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PART VI.

BILLS OF THE GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

The following Report of the Select Committee on the Bill to consolidate and amend the law relating to Railways in India was presented to the Council of the Governor General of India for the purpose of making Laws and Regulations on the 26th February, 1879:—

REPORT.

WE, the undersigned Members of the Select Committee to which the Bill to consolidate and amend the law relating to Railways in India was referred, have considered the papers noted in the annexed list; we have also had the advantage of receiving through our Hon'ble colleague, Sir Andrew Clarke, many valuable suggestions from the members of the Railway Conference recently assembled at Calcutta, and we now submit our final report.

2. We have re-distributed the sections contained in the first chapters of the Bill No. II in what appears to us a more convenient way; and in the remarks which we are about to submit, we shall follow the order of the new arrangement.

3. The definition of "Railway," it will be observed, has been to some extent recast, but the only substantial changes made in it are—

1st.—That, by the omission of all reference to the Government or Companies, it is now made to comprise railways owned and worked by private persons or Native States;

2ndly.—That, by the substitution of the words "vessels and rafts" for "ferry-boats," the flotillas worked in connection with Railways will be treated as a part of such Railways;

3rdly.—That section 4 (giving the right to run locomotives) has been extended to Railways under construction, and section 52 (empowering the Government to require a line to be fenced) has been included in the provisions of the Bill applicable to Railways under construction and to Railways not used for the public conveyance of passengers and goods.

4. We have enlarged the definition of "Railway-servant," so as to include in certain sections the employés of Railway-contractors.

5. We have substituted for the definition of "Magistrate" a section (50) directly providing that offences against the Act shall not be tried by any Magistrate inferior to a Magistrate of the second class.

6. We have introduced a section (5) providing that no Railway shall be opened for traffic until it has been inspected and passed by a Government officer. This is in accordance with the law in England and with the practice that has hitherto prevailed in this country.

7. In section 6 we propose to maintain the time allowed by the present law for reporting accidents, and have somewhat enlarged the class of cases in which a report of an accident is required.

8. We have, at the suggestion of the members of the Railway Conference, omitted certain headings from the list of subjects on which the Railway-Administration was by Bill No. II. empowered to make general rules, and so altered the wording of the section (now section 8) as to render it obligatory on the Railway-Administration to make rules on the remaining subjects.

9. On further considering the question of the liability of carriers by Railway for loss or damage to ordinary goods, as distinguished from goods for which a special insurance-rate, as it is sometimes called, is chargeable, we are of opinion that no mere adaptation of section 7 of the Railway and Canal Traffic Act, 1854, such as is proposed in paragraph 7 of our former report, will suffice to put the law into as clear and simple a form as is desirable. The amendment we propose in section 10 will be found when the entire law bearing on the point is looked to, to be, except in one particular to which we shall presently advert, an amendment in point of form only; but it is nevertheless desirable that we should explain it in some detail.

10. The law now governing the liability of Railway Companies in India in such cases has recently come under the consideration of the High Court at Bombay in the case of *Kuvarji Toolsee Dass v. The Great Indian Peninsula Railway Company*. It has to be collected with some pains from sections 151, 152 and 161 of the Indian Contract Act, which treat of the responsibility of bailees in general, the Carriers Act of 1865, which treats of the responsibility of common carriers, and section 11 of the Railway Act of 1854.

By these enactments it was intended to provide* that a Railway Company should be liable for loss of, or damage to, ordinary goods only when such loss or damage arose from the neglect or misconduct of its servants; and, further, that no Company should by any special contract be able to relieve itself of liability in such cases. But, though the Bombay High Court, in the case just referred to, held that the effect of these enactments when taken together was, at all events as regards the main point, in accordance with the intention of the framers, it arrived at this conclusion only after a discussion which makes it clear that some simplification in point of form is desirable.

11. What we now propose is to remove contracts to carry by Railway altogether from the operation of the Carriers Act of 1865 and to frame the section of this Bill regarding them in such a manner that the whole law will be found in that section and the provisions of the Contract Act relating to bailments.

Under sections 151 and 152 of the Contract Act, carriers by Railway will be bound to take the same care of the goods entrusted to them as a prudent man would take of his own; and where they take such care, they will not be liable for any loss or damage that may occur.

Under section 10 of the Bill, they will be prohibited, as a rule, from freeing themselves by any special contract from the obligation thus imposed upon them.

12. So far the law will be in strict accordance with the existing law or what the existing law was intended to be; but here we have introduced an alteration of some, though not of very great, importance by excepting from the general rule prohibiting special contracts such contracts in writing as may be in a form approved of by the Governor General in Council, and may be signed by the consignor.

It will be observed that this exception corresponds to the proviso regarding special contracts in section 7 of the Railway and Canal Traffic Act, 1854, with this difference that, while the latter Act provides that the special contract shall be effectual and relieve the Company only, if it is held by the Court to be reasonable, thus leaving the validity of the contract to be determined *ex post facto*, our exception makes the contract good, if in a form to be approved beforehand, and thus avoids the uncertainty which, owing to the different views that may be taken by different Judges as to the reasonableness of a contract, frequently attaches to such transactions in England.

13. It need hardly be said that contracts going to relieve absolutely from liability for neglect or misconduct would usually be held unreasonable in England; but there are cases in which it has been held that a carrier by Railway may reasonably exempt himself, at least conditionally or partially, from such liability as, e.g., where he stipulates that he shall not be liable unless a claim is made within a certain time after the loss or damage has occurred,¹ or where he is willing to carry subject to the ordinary liability at a fair rate, but offers as an alternative to carry free from all liability at a lower rate,² or where he exempts himself only from liability for damage arising from loss of market caused by delay. It is to meet cases of this sort that the exception has been introduced.

14. Our attention having been directed since the submission of our previous report to the danger to which carriers by Railway in this country are exposed of having fraudulent claims brought against them in respect of valuable property of small bulk alleged to have been lost in transit (a point dwelt on

¹ *Simons v. The Great W. Railway Co.*, 18 C. B. 805.

² *Simons v. The Great W. Railway Co.*, 18 C. B. 805. Per Blackburn and Crompton, JJ., in *Peck v. The N. Staffordshire Railway Co.*, 32 L. J. Q. B. at pages 251 and 257. Per Cockburn, C. J., and Crompton, J., in *Allday v. Great W. Railway Co.*, 34 L. J. Q. B. at page 6. Per Kelly, C. B., in *Roth v. N. E. Railway Co.*, Law Rep. 2 Ex. at p. 178.

³ *Lord v. Midland Railway Co.*, Law Rep. 2 C. P. 339.

at some length by the Select Committee in the Act of 1854), we have deemed it well to omit the limitation of Rs. 100, which we introduced into Bill No. II. and to require (section 11) that such property shall (as at present) be declared in all cases, whatever be its value.

15. The only other points which it is necessary to mention in connection with this portion of the Bill are that we have struck out the second sentence of section 5 of the Bill No. II, which was intended to relieve the Government or the Company in certain cases from liability for loss or damage to luggage occasioned otherwise than by the neglect or default of a Railway-officer, but which is obviously unnecessary now that it is made clear that the carrier is in all cases so relieved; and that we have embodied in section 13 the provision of the Carriers Act of 1865, by which the onus of showing in what way the loss or damage was occasioned is thrown upon the carrier.

16. We have (section 14) enlarged the power of selling property left in the hands of the Railway-Administration with charges for conveyance, demurrage, &c., due upon it by empowering the Administration—

(a) to sell such property at once if it is perishable, and

(b) to sell the whole of it if they think fit instead of only such portion as may be sufficient to defray their charges.

This last power is, we understand, indispensable, as otherwise the Railway-Administration will be liable in certain states of the market to have its premises incumbered with unclaimed goods.

17. We have added to chapter IV a section (20) empowering Railway-servants to remove from railway-carriages and from the railway-premises persons suffering from infectious diseases.

18. We have, chiefly at the instance of the members of the Railway Conference, enhanced or reduced several of the penalties imposed by chapter V.

19. We have modified the restrictions on smoking by omitting in section 32 of the present Bill the words of section 6 of Act XVIII of 1854 which made it an offence to smoke on the Railway-premises.

20. We have, in section 40, imposed a penalty for needlessly interfering with the means of communication between the guard and the engine-driver or passengers.

21. We have, at the instance of many of the authorities consulted, extended to girls section 44, which provides for the case of children throwing stones at a train or tampering with the permanent-way. There being, however, no legal penalty suitable for the case of girls under seven years of age, we have been compelled to content ourselves with holding their parents or guardian liable. As regards the liability of the parent or guardian, we have, on further consideration, deemed it better to require him to enter into a bond binding himself to prevent his child repeating the offence, instead of subjecting him in the first instance to a penalty for an act of misconduct on the part of the child which he might have had no reason to foresee.

22. We have, in section 50, provided that a person committing an offence against the Act or the rules made under it may be tried in any place which the Local Government may appoint, as well as in any place in which he may now be tried for such offence. This, it has been represented to us, is necessary to meet cases where the Court which would ordinarily have jurisdiction is at a distance from the line, and there is another Court on the line which can be more easily reached.

23. We have added a section (54) to the Bill empowering the Governor General in Council to extend the whole or any portion of it to tramways worked by steam.

24. We have added in the second schedule :—

in clause (g), "Government-stamps :"

in clause (j), "other works of art :"

in clause (k), "marble :"

in clause (p), "sandalwood-oil :"

in clause (q), "scientific instruments."

25. We have made numerous other additions and amendments, but they are of so trifling a description that we deem it unnecessary to specify them.

26. The Bill No. II and report of Select Committee thereon have been published in English in all the local Gazettes except those for Bengal, Assam and Rájputána. Publication of the Bill and report in the vernacular has been reported only by the Governments of the North-Western Provinces and Oudh and of the Panjáb; we do not consider that the changes now made are such as to render republication necessary, especially as most of these changes have met with the approval of the members of the Railway Conference; and we accordingly recommend that the Bill as amended be passed.

A. CLARKE.

WHITLEY STOKES.

F. R. COCKERELL.

The 26th February, 1879.

LIST OF PAPERS.

From J. G. W. Sykes, Esq., Advocate, High Court, North-Western Provinces, dated 9th August 1878.

Memorandum by Public Works Department, No. 3870R, dated 20th September, 1878, and enclosure.

From Secretary to Chief Commissioner, Mysore, No. 5091—8J, dated 3rd October, 1878.

„ Secretary for Birár, to Resident, Haidarábád, No. 7B, dated 7th October, 1878.

„ Ditto, ditto, No. 8B, dated 9th October, 1878, and enclosures.

„ Officiating Secretary to Chief Commissioner, Central Provinces, No. 4315—195, dated 12th October, 1878.

„ Secretary to Chief Commissioner, Assam, No. 1965, dated 29th October, 1878.

„ Secretary, Bombay Association, dated 16th November, 1878, and enclosure.

„ Under Secretary to Government, Bombay, No. 6606, dated 18th November, 1878, and enclosure.

„ Secretary to Chief Commissioner, British Burma, No. 3576-593, dated 28th December, 1878, and enclosure.

„ Chief Commissioner, Ajmer, and Merwára, No. 17, dated 3rd January, 1879, .

„ Under Secretary to Government, Bombay, No. 188, dated 11th January, 1879, and enclosure.

„ Acting Chief Secretary to Government, Madras, No. 2590, dated 21st December, 1878, and enclosures.

„ Secretary to Government, North-Western Provinces and Oudh, No. 114, dated 15th January, 1879, and enclosures.

„ Ditto, 1879, and enclosures.

ditto,

No. 170, dated 22nd January,

D. FITZPATRICK,

Secretary to the Government of India.