shops, and the great increase of them, over which the Police Authorities have no control, as any person who wishes to open such a shop can do so without a license or permission of any kind. These places are mostly kept by sailors who have left their ships and served as barmen in some public house, and men who are reported to me as convicts, ticket-leave men from the Australian Colonies.

From the Preamble of Acts XLVIII of 1860 it appears evident that the Legislative Council of India intended that the Police Commissioners of the Straits should be vested with the like power as those of Calcutta, Madras, and Bombay, but unfortunately the important words "*and the several Stations of the Settlement of Prince of Wales' Island, Singapore, and Malacca*" have been omitted in the 11th and 12th Sections of the Act. This being remedied, the evil complained of could be dealt with, and only properly conducted houses would be licensed. May I request you to be good enough to bring this to the consideration of His Honour the Governor, and I feel sure you will support my suggestion.

I have, &c.

(Sd.) THOS. DUNMAN,
Commissioner of Police.

(Sd.) H. B. HARRINGTON.

M. WYLIE,

Deputy Secy. to the Govt. of India,
Home Department.

The following Report of a Select Committee was presented to the Council of the Governor General of India for the purpose of making Laws and Regulations on the 3rd December 1862:—

HOME DEPARTMENT—*Legislative.*

We, the undersigned, the Members of the Select Committee of the Council of the Governor General of India for the purpose of making Laws and Regulations, to whom the Bill "to amend Act XI of 1862 (to amend the Duties of Customs on Goods imported and exported by Sea)" was referred, have the honour to report that we have considered the Bill, and that we have no amendments to suggest.

We have not received any communication on the subject of the Bill.

(Sd.) H. B. HARRINGTON.

" H. S. MAINE.

" W. S. FITZWILLIAM.

" D. COWIE.

" R. S. ELLIS.

M. WYLIE,

Deputy Secy. to the Govt. of India,
Home Department.

The 26th November 1862.

The following report of a Select Committee was presented to the Council of the Governor General of India for the purpose of making Laws and Regulations on the 10th December 1862:—

HOME DEPARTMENT—*Legislative.*

We, the undersigned, the Members of the Select Committee of the Council of the Governor General of India for the purpose of making Laws and Regulations, to whom the Bill relating to Breaches of Contract committed in bad faith was referred, have the honour to report that we have considered this measure in connection with the Despatch addressed on the 9th of June 1862 by the Secretary of State for India to the Government of India.

2. The Committee have not attempted to determine the exact effect of that Despatch on their deliberations or on those of the Council, for they consider that the opinion expressed on a former occasion by the Honorable the present Chief Justice of Bengal, in reference to a similar communi-

cation may be adopted in the present instance, and that under the circumstances, it could be neither for the public interest, nor for the dignity of the Council, that a project of Law should be proceeded with, which, if passed, would certainly be annulled in a few months.

3. The Secretary of State, in the last paragraph of his Despatch, has expressed a doubt whether any legislative interference in commercial transactions, with the view of coercing one of the parties to a contract, can be productive of good. The Committee have, however, been of opinion that this doubt ought not to prevent them from considering whether the Bill is susceptible of such modifications as would be likely to remove or diminish the probability of its ultimate disallowance.

4. After attentive examination of the Bill and of the Despatch, the Select Committee have come to the conclusion that no modification of the Bill, short of its complete transformation into a measure of a different kind, would neutralize the objections of the Secretary of State for India. Not to mention passages of his Despatch in which the Secretary of State takes exception to the sole machinery by which the Law could be carried into effect, the Committee have especially directed their attention to the language of the 9th paragraph, in which he appears to object to any inquiry into the motives and intentions of the defendant in a suit for Breach of Contract, and into "the reasonableness or otherwise of the numberless excuses which may be urged for failing to fulfil the engagement." Such an inquiry, as it seems to the Committee, is imperatively required by the principle of the Bill before them.

5. The Select Committee beg therefore to recommend the withdrawal of the Bill.

6. They have not thought fit to advert to the question whether any further legislation on the subject is necessary or possible since they are of opinion that such legislation, if attempted, must take a form distinct from that assumed by the measure which has been referred to them.

(Sd.) H. S. MAINE.
 " CECIL BEADON.
 " H. B. HARRINGTON.
 " C. J. ERSKINE.
 " D. COWIE.

M. WYLIE,
 Depy. Secy. to the Govt. of India,
 Home Dept.

The 8th December 1862.

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 10th December 1862, and was referred to a Select Committee with instructions to make their report thereon in eight weeks:—

No. 57 of 1862.

A Bill to amend the Code of Civil Procedure.

Whereas the Code of Civil Procedure requires that Appeals from decisions or orders to the Sudder Court shall ordinarily be heard and determined by two or more Judges of the said Court; and whereas in the Territories, not subject to the general Regulations, the highest Civil Courts of Appeal, which are declared by Section 386 of Act VIII. of 1859, to be included in the expression "Sudder Court" in any part of the said Territories to which the said Code may be extended, generally

consist of only a single Judge, and it is expedient to make provision for the powers to be exercised by such single Judge in hearing appeals from decisions and orders, or in proceedings relating to any other matter which may be brought before him: It is enacted as follows:—

I. When in any part of the British Territories in India to which the Code of Civil Procedure has been or shall be extended under the provisions of Section 385 of the said Code, or of Section 39 of Act XXIII of 1861 (amending the said Code), the highest Civil Court of Appeal consists of a single Judge, such Judge shall have all the powers vested by such Code in two or more Judges of the Sudder Court.

II. No order passed by or proceeding held before the single Judge of any such highest Civil Court of Appeal subsequent to the extension of the Code of Civil Procedure to such part of the British Territories in India, shall be deemed invalid, or be liable to be questioned on the ground that such order or proceeding was passed by or held before a single Judge.

STATEMENT OF OBJECTS AND REASONS.

Section 23 Act XXIII. of 1861 provides that appeals to the Sudder Court shall be heard and determined by two or more Judges of the said Court, and in Section 386 Act VIII. of 1859 it is declared, that in any part of the British Territories in India, to which the said Act may be extended, the expression "Sudder Court" shall be deemed to include the highest Civil Court of Appeal in such part of the said Territories, but neither of these two enactments contains any provision in respect to the powers to be exercised by the Judges of the highest Civil Courts in Provinces not subject to the general Regulations of Bengal, Madras, and Bombay, when such Courts consist, as is invariably the case, of single Judges, and in the absence of any such provision a doubt has arisen whether, with reference to the requirement to be found in the more recent Statute as to the number of Judges necessary to hear and determine appeals from decisions or orders to the Sudder Court, the construction given to the words "Sudder Court" in the Code of Civil Procedure can be held to empower the Judges of the highest Civil Courts of Appeal in the Non-Regulation Provinces, to which that construction applies, singly to hear and determine the appeals which come before their Courts from the decisions and orders of the Courts subordinate to them. The object of the first Section of the Bill is to remove the doubt which is entertained upon the point. A similar Section is contained in the Code of Criminal Procedure.

The second Section has been added to the Bill to prevent the legality of the decisions and orders already passed by the Judges of the highest Civil Courts of Appeal in the Provinces, not subject to the general Regulations as above, from being questioned on the ground of their having been passed by single Judges without express authority of law, and to give validity to all such decisions and orders.

(Sd.) H. B. HARRINGTON.
The 12th November 1862.

M. WYLIE,
 Depy. Secy. to the Govt. of India,
 Home Department.