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PART VI.

BILLS OF THE GOVERNMENT OF INDIA.

LEGISLATIVE 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 25th October 1888 :

Bill No. 20 of 1888.

THE INDIAN RAILWAYS BILL.

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A Bill to consolidate, amend and add to the law relating to Railways in India.

WHEREAS it is expedient to consolidate, amend and add to the law relating to Railways in India; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

1. (1) This Act may be called the Indian Railways Act, 1889. [Act IV, 1879, s. 1.]
Title, extent and commencement.

(2) It extends to the whole of British India and applies to all subjects of Her Majesty within the dominions of Princes and States in India in alliance with Her Majesty, and to all Native subjects of Her Majesty without and beyond British India and those dominions; and

(3) It shall come into force on the first day of April, 1889.

2. (1) On and from that day the enactments specified in the first schedule are repealed to the extent mentioned in the third column thereof.

(2) But all rules, declarations and appointments made, forms approved, powers conferred, directions given and notifications published under any of those enactments, or under any enactment repealed by any of them, shall, so far as they are consistent with this Act, be deemed to have been respectively made, approved, conferred, given and published under this Act.

(3) Any enactment or document referring to any of those enactments or to any enactment repealed by any of them shall, so far as may be, be construed to refer to this Act or to the corresponding portion thereof.

*The Indian Railways Bill.**(Chapter I.—Preliminary.—Section 3. Chapter II.—Inspection of Railways.—Sections 4-5).*

[Act IV, 1879, s. 3.] 3. In this Act, unless there is something repugnant in the subject or context,—

I of 1886. (1) "tramway" means a tramway constructed under the Indian Tramways Act, 1886, or any special Act relating to tramways :

(2) "ferry" includes a bridge of boats, pontoons or rafts, a swing-bridge, a flying bridge and a temporary bridge, and the approaches to, and landing-places of, a ferry :

[Twelfth Annual Report, Railway Comms., p. 4.] (2) "railway" means a railway, or any portion of a railway, for the public carriage of passengers, animals or goods, and includes—

(a) all land within the fences or other boundary-marks indicating the limits of the land appurtenant to a railway ;

(b) all lines of rails, sidings or branches worked over for the purposes of, or in connection with, a railway ;

(c) all stations, offices, warehouses, wharves, workshops, manufactories, fixed plant and machinery and other works constructed for the purposes of, or in connection with, a railway ; and

[C. R. No. 6377 of 1881 : U. O. Reg. No. 86 of 1885 : Pros., Act IV, 1879, p. 45.] (d) all ferries, ships, boats and rafts which are used on rivers or other inland waters for the purposes of the traffic of a railway and are under the direct control of the authority administering the railway :

[34 & 35 Vict., c. 78, s. 2.] (4) "railway company" includes any persons, whether incorporated or not, who are owners or lessees of a railway or parties to an agreement for working a railway :

[Act IV, 1879, s. 3 : cf. Chapter VII of this Bill.] (5) "railway administration" or "administration", in the case of a railway administered by the Government or a Native State, means the Manager of the railway and includes the Government or the Native State, and, in the case of a railway administered by a railway company, means the railway company :

[Act IV, 1879, s. 3.] (6) "railway servant" means any person employed by a railway administration in connection with the service of a railway :

[New.] (7) "inspector" means an Inspector of Railways appointed under this Act :

[Cl. 8 Vict., c. 20, s. 3.] (8) "goods" includes inanimate things of every kind :

[35 & 36 Vict., c. 50, s. 2.] (9) "rolling-stock" includes locomotive engines, tenders, carriages, wagons, trucks and trolleys of all kinds :

[17 & 18 Vict., c. 31, s. 1.] (10) "traffic" includes rolling-stock of every description as well as passengers, animals and goods :

[New.] (11) "through traffic" means traffic which is carried over the railways of two or more railway administrations :

[8 Vict., c. 20, s. 3.] (12) "rate" includes any fare, charge or other payment for the carriage of any passenger, animal or goods :

[51 & 52 Vict., c. 25, s. 55.] (13) "terminals" includes charges in respect of stations, sidings, wharves, depôts, warehouses, cranes and other similar matters, and of any services rendered thereat :

(14) "pass" means an authority given [New.] by a railway administration, or by an officer appointed by a railway administration in this behalf, and authorising the person to whom it is given to travel as a passenger on a railway gratuitously :

(15) "ticket" includes a single ticket, a return ticket and a season ticket : and

(16) "cattle" includes elephants, camels, [Act I, 1871, buffaloes, horses, mares, geldings, ponies, colts, s. 3.] fillies, mules, asses, pigs, rams, ewes, sheep, lambs, goats and kids.

CHAPTER II.

INSPECTION OF RAILWAYS.

4. (1) The Governor General in Council may [34 and 35 appoint persons, by name Vict., c. 78, or by virtue of their s. 3.] office, to be Inspectors of Railways.

(2) The duties of an Inspector of Railways shall be—

(a) to inspect railways with a view to determine whether they are fit to be opened for the public carriage of passengers, and to report thereon to the Governor General in Council as required by this Act ;

(b) to make such periodical or other inspections of any railway or of any rolling-stock used thereon as the Governor General in Council may direct ;

(c) to make inquiry under this Act into the cause of any accident on a railway ;

(d) to perform such other duties as are imposed on him by this Act or any other enactment for the time being in force relating to railways.

5. An Inspector shall, for the purpose of any [Act IV, 1883, Powers of Inspectors. of the duties which he is s. 2 : and required or authorised to 34 & 35 Vict., c. 78, s. 4.]

perform under this Act, be deemed to be a public servant within the meaning of the Indian Penal Code, and, subject to the control of the Governor General in Council, shall for that purpose have the following powers, namely :—

(a) to enter upon and inspect any railway or any rolling-stock used thereon ;

(b) by an order in writing under his hand addressed to the railway administration, to require the attendance before him of any railway servant, and to require answers or returns to such inquiries as he thinks fit to make from such railway servant or from the railway administration ;

(c) to require the production of any book or document belonging to or in the possession or control of any railway administration (except a communication between a railway company and its legal advisers) which it appears to him to be necessary to inspect.

*The Indian Railways Bill.**(Chapter II.—Inspection of Railways.—Section 6. Chapter III.—Construction and Maintenance of Works.—Sections 7-11.)*

[Act IV, 1883, s. 2.]

6. A railway administration shall afford to the Inspector all reasonable facilities for performing the duties and exercising the powers imposed and conferred upon him by this Act.

CHAPTER III.

CONSTRUCTION AND MAINTENANCE OF WORKS.

[8 Vict., c. 20, s. 16.]

7. Subject to the provisions of this Act and of any enactment for the time being in force for the acquisition of land for public purposes and for companies, and, subject also, in the case of a railway company, to the provisions of any contract between the company and the Government, a railway administration may, for the purpose of constructing a railway or the accommodation or other works connected therewith, and notwithstanding anything in any other enactment for the time being in force,—

- (a) make or construct in, upon, across, under or over any lands, or any streets, hills, valleys, roads, railways or tramways, or any rivers, canals, brooks, streams or other waters, or any drains, water-pipes, gas-pipes or telegraph lines, such temporary or permanent inclined planes, arches, tunnels, culverts, embankments, aqueducts, bridges, roads, ways, passages, conduits, drains, piers, cuttings and fences as the railway administration thinks proper;
- (b) alter the course of any rivers, brooks, streams or watercourses, for the purpose of constructing and maintaining tunnels, bridges, passages or other works over or under them, and divert or alter, as well temporarily as permanently, the course of any rivers, brooks, streams or watercourses or any roads, streets or ways, or raise or sink the level thereof, in order the more conveniently to carry them over or under or by the side of the railway, as the railway administration thinks proper;
- (c) make drains or conduits into, through or under any lands adjoining the railway for the purpose of conveying water from or to the railway;
- (d) erect and construct such houses, warehouses, offices and other buildings, yards, stations, wharves, engines, machinery, apparatus and other works and conveniences as the railway administration thinks proper;
- (e) alter, repair or discontinue such works as aforesaid or any of them, and substitute others in their stead; and
- (f) do all other acts necessary for making, maintaining, altering or repairing and using the railway.

8. A railway administration may, for the purpose of exercising the powers conferred upon it by this Act, alter the position of any pipe for the supply of gas or water or the position of any drain not being a main drain:

Alteration of pipes and drains.

Provided that—

- (a) when the railway administration desires to alter the position of any such pipe or drain it shall give reasonable notice of its intention to do so, and of the time at which it will begin to do so, to the local authority or company having control over the pipe or drain, or, when the pipe or drain is not under the control of a local authority or company, to the person under whose control the pipe or drain is;
- (b) a local authority, company or person receiving notice under proviso (a) may send a person to superintend the work, and the railway administration shall execute the work to the reasonable satisfaction of the person so sent.

9. (1) The Governor General in Council may [5 & 6 Vict., c. 55, s. 14.]

Temporary entry upon land for repairing or preventing accident.

authorise any railway administration, in case of any slip or other accident happening or being apprehended to any cutting, embankment or other work under the control of the railway administration, to enter upon any lands adjoining its railway for the purpose of repairing or preventing the accident, and to do all such works as may be necessary for the purpose.

(2) In case of necessity the railway administration may enter upon the lands and do the works aforesaid without having obtained the previous sanction of the Governor General in Council, but in such a case shall, within seventy-two hours after such entry, make a report to the Governor General in Council, specifying the nature of the accident or apprehended accident, and of the works necessary to be done, and the power conferred on the railway administration by this sub-section shall cease and determine if the Governor General in Council, after considering the report, considers that the exercise of the power is not necessary for the public safety.

10. A railway administration shall do as little [Pros., P. W. D., January, 1868, Nos. 60 to 64, E. I. R. 26.]

Payment of compensation to persons affected by exercise of powers under section 7, 8 or 9. damage as possible in the exercise of the powers conferred by any of the three last foregoing sections, and such compensation shall be paid to persons affected by the exercise thereof as may be agreed upon or as, in case of dispute, may be awarded under the Land-acquisition Act, 1870, or settled according to the procedure prescribed in that Act for the settlement of cases of disputed compensation.

11. (1) A railway administration shall make [8 Vict., c. 20, s. 68.] Accommodation works. and maintain the following works for the accommodation of the owners and occupiers of lands adjoining the railway, namely:—

- (a) such and so many convenient crossings, bridges, arches, culverts and passages over, under or by the sides of, or leading to or from, the railway as may, in the opinion of the Governor General in Council, be necessary for the purpose of

*The Indian Railways Bill.**(Chapter III.—Construction and Maintenance of Works.—Sections 12-15.)*

making good any interruptions caused by the railway to the use of the lands through which the railway is made, and

- (b) all necessary arches, tunnels, culverts, drains, watercourses or other passages, over or under or by the sides of the railway, of such dimensions as will, in the opinion of the Governor General in Council, be sufficient at all times to convey water as freely from or to the lands lying near or affected by the railway as before the making of the railway, or as nearly so as may be.

(2) The works specified in clauses (a) and (b) of sub-section (1) shall be made during or immediately after the laying out or formation of the railway over the lands traversed thereby and in such manner as to cause as little damage or inconvenience as possible to persons interested in the lands or affected by the works.

(3) The foregoing provisions of this section are subject to the following provisos, namely:—

- (i) a railway administration shall not be required to make any accommodation works in such a manner as would prevent or obstruct the working or using of the railway, or to make any accommodation works with respect to which the owners and occupiers of the lands have agreed to receive and have been paid compensation in consideration of their not requiring the works to be made;

[8 Vict., c. 20, s. 73.]

- (ii) save as hereinafter in this Chapter provided, a railway administration shall not be compelled to defray the cost of executing any further or additional accommodation works for the use of the owners or occupiers of the lands after the expiration of ten years from the date on which the railway passing through the lands was first opened for public traffic;
- (iii) where a railway administration has provided suitable accommodation for the crossing of a road or stream, and the road or stream is afterwards diverted by the act or neglect of the person having the control thereof, the administration shall not be compelled to provide other accommodation for the crossing of the road or stream.

[Suggested at Railway Conference, 1888.]

[8 Vict., c. 20, s. 70.]

- (4) The Governor General in Council may appoint a time for the commencement of any work to be executed under sub-section (1), and, if for fourteen days next after that time the railway administration fails to commence the work or, having commenced it fails to proceed diligently to execute it in a sufficient manner, the Governor General in Council may execute it and recover from the railway administration the cost incurred by him in the execution thereof.

[8 Vict., c. 20, s. 71.]

Power for owner or occupier of land to cause additional accommodation works to be made.

12. If an owner or occupier of any land affected by a railway considers the works made under the last foregoing section to be insufficient for the commodious use of the

land, he may at any time require the railway administration to make at his expense such further works for that purpose as he thinks necessary and are agreed to by the railway administration or as, in case of difference of opinion, may be authorised by the Governor General in Council.

13. The Governor General in Council may require that, within a time to be specified in the requisition or within such further time as he may appoint in this behalf,—

(a) boundary-marks or fences be provided or renewed by a railway administration for a railway or any part thereof and for roads constructed in connection therewith;

- (b) any works in the nature of a screen near to or adjoining the side of any public road constructed before the making of a railway be provided or renewed by a railway administration for the purpose of preventing danger to passengers on the road by reason of horses being frightened by the sight or noise of the rolling-stock moving on the railway;

- (c) suitable gates, chains, bars, stiles or hand-rails be erected or renewed by a railway administration at places where a railway crosses a public road on the level;

- (d) persons be employed by a railway administration to open and shut such gates, chains or bars.

14. (1) Where a railway administration has constructed a railway across a public road on the level, the Governor General in Council may at any time, if it appears to him necessary for the public safety, require the railway administration, within such time as he thinks fit, to carry the road either under or over the railway by means of a bridge or arch, with convenient ascents and descents and other convenient approaches, instead of crossing the road on the level, or to execute such other works as, in the circumstances of the case, may appear to the Governor General in Council to be best adapted for removing or diminishing the danger arising from the level-crossing.

(2) The Governor General in Council may require, as a condition of making a requisition under sub-section (1), that the local authority, if any, which maintains the road shall undertake to pay the whole of the cost to the railway administration of complying with the requisition or such portion of the cost as the Governor General in Council thinks just.

Removal of trees dangerous to or obstructing the working of a railway.

15. (1) In either of the following cases, namely:—

- (a) where there is danger that a tree standing near a railway may fall on the railway so as to obstruct traffic,

[Act IV, 1879, s. 52: 5 & 6 Vict., c. 55, s. 10: U. O. Register No. 2360 of 1881: and Pros., P. W. D., May, 1866 Nos. 12 to 17; January, 1868, Nos. 62 to 64; Despatch, para. 23; Oct., 1869, Nos. 318 to 343; and June, 1874, Nos. 11 and 12.]

[8 Vict., c. 20, s. 63.]

[5 & 6 Vict., c. 55, s. 9.]

[8 Vict., c. 20, s. 48.]

[26 & 27 Vict., c. 92, s. 7.]

[8 Vict., c. 20, s. 46: 51 & 52 Vict., c. 25, s. 16: and 36 W. R. 491.]

[31 & 32 Vict., c. 119, s. 24, and Act XIII, 1885, s. 18.]

*The Indian Railways Bill.**(Chapter IV.—Opening of Railways.—Sections 16-20.)*

(b) when a tree obstructs the view of any fixed signal,

the railway administration may, with the permission of any Magistrate, fell the tree or deal with it in such other manner as will in the opinion of the railway administration avert the danger or remove the obstruction, as the case may be.

(2) In case of emergency the power mentioned in sub-section (1) may be exercised by a railway administration without the permission of a Magistrate.

(3) Where a tree felled or otherwise dealt with under sub-section (1) or sub-section (2) was in existence before the railway was constructed or the signal was fixed, any Magistrate may, upon the application of the persons interested in the tree, award to those persons such compensation as he thinks reasonable.

(4) Such an award, subject, where made in a presidency-town by any Magistrate other than the Chief Presidency Magistrate or where made elsewhere by any Magistrate other than the District Magistrate, to revision by the Chief Presidency Magistrate or the District Magistrate, as the case may be, shall be final.

CHAPTER IV.

OPENING OF RAILWAYS.

[Act IV, 1879, s. 4; 8 Vict., c. 20, s. 86; and K. W. Progs., A. March, 1883, No. 182.] **16.** (1) A railway administration may, with the previous sanction of the Governor General in Council, use upon a railway locomotive engines or other motive power, and rolling-stock to be drawn or propelled thereby.

[New: U. O. Regr. No. 1622 of 1878, and K. W. No. 1, Pros. A. April, 1879, Nos. 39-113.] (2) But rolling-stock shall not be moved upon a railway by steam or other mechanical power until general rules for the railway have been made, sanctioned, published and notified under this Act.

[Act IV, 1883, s. 2; and K. W. No. 5, Progs., A. March, 1883, Nos. 1-82.] **17.** (1) Subject to the provisions of sub-section (2), a railway administration shall, one month at least before it intends to open any railway for the public carriage of passengers, give to the Governor General in Council notice in writing of its intention.

(2) The Governor General in Council may in any case, if he thinks fit, reduce the period of, or dispense with, the notice mentioned in sub-section (1).

[Act IV, 1883, s. 2; and Pros. P. W. D. Jan., 1868, Nos. 60 to 64. E. I. R. 29-32.] **18.** A railway shall not be opened for the public carriage of passengers until the Governor General in Council, or an Inspector empowered by the Governor General in Council in this behalf, has by order sanctioned the opening thereof for that purpose.

[Act IV, 1883, s. 2.] **19.** (1) The sanction of the Governor General in Council under the last foregoing section shall not be given until an

Inspector has, after inspection of the railway, reported in writing to the Governor General in Council—

- (a) that he has made a careful inspection of the railway and rolling-stock;
- (b) that the moving and fixed dimensions prescribed by the Governor General in Council have not been infringed;
- (c) that the weight of rails, strength of [5&6 Vict., c. 55, s. 16.] bridges, general structural character of the works, and the size of and maximum gross load upon the axles of any rolling-stock are in accordance with the standards prescribed by the Governor General in Council;
- (d) that the railway is sufficiently supplied with rolling-stock;
- (e) that general rules for the working of the railway have been made, sanctioned, published and notified under this Act; and
- (f) that, in his opinion, the railway can be opened for the public carriage of passengers without danger to the public using it.

(2) If in the opinion of the Inspector the railway cannot be so opened without danger to the public using it, he shall state that opinion together with the grounds therefor to the Governor General in Council, and the Governor General in Council may thereupon order the railway administration to postpone the opening of the railway.

(3) An order under the last foregoing sub-section must set forth the requirements to be complied with as a condition precedent to the opening of the railway being sanctioned, and shall direct the postponement of the opening of the railway until those requirements have been complied with or the Governor General in Council is otherwise satisfied that the railway can be opened without danger to the public using it.

(4) The sanction given under this section may be either absolute or subject to such conditions as the Governor General in Council thinks necessary for the safety of the public. [Act IV, 1883, s. 2.]

(5) When sanction for the opening of a railway is given subject to conditions and the railway administration fails to fulfil those conditions, the sanction shall be deemed to be void and the railway shall not be worked or used until the conditions are fulfilled to the satisfaction of the Governor General in Council. [Act IV, 1883, s. 2.]

20. (1) The provisions of sections 17, 18 and 19 with respect to the opening of railway shall extend to the opening of the works mentioned in sub-section (2) when those works form part of, or are directly connected with, a railway used for the public carriage of passengers and have been constructed after the inspection which preceded the first opening of the railway. [34 & 35 Vict., c. 76, s. 5.]

Application of the provisions of the three last foregoing sections to material alterations of a railway.

(2) The works referred to in sub-section (1) are additional lines of railway, deviation lines, stations, junctions and crossings on the level, and

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(Chapter IV.—Opening of Railways.—Sections 21-25. Chapter V.—Railway Commissions and Traffic Facilities.—Sections 26-27.)

any alteration or re-construction materially affecting the structural character of any work to which the provisions of sections 17, 18 and 19 apply or are extended by this section.

[New.]

21. When an accident has occurred resulting in a temporary suspension of traffic, and either

Exceptional provision. the original line and works have been rapidly restored to their original standard, or a temporary diversion has been laid for the purpose of restoring communication, the original line and works so restored, or the temporary diversion, as the case may be, may, in the absence of the Inspector, be opened for the public carriage of passengers, subject to the following conditions, namely:—

- (a) that the railway servant in charge of the works undertaken by reason of the accident has recorded an opinion that the opening of the restored line and works, or of the temporary diversion, will not be attended with danger to the public using the line and works or the diversion; and
- (b) that notice by telegraph of the opening of the line and works or the diversion shall be sent to the Inspector appointed for the railway.

[New: suggested at Railway Conference, 1888.]

22. The Governor General in Council may make rules defining the cases in which, and in those cases the extent to which, the procedure prescribed in sections 17 to 20 (both inclusive) may be dispensed with.

[Act IV, 1883, s. 2.]

23. (1) When, after inspecting any open railway used for the public carriage of passengers, or any rolling-stock used thereon, an Inspector is of opinion that the use of the railway or of any specified rolling-stock will be attended with danger to the public using it, he shall state that opinion, together with the grounds therefor, to the Governor General in Council; and the Governor General in Council may thereupon order that the railway be closed for the public carriage of passengers, or that the use of the rolling-stock so specified be discontinued, or that the railway or the rolling-stock so specified be used for the public carriage of passengers only on such conditions as the Governor General in Council may consider necessary for the safety of the public.

[5 & 6 Vict., c. 55, s. 6.]

(2) An order under the last foregoing subsection must set forth the grounds on which it is founded.

[Act IV, 1883, s. 2.]

24. (1) When a railway has been closed under the last foregoing section, it shall not be re-opened for the public carriage of passengers until it has been inspected, and its re-opening sanctioned, in accordance with the provisions of this Act.

[Act IV, 1883, s. 2.]

(2) When the Governor General in Council has ordered under the last foregoing section that the use of any specified rolling-stock be discontinued,

that rolling-stock shall not be used until an Inspector has reported that it is fit for use and the Governor General in Council has sanctioned its use.

(3) When the Governor General in Council has imposed under the last foregoing section any conditions with respect to the use of any railway or rolling-stock, those conditions shall be observed until they are withdrawn by the Governor General in Council.

25. (1) The Governor General in Council may, by general or special [Act IV, 1879, s. 5B (2).]

Delegation of powers under this Chapter to Inspectors. order, authorise the discharge of any of his functions under this Chapter by an Inspector, and may cancel any sanction or order given by an Inspector discharging any such function or attach thereto any condition which the Governor General in Council might have imposed if the sanction or order has been given by himself.

(2) A condition imposed under sub-section (1) shall for all the purposes of this Act have the same effect as if it were attached to a sanction or order given by the Governor General in Council.

CHAPTER V.

RAILWAY COMMISSIONS AND TRAFFIC FACILITIES.

Railway Commissions.

26. (1) For the purposes of this Chapter the Governor General in Council shall, as occasion may in his opinion require, appoint a commission, styled a Railway Commission (in this Act referred to as the Commissioners) and consisting of one Law Commissioner and two Lay Commissioners. [17 & 18 Vict., c. 31; 30 & 37 Vict., c. 48; and 51 & 52 Vict., c. 25.]

(2) The Commissioners shall sit at such times and in such places as the Governor General in Council appoints.

(3) The Law Commissioner shall be such Judge of the High Court having jurisdiction in reference to European British subjects under the Code of Criminal Procedure, 1882, in the place where the Commissioners are to sit as, in the case of a High Court established under the Statute 24 and 25 Victoria, Chapter 104, the Chief Justice or, in the case of the Chief Court of the Punjab, the Senior Judge or, in the case of the Court of the Recorder of Rangoon, the Chief Commissioner of Burma may, on the request of the Governor General in Council, assign by writing under his hand.

(4) The Lay Commissioners shall be appointed by the Governor General in Council, and one at least of them shall be of experience in railway business.

27. The Commissioners shall take cognizance of such cases only as are referred to them by the Governor General in Council.

Restriction of jurisdiction of Railway Commission to cases specially referred.

*The Indian Railways Bill.**(Chapter V.—Railway Commissions and Traffic Facilities.—Sections 28-38.)*

Reference of cases to following circumstances, namely:—
Railway Commission.

(a) where complaint is made to the Governor General in Council of anything done or any omission made by a railway administration in violation or contravention of any provision of this Chapter:—

(b) where any difference referable to arbitration arises between railway administrations, and the railway administrations apply to the Governor General in Council to have it referred to the Commissioners;

(c) where any other difference to which a railway administration is a party arises, and the parties thereto apply to the Governor General in Council to have it referred to the Commissioners;

the Governor General in Council may, if he thinks fit, refer the case to the Commissioners for decision.

29. The three Commissioners shall attend at the hearing of any case referred to them for decision under this Chapter, and the Law Commissioner shall preside at the hearing.

30. (1) In hearing any such case the Commissioners shall have all the powers which may be exercised in the hearing of an original civil suit by the High Court of which the Law Commissioner is a member, and they or the majority of them may make any order in the case, by way of injunction, which may in the circumstances appear to them to be suitable.

(2) At the hearing the Commissioners may permit any person to appear before them either by himself or by any legal practitioner entitled to practise in any High Court.

31. (1) An appeal shall not lie from any order of the Commissioners upon any question of fact on which two of the Commissioners are agreed.

(2) Subject to the provisions of sub-section (1), an appeal shall lie from an order of the Commissioners—

(a) where the Law Commissioner was the Recorder or Additional Recorder of Rangoon, to the High Court of Judicature at Fort William in Bengal, and

(b) in any other case, to the High Court of which the Law Commissioner was a member.

(3) Such an appeal must be presented within six months from the date of the order appealed from, and shall be heard by a bench of as many Judges, not being fewer than three, as the High Court may by rule prescribe.

(4) In the hearing of the appeal the High Court shall, subject to the other provisions of this Chapter, have all the powers which it has as an Appellate Court under the Code of Civil Procedure, and may make any order which the Commissioners could have made.

32. Notwithstanding any appeal to the High Court from an order of the Commissioners, the order shall, unless the Commissioners or the majority of them see fit to suspend it, continue in operation until it is reversed or varied by that Court.

33. Subject to the foregoing provisions of this Chapter and to any direction of Her Majesty in Council, an order of the Commissioners shall be final and shall not be questioned in or restrained by any Court.

34. (1) The Commissioners, in the exercise of their jurisdiction under this Chapter, may from time to time, with the general or special sanction of the Governor General in Council, call in one or more persons of engineering or other technical knowledge to act as assessors.

(2) There shall be paid to such persons such remuneration as the Governor General in Council upon the recommendation of the Commissioners may direct.

35. The Governor General in Council may make rules regulating proceedings before the Commissioners and enabling the Commissioners to carry into effect the provisions of this Chapter, and prescribing fees to be taken in relation to proceedings before the Commissioners.

36. The costs of, and incidental to, any proceedings before the Commissioners or the High Court under this Chapter shall be in the discretion of the Commissioners or the High Court, as the case may be.

37. The High Court of which the Law Commissioner was a member shall, on the application of any person who was a party to the proceedings before the Commissioners or on appeal before a High Court, or of the representative of any such person, cause an order made by the Commissioners or by a High Court under this Chapter to be enforced or executed as if it were an order made by itself in the exercise of its original civil jurisdiction.

38. A document purporting to be signed by the Commissioners, or any of them, shall be received in evidence without proof of the signature, and shall, until the contrary is proved, be deemed to have been so signed and to have been duly executed or issued by the Commissioners.

*The Indian Railways Bill.**(Chapter V.—Railway Commissions and Traffic Facilities.—Sections 39-41.)***39.** The Commissioners shall, as soon as may be

Submission to the Governor General in Council of special reports by Railway Commission.

after the disposal of each case referred to them, submit to the Governor General in Council a special report on the case, and the Governor General in Council shall cause the report to be published in such manner as he thinks fit for the information of persons interested in the subject-matter thereof.

40. Except for the purpose of the last foregoing

Dissolution of Railway Commission.

section, a Railway Commission shall be deemed to be dissolved at the close of the last of the sittings of the Commissioners for the decision of the cases referred to them.

Traffic Facilities.

[8 Vict., c. 20, s. 90; 17 and 18 Vict., c. 31, s. 2; 51 & 52 Vict., c. 25, s. 25; and Eighth Report, Railway Commissioners', p. 4.]

41. (1) Every railway administration shall, according to its powers, afford all reasonable facilities for the receiving, forwarding and delivering of traffic upon and from the several railways belonging to or worked by it and for the return of rolling stock.

(2) A railway administration shall not make or give any undue or unreasonable preference or advantage to or in favour of any particular person or railway administration, or any particular description of traffic, in any respect whatsoever or subject any particular person or railway administration or any particular description of traffic to any undue or unreasonable prejudice or disadvantage in any such respect.

[17 & 18 Vict., c. 31, s. 1.]

(3) A railway administration having or working railways which form part of a continuous line of railway communication, or having its terminus or station within one mile of the terminus or station of another railway administration, shall afford all due and reasonable facilities for receiving and forwarding by one of such railways all the traffic arriving by the other at such terminus or station, without any unreasonable delay, and without any such preference or advantage or prejudice or disadvantage as aforesaid, and so that no obstruction may be offered to the public desirous of using such railways as a continuous line of communication, and so that all reasonable accommodation may by means of such railways be at all times afforded to the public in that behalf.

[Thirteenth Report, Railway Commissioners', p. 4.]

(4) The facilities to be afforded under this section shall include the due and reasonable receiving, forwarding and delivering by every railway administration, at the request of any other railway administration, of through traffic to and from the railway of any other railway administration at through rates:

Provided as follows:—

(a) the railway administration requiring the traffic to be forwarded shall give written notice of the proposed through rate to each forwarding railway administration, stating both its amount and the route

by which the traffic is proposed to be forwarded; and when an administration gives such notice it shall also state the apportionment of the through rate. The proposed through rate may be per truck or per maund;

(b) each forwarding railway administration shall, within the prescribed period after the receipt of such notice, by written notice inform the railway administration requiring the traffic to be forwarded whether it agrees to the rate and route, and, if it objects to either, the grounds of the objection;

(c) if at the expiration of the prescribed period no such objection has been sent by any forwarding railway administration, the rate shall come into operation at the expiration of that period;

(d) if an objection to the rate or route has been sent within the prescribed period, the Governor General in Council shall, on the request of any of the railway administrations, refer the case to the Commissioners for their decision;

(e) if the objection is to the granting of the rate or to the route, the Commissioners shall consider whether the granting of the rate is a due and reasonable facility in the interest of the public, and whether, regard being had to the circumstances, the route proposed is a reasonable route, and shall allow or refuse the rate accordingly or fix such other rate as may seem to the Commissioners to be just and reasonable;

[Tenth Report, Railway Commissioners', p. 6.]

(f) if the objection is only to the apportionment of the rate, the rate shall come into operation at the expiration of the prescribed period, but the decision of the Commissioners as to its apportionment shall be retrospective: in any other case the operation of the rate shall be suspended until the Commissioners make their order in the case;

(g) the Commissioners in apportioning the through rate shall take into consideration all the circumstances of the case, including any special expense incurred in respect of the construction, maintenance or working of the route or any part of the route, as well as any special charges which any railway administration is entitled to make in respect thereof;

(h) subject to the foregoing provisions of this sub-section, the Commissioners shall have full power to decide that any proposed through rate is due and reasonable, notwithstanding that a less amount may be allotted to any forwarding railway administration out of the through rate than the maximum rate which the railway administration is entitled to charge, and to allow and apportion the through rate accordingly;

[36 & 37 Vict., c. 43, s. 12.]

*The Indian Railways Bill.**(Chapter V.—Railway Commissions and Traffic Facilities.—Sections 42-47.)**Chapter VI.—Working of Railways.—Section 48.)*

- (i) the prescribed period mentioned in this sub-section shall be one month, or such longer period as the Governor General in Council may by general or special order prescribe.

[51 & 52 Vict., c. 25, s. 27.]

42. (1) Whenever it is shown that a railway administration charges one trader or class of traders, or the traders in any district or country, lower rates for the same or similar merchandise, or lower rates for the same or similar services, than it charges to other traders or classes of traders, or to the traders in another district or country, the burden of proving that such lower charge does not amount to an undue preference shall lie on the railway administration.

(2) In deciding whether a lower charge does or does not amount to an undue preference, the Commissioners may, so far as they think reasonable, in addition to any other considerations affecting the case, take into consideration whether such lower charge is necessary for the purpose of securing, in the interests of the public, the traffic in respect of which it is made.

[51 & 52 Vict., c. 25, s. 25, & section 3 (3) (d) of this Bill.]

43. Where a railway administration is a party to an agreement for using on a river or other inland water for the purposes of the traffic of the railway any ferry, ship, boat or raft which is not under the direct control of the railway administration, the provisions of the two last foregoing sections applicable to a railway shall extend to the ferry, ship, boat or raft and to the traffic carried thereby.

[New.]

44. A railway administration may charge reasonable terminals.

[36 & 37 Vict., c. 45, s. 15.]

45. (1) The Governor General in Council may refer to the Commissioners for decision any question or dispute which may arise with respect to the terminals charged by a railway administration, and the Commissioners may thereupon decide what is a reasonable sum to be paid to the railway administration in respect of terminals.

[51 & 52 Vict., c. 25, s. 24, (1).]

(2) In deciding the question or dispute the Commissioners shall have regard only to the expenditure reasonably necessary to provide the accommodation in respect of which the terminals are charged, irrespective of the outlay which may have been actually incurred by the railway administration in providing that accommodation.

[36 & 37 Vict., c. 45, s. 14: 51 & 52 Vict., c. 25, s. 33: and Seventh Report, Railway Commissioners, p. 1.]

46. (1) A railway administration shall keep at each of its stations a book or books showing every rate for the time being charged for the carriage of traffic, other than passengers and their luggage, from that station to any place to which the administration quotes a rate, and stating the distance from that station of every station, siding or place to which any such rate is charged.

- (2) Every such book shall during all reasonable hours be open to the inspection of any person without payment of any fee.

47. (1) Where any charge is made by and paid to a railway administration in respect of the carriage of goods over its railway, the administration shall, on the application of the person by whom or on whose behalf the charge has been paid, render to the applicant an account showing how much of the charge comes under each of the following heads, namely:—

- (a) the carriage of the goods on the railway;
- (b) terminals; and
- (c) demurrage, collection, delivery and other expenses;

but without particularising the several items of which the charge under each head consists.

(2) The application under sub-section (1) must be in writing and be made to the railway administration within one month after the date of the payment of the charge by or on behalf of the applicant, and the account must be rendered by the administration within two months after the receipt of the application.

[Cf. 36 & 37 Vict., c. 45, s. 14: and Eleventh Report, Commissioners, p. 6.] [The periods mentioned in sub-section (2) are those suggested at the Railway Conference, 1888.]

CHAPTER VI.

WORKING OF RAILWAYS.

General.

48. (1) Every railway company and, in the case of a railway administered by the Government, an officer to be appointed by the Governor General in Council in this behalf, shall make general rules consistent with this Act for the following purposes, namely:—

- (a) for regulating the mode in which, and the speed at which, rolling-stock used on the railway is to be moved or propelled;
- (b) for regulating the provision to be made for the accommodation and convenience of passengers;
- (c) for declaring what shall be deemed to be, for the purposes of this Act, dangerous or offensive goods, and for regulating the carriage of such goods;
- (d) for regulating the conduct of the railway servants;
- (e) for regulating the terms and conditions on which the railway administration will warehouse or retain goods at any station on behalf of the consignee or owner; and
- (f) generally for regulating the travelling upon, and the use, working and management of, the railway.

(2) The rules may provide that any person committing a breach of any of them shall be punished with fine which may extend to any sum not exceeding fifty rupees.

[Act IV, 1879, s. 8: 3 & 4 Vict., c. 97, ss. 7, 8 & 9: and 8 Vict., c. 20, s. 108.]

[Act IV, 1883, s. 3.]

[New.]

[26 & 27 Vict., c. 92, s. 32.]

[Act IV, 1879, s. 8.]

*The Indian Railways Bill.**(Chapter VI.—Working of Railways.—Sections 49-52.)*[Act IV, 1879,
s. 8.]

(3) A rule made under this section shall not take effect until it has received the sanction of the Governor General in Council and been published in the *Gazette of India* :

[New : but represents existing practice.]

Provided that, where the rule is in the terms of a rule which has already been published at length in the *Gazette of India*, a notification in that *Gazette* referring to the rule already published and announcing the adoption thereof shall be deemed a publication of a rule in the *Gazette of India* within the meaning of this sub-section.

[Act IV, 1879,
s. 8.]

(4) The Governor General in Council may cancel any rule made under this section, and the authority required by sub-section (1) to make rules thereunder may, at any time, with the previous sanction of the Governor General in Council, rescind or vary any such rule.

[Unofficial
Reg. No. 414
of 1887,
IV of 1879.]

(5) Every rule purporting to have been made for any railway under section 8 of the Indian Railway Act, 1879, and appearing from the *Gazette of India* to be intended to apply to the railway at commencement of this Act, shall notwithstanding any irregularity in the making or publication of the rule, be deemed to have been made and to have taken effect under this section.

[New.]

(6) Every railway administration shall keep at each station on its railway a copy of the general rules for the time being in force on the railway under this section, and shall allow any person to inspect it free of charge at all reasonable times.

[5 & 6 Vict.,
c. 55, s. 11:
26 & 27 Vict.,
c. 92, s. 9.]

49. Where two or more railway administrations whose railways have a common terminus or a portion of the same line of rails in common, or form separate portions of one continued line of railway communication, are not able to agree upon arrangements for conducting at such common terminus, or at the point of junction between them, their joint traffic with safety to the public, the Governor General in Council, upon the application of either or any of the administrations, may decide the matters in dispute between them, so far as those matters relate to the safety of the public, and may determine whether the whole or what proportion of the expenses attending on such arrangements shall be borne by either or any of the administrations respectively.

[42 & 43 Vict.,
c. 41, s. 4
(d).]

50. Any railway company, not being a guaranteed company within the meaning of the Statute 42 and 43 Victoria, Chapter 41, may from time to time make and carry into effect agreements with the Governor General in Council for the construction of rolling-stock, plant or machinery used on, or in connection with, railways, or for leasing or taking on lease any rolling-stock, plant, machinery or equipments required for use on a railway, or for the maintenance of rolling-stock.

51. Any railway company, not being a guaranteed company within the meaning of the Statute 42 and 43 Victoria, Chapter 41, may from time to time make with the Governor General in Council, and carry into effect, or, with the sanction of the Governor General in Council, make with any other railway administration, and carry into effect, any agreement with respect to any of the following purposes, namely :—

- (a) the working, use, management and maintenance of any railway ;
- (b) the supply of rolling-stock and machinery necessary for any of the purposes mentioned in clause (a) and of officers and servants for the conduct of the traffic of any such railway ;
- (c) the payments to be made and the conditions to be performed with respect to such working, use, management and maintenance ;
- (d) the interchange, accommodation and conveyance of traffic being on, coming from or destined for the respective railways of the contracting parties, and the fixing, collecting, apportionment and appropriation of the revenues arising from that traffic ;
- (e) generally, the giving effect to any such provisions or stipulations with respect to any of the purposes mentioned in clause (a) as the contracting parties may think fit and mutually agree on :

Provided that the agreement shall not affect any of the rates which the railway administrations parties thereto are from time to time respectively authorised to demand and receive from any person, and that every such person shall, notwithstanding the agreement, be entitled to the use and benefit of the railways of any railway administrations, parties to the agreement, on the same terms and conditions, and on payment of the same rates, as he would be if the agreement had not been entered into.

52. Any railway company, not being a guaranteed company within the meaning of the Statute 42 and 43 Victoria, Chapter 41, may from time to time exercise with the sanction of the Governor General in Council all or any of the following powers, namely :—

- (a) it may establish, for the accommodation of the traffic of its railway, any ferry properly equipped with ships and boats or a bridge-of-boats and fixed and moveable machinery and plant of good quality and adequate in quantity to work the ferry ;
- (b) it may work any ferry established by it under this section for purposes other than the accommodation of the traffic of the railway ;

[42 & 43 Vict.,
c. 41, s. 2:
8 Vict., c. 20,
s. 87:
8 & 9 Vict., c.
96:
26 & 27 Vict.,
c. 92, s. 22:
and Directions
of the Railway
Commrs.
relating to
working
agreements
between
Companies.]

Establishment of ferries
and roadways for accom-
modation of traffic.

*The Indian Railways Bill.**(Chapter VI.—Working of Railways.—Sections 53-59.)*

- (c) it may provide and maintain on any of its bridges, roadways for foot-passengers, cattle, carriages, carts or other traffic;
- (d) it may construct and maintain roads for the accommodation of traffic passing to or from its railway;
- (e) it may provide and maintain any means of transport which may be required for the reasonable convenience of passengers, animals or goods carried or to be carried on its railway;
- (f) it may charge tolls on the traffic using such ferries, roadways, roads or means of transport as it may provide under this section, according to tariffs to be arranged from time to time with the sanction of the Governor General in Council.

[3 & 4 Vict., c. 97, s. 3;
31 & 32 Vict., c. 119, ss. 3 & 4; and
34 & 35 Vict., c. 78, ss. 9 & 10.]

53. Every railway administration shall in forms to be prescribed by the Governor General in Council, prepare and print, half-yearly or at such longer intervals as the Governor General in Council may prescribe, such returns of its capital and revenue transactions and of its traffic as the Governor General in Council may require, and shall forward a copy of such returns to the Governor General in Council at such times as he may direct.

Carriage of Property.

[5 & 6 Vict., c. 55, s. 16.]

54. (1) Every railway administration shall determine the maximum load for every wagon or truck in its possession, and shall exhibit the words or figures representing the load so determined in a conspicuous manner on the outside of every such wagon or truck.

(2) Every person owning a wagon or truck which passes over a railway shall similarly determine and exhibit the maximum load for the wagon or truck.

(3) The gross weight of any such wagon or truck bearing on the axles when the wagon or truck is loaded to such maximum load shall not exceed such limit as may be fixed by the Governor General in Council for the class of axle under the wagon or truck.

[New.]

55. (1) A railway administration may impose conditions, not inconsistent with this Act or with any general rule thereunder, with respect to the receiving, forwarding or delivering of any animals or goods.

(2) The railway administration shall keep at each station on its railway a copy of the conditions for the time being in force under sub-section (1) at the station, and shall allow any person to inspect it free of charge at all reasonable times.

[Act IV, 1879, s. 14; 8 Vict., c. 20, s. 97; and Procs., P. W.D., Jan. 1868, Nos. 60 to 64, Despatch, para. 13.]

56. (1) If a person fails to pay on demand any rate, terminal or other charge due from him to a railway administration in respect of any animals or goods, the railway administration may detain the whole or any of the animals or goods, or, if they have

been removed from the railway, any other animals or goods of such person then being in or thereafter coming into its possession.

(2) When any animals or goods have been detained under sub-section (1), the railway administration may sell by public auction, in the case of perishable goods at once, and in the case of other goods or of animals on the expiration of at least fifteen days' notice of the intended auction, published in one or more of the local newspapers or, where there are no such newspapers, in such manner as the Governor General in Council may prescribe, sufficient of such animals or goods to produce a sum equal to the charge and all expenses of such detention, notice and sale, including, in the case of animals, the expenses of the feeding, watering and tending thereof.

(3) Out of the proceeds of the sale the railway administration may retain a sum equal to the charge and the expenses aforesaid, rendering the surplus, if any, of the proceeds and such of the animals or goods (if any) as remain unsold, to the person entitled thereto.

(4) If a person on whom a demand for any rate, terminal or other charge has been made fails to remove from the railway within a reasonable time any animals or goods which have been detained under sub-section (1), or any animals or goods which have remained unsold after a sale under sub-section (2), the railway administration may sell the whole of them and dispose of the proceeds of the sale as nearly as may be under the provisions of the last foregoing sub-section.

(5) Notwithstanding anything in the foregoing sub-sections, the railway administration may recover by suit any such rate, terminal or other charge as aforesaid or balance thereof.

57. When any animals or goods have come into the possession of a railway administration for carriage or otherwise and are not claimed within a reasonable time by the owner or other person appearing to the railway administration to be entitled thereto, the railway administration may sell them as nearly as may be under the provisions of the last foregoing section, rendering the surplus, if any, of the proceeds of the sale to any person entitled thereto.

Disposal of unclaimed things on a railway.

58. If the railway administration has any doubt as to the person entitled to any animals, goods or sale-proceeds under either of the two last foregoing sections, it may withhold delivery thereof until the person claiming them has established his title thereto in a Civil Court.

59. Where any animals or goods in the possession of a railway administration are claimed by two or more persons, or the ticket or receipt given therefor is not

Power for railway administrations to require indemnity on delivery of goods in certain cases.

[Secretary of State's Despatch, Railway, No. 4, dated the 5th January 1888.]

*The Indian Railways Bill.**(Chapter VI.—Working of Railways.—Sections 60-63.)*

forthcoming, the railway administration may withhold delivery of the animals or goods until the person entitled in its opinion to receive them has given an indemnity, to the satisfaction of the railway administration, against the claims of any other person with respect to the animals or goods.

[Act IV, 1879, s. 15.]

60. (1) The owner or person having charge of any goods which have been carried upon a railway, or are brought upon a railway for the purpose of being carried thereon, shall, on the request of any railway servant appointed in this behalf by the railway administration, deliver to him an exact account in writing signed by such owner or person of the quantity and description of the goods.

(2) If an account delivered under sub-section (1) is materially false with respect to the quantity or description of any goods to which it purports to relate, the railway administration may charge in respect of the carriage of the goods a rate not exceeding double the highest rate which may be in force at the time on the railway for any class of goods.

[18 Vict., c. 20, s. 101.]

(3) If any difference arises between a railway servant and an owner of or a person having the charge of any goods carried or to be carried on a railway, respecting the quantity or description of goods of which an account has been required or delivered under this section, the railway servant may detain and examine the goods.

(4) If an account has not been delivered under sub-section (1) on request made therefor under that sub-section, the person to whom the request was addressed or, if that person is not the owner of the goods, then that person and the owner jointly and severally shall be liable to pay to the railway administration the cost of the detention and examination of the goods, and the railway administration shall be exonerated from all responsibility for any loss which may have been caused by the detention or examination.

(5) If it appears from the examination that the quantity of the goods is larger than, or their description different from, that stated in an account delivered under sub-section (1), the person who delivered the account or, if that person is not the owner of the goods, then that person and the owner jointly and severally shall be liable to pay to the railway administration the cost of the detention and examination of the goods, and the railway administration shall be exonerated from all responsibility for any such loss as aforesaid.

(6) If it appears that the quantity of the goods is not larger than, or their description not different from, that stated in an account delivered under sub-section (1), the railway administration shall pay the cost of the detention and examination and be responsible to the owner of the goods for any loss which may have been caused by the detention or examination thereof.

61. (1) No person shall be entitled to take with him, or to require a railway administration to carry, any dangerous or offensive goods upon a railway.

(2) No person shall take any such goods with him upon a railway without giving the notice of their nature to the station-master or other railway servant in charge of the place where he brings the goods upon the railway, or shall tender or deliver any such goods for carriage upon a railway without distinctly marking their nature on the outside of the package containing them or otherwise giving notice in writing of their nature to the railway servant to whom he tenders or delivers them.

(3) Any railway servant may refuse to receive such goods for carriage and, when such goods have been so received without such notice as is mentioned in the last foregoing sub-section having to his knowledge been given, may refuse to carry them or may stop their transit.

(4) If any railway servant has reason to believe any such goods to be contained in a package with respect to the contents whereof such notice as is mentioned in sub-section (2) has not to his knowledge been given, he may cause the package to be opened for the purpose of ascertaining its contents.

(5) Nothing in this section shall be construed to derogate from the Indian Explosives Act, 1884, or any rule under that Act, and nothing in sub-sections (1), (3) and (4) shall be construed to apply to any goods tendered or delivered for carriage by order or on behalf of the Government or to any goods which an officer, soldier, sailor or police-officer or a person enrolled as a volunteer under the Indian Volunteers Act, 1869, XX of 1869, may take with him upon a railway in the course of his employment or duty as such.

Carriage of Passengers.

62. The Governor General in Council may require any railway administration to provide and maintain in proper order, in any train worked by it which carries passengers, such efficient means of communication between the passengers and the railway servants in charge of the train as the Governor General in Council has approved.

63. Every railway administration shall fix, subject to the approval of the Governor General in Council, the maximum number of passengers which may be carried in each compartment of every description of carriage, and shall exhibit the number so fixed in a conspicuous manner inside or outside each compartment, in English or in one or more of the vernacular languages in common use in the territory traversed by the railway, or both in English and in one or more of such vernacular languages, as the Governor General in Council, after consultation with the railway administration, may determine.

*The Indian Railways Bill.**(Chapter VI.—Working of Railways.—Sections 64-71. Chapter VII.—Responsibility of Railway Administrations as Carriers.—Sections 72-73.)*

[New.]

64. Every railway administration shall in every passenger-train reserve at least one compartment of the lowest class for the exclusive use of females.

[Act IV, 1879, s. 9, as amended at Railway Conference, 1888.]

65. Every railway administration shall cause to be posted in a conspicuous place at every station on its railway, in English and in a vernacular language in common use in the territory where the station is situate, a copy of the time-tables for the time being in force on the railway, and lists of the fares chargeable for travelling from the station where the lists are posted to every place for which card-tickets are ordinarily issued to passengers at that station.

[Act IV, 1879, s. 17.]

66. (1) Every person desirous of travelling on a railway shall, upon payment of his fare, be supplied with a ticket, specifying the class of carriage for which, and the place from and the place to which, the fare has been paid, and the amount of the fare.

(2) The matters required by sub-section (1) to be specified on a ticket shall be set forth—

- (a) if the class of carriage to be specified thereon is the lowest class, then in a vernacular language in common use in the territory traversed by the railway, and
- (b) if the class of carriage to be so specified is any other than the lowest class, then in English.

[Act IV, 1879, s. 18.]

67. (1) Fares shall be deemed to be accepted, and tickets to be issued, subject to the condition of there being room available in the train for which the tickets are issued.

[New.]

(2) A person to whom a ticket has been issued and for whom there is not room available in the train for which the ticket was issued shall on returning the ticket within an hour after the departure of the train be entitled to have his fare at once refunded.

[Act IV, 1879, s. 19.]

68. No person shall enter any carriage on a railway for the purpose of travelling therein as a passenger unless he has with him either a pass or a ticket.

[Act IV, 1879, s. 17.]

69. Every passenger by railway shall, on the requisition of any railway servant appointed by the railway administration in this behalf, present his pass or ticket to the railway servant for examination, and at the end of the journey for which the pass or ticket was issued or, in the case of a season pass or ticket,

at the expiration of the period for which it is current deliver up the pass or ticket to the railway servant.

70. A return ticket shall not be transferable and may be used only by the person for whose journey to and from the places specified thereon it was issued.

[English By-law No. 5: & U.O. Reg. No. 852 of 1876.]

71. (1) A railway administration may refuse to carry a person suffering from any infectious disorder.

[Act IV, 1879, s. 20: and English By-law No. 16.]

(2) A person suffering from such a disorder shall not enter or travel upon a railway without the special permission of the station-master or other railway servant in charge of the place where he enters upon the railway.

(3) A railway servant giving such permission as is mentioned in the last foregoing sub-section must arrange for the segregation of the person suffering from the disorder from other persons being or travelling upon the railway.

[New.]

CHAPTER VII.

RESPONSIBILITY OF RAILWAY ADMINISTRATIONS AS CARRIERS.

72. (1) The responsibility of a railway administration for the loss, destruction or deterioration of animals or goods delivered to the administration to be carried by railway shall, subject to the other provisions of this Act, be that of a bailee under Chapter IX of the Indian Contract Act, 1872.

[Act IV, 1879, s. 10: L. R. 3 Bom. 109 and 10 Cal. 166: and U.O. Reg. No. 263 of 1879.]

(2) An agreement purporting to limit that responsibility shall, in so far as it purports to affect such limitation, be void unless it—

- (a) is in writing signed by or on behalf of the person sending or delivering the animals or goods, and
- (b) is otherwise in a form approved by the Governor General in Council.

(3) Nothing in the common law of England or in the Carriers Act, 1865, with respect to the carriage of animals or goods, shall apply to their carriage by railway.

[17 & 18 Vict., c. 31, s. 7: Procs. P.W.D. January, 1868, Nos. 60 to 64: Despatch, para. 11.]

73. (1) The responsibility of a railway administration under the last foregoing section for the loss, destruction or deterioration of animals delivered to the administration to be carried on a railway shall not in any case exceed, in the case of elephants or horses five hundred rupees a head or, in the case of camels or horned cattle, fifty rupees a head or, in the case of sheep, goats, dogs or other animals, ten rupees a head, unless the person sending or delivering them to the administration caused them to be declared, or declared

[17 & 18 Vict., c. 31, s. 7: Procs. P.W.D. January, 1868, Nos. 60 to 64: Despatch, para. 11.]

*The Indian Railways Bill.**(Chapter VII.—Responsibility of Railway Administrations as Carriers.—Sections 74-81.)*

them, at the time of their delivery for carriage by railway, to be respectively of higher value than five hundred, fifty or ten rupees a head, as the case may be.

(2) Where such higher value has been declared, the railway administration may charge, in respect of the increased risk, a percentage upon the excess of the value so declared over the respective sums aforesaid.

(3) In every proceeding against a railway administration for the recovery of compensation for the loss, destruction or deterioration of any animal the burden of proving the value of the animal and, where the animal has been injured, the extent of the injury shall lie upon the person claiming the compensation.

[Act IV, 1879, s. 12: L. R. 6 C. P. 44.]

74. A railway administration shall not be responsible for the loss, destruction or deterioration of any luggage belonging to or in charge of a passenger unless a railway servant has booked and given a receipt for the luggage and the passenger has left the luggage to be carried by the railway administration in a wagon or other place appropriated for the carriage of luggage or of luggage and other goods.

[Act IV, 1879, s. 11: 1 Wm. IV, c. 68, s. 1: L. R. Mad. 310, and 5 Mad. 208.]

75. (1) When any articles mentioned in the second schedule are contained in any parcel or package delivered to a railway administration, and the value of such articles in the parcel or package exceeds one hundred rupees, the railway administration shall not be responsible for the loss, destruction or deterioration of the parcel or package unless the person sending or delivering the parcel or package to the administration caused its value and contents to be declared or declared them at the time of the delivery of the parcel or package for carriage by railway, and a railway servant on behalf of the administration has accepted a percentage on the value so declared by way of compensation for increased risk, or an engagement to pay such percentage.

(2) When any parcel or package of which the value has been declared under sub-section (1) has been lost or destroyed or has deteriorated, the compensation recoverable in respect of such loss, destruction or deterioration shall not exceed the value so declared, and the burden of proving the value so declared to have been the true value shall lie on the person claiming the compensation.

[Act IV, 1879, s. 13.]

76. In any suit against a railway administration for compensation for loss, destruction or deterioration of animals or goods delivered to a railway servant for carriage by railway, it shall not be necessary for the plaintiff to prove how the loss, destruction or deterioration was caused.

77. A person shall not be entitled to a refund of an overcharge in respect of animals or goods carried by railway or to compensation for the loss, destruction or deterioration of animals or goods delivered to be so carried, unless his claim to the refund or compensation has been preferred in writing by him or on his behalf to the railway administration within six months from the date of the delivery of the animals or goods for carriage by railway.

[New: U. O. Register No. 3474 of 1882.]

78. Notwithstanding anything in the foregoing provisions of this Chapter, a railway administration shall not be responsible for the loss, destruction or deterioration of any goods with respect to the quantity or description of which an account materially false has been delivered under sub-section (1) of section 60 and in respect of the carriage of which a special rate has not been charged under sub-section (2) of that section.

[New: I. L. R. 3 Bom. 120.]

79. Where an officer, soldier or follower, while being or travelling as such on duty upon a railway belonging to the Government, loses his life or receives any personal injury in such circumstances that if he were not an officer, soldier or follower being or travelling as such on duty upon the railway, compensation would be payable under Act No. XIII of 1855 (*an Act to provide compensation to families for loss occasioned by the death of a person caused by actionable wrong*) or to him, as the case may be, the form and amount of the compensation to be made in respect of the loss of his life or his injury shall, where there is any provision in this behalf in the military regulations to which he was immediately before his death or is subject, be determined in accordance with those regulations, and not otherwise.

[Secy. of State's Despatch, Railway, No. 4, dated the 5th January 1889.]

80. A suit for compensation for loss of the life of, or personal injury to, a passenger, or for loss, destruction or deterioration of animals or goods, where the passenger was or the animals or goods were booked through over the railways of two or more railway administrations, shall lie against the railway administration from which the passenger purchased his ticket, or to which the animals or goods were delivered by the consignor thereof, as the case may be.

[Pros., P. W. D., July 1887, Nos. 1 to 141, No. 69: I. L. R. 5 Bom. 371.]

81. (1) When a railway administration contracts to carry passengers, animals or goods partly by railway and partly by sea, a condition exempting the railway administration from responsibility for any loss of life, personal injury or loss of or damage to animals or goods which may happen during the carriage by sea from the act of God,

[31 & 32 Vict., c. 119, s. 14: 34 & 35 Vict., c. 78, s. 12: Secy. of State's Despatch, Railway, No. 4, dated the 5th January, 1888.]

*The Indian Railways Bill.**(Chapter VIII.—Accidents.—Sections 82-85. Chapter IX.—Penalties and Offences.—Sections 86-87.)*

the King's enemies, fire, accidents from machinery, boilers and steam and all and every other dangers and accidents of the seas, rivers and navigation of whatever nature and kind soever shall, without being expressed, be deemed to be part of the contract, and, subject to that condition, the railway administration shall, irrespective of the nationality or ownership of the ship used for the carriage by sea, be responsible for any loss of life, personal injury or loss of or damage to animals or goods which may happen during the carriage by sea, to the extent to which it would be responsible under the Merchant Shipping Act, 1854, and the Merchant Shipping Act Amendment Act, 1862, if the ship were registered under the former of those Acts and the railway administration were owner of the ship, and not to any greater extent.

(2) The burden of proving that any such loss, injury or damage as is mentioned in sub-section (1) happened during the carriage by sea shall lie on the railway administration.

CHAPTER VIII.

ACCIDENTS.

[34 & 35 Vict., c. 78, s. 6; U. O. Reg. No. 1841 of 1879; L. R. 4 C. P. 602.] 82. When any of the following accidents occur in the course of working a railway, namely:—

- (a) any accident attended with loss of human life, or grievous hurt as defined in the Indian Penal Code, or serious injury to property;
- (b) any collision between trains of which one is a passenger-train;
- (c) the derailment of any train carrying passengers or of any part of such a train;
- (d) any accident of a description usually attended with loss of human life or such grievous hurt as aforesaid or serious injury to property;
- (e) any accident of any other description which the Governor General in Council may notify in this behalf in the Gazette of India;

the railway administration working the railway and, if the accident happens to a train belonging to any other railway administration, the other railway administration also shall, without unnecessary delay, send notice of the accident to the Local Government and to the Inspector appointed for the railway; and the station-master nearest to the place at which the accident occurred or, where there is no station-master, the railway servant in charge of the section of the railway on which the accident occurred shall, without unnecessary delay, give notice of the accident to the Magistrate of the district in which the accident occurred, and to the officer in charge of the police-station within the local limits of which it occurred, or to such other Magistrate and police-officer as the Governor General in Council appoints in this behalf.

[Pros., P. W. D., January 1868, Nos. 62 to 64, Despatch, para. 28.]

[Act 1888.]

83. The Governor General in Council may [New.] make rules, consistent with this Act and any other enactment for the time being in force, for any of the following purposes, namely:—

- (a) for prescribing the forms of the notices mentioned in the last foregoing section, and the particulars of the accident which those forms are to contain;
- (b) for prescribing the class of accidents of which notice is to be sent by telegraph immediately after the accident has occurred;
- (c) for prescribing the duties of railway servants, police-officers, Inspectors and Magistrates on the occurrence of an accident.

84. Every railway administration shall send [Act IV, 1879, s. 7.] to the Governor General in Council a return of accidents occurring upon its railway, whether attended with personal injury or not, in such form and manner and at such intervals of time as the Governor General in Council directs.

Submission of return of accidents.

85. Whenever any person injured by an accident on a railway [31 & 32 Vict., c. 119, s. 26.] claims compensation on account of the injury, any Court or person having by law or consent of parties authority to determine the claim may order that the person injured be examined by some duly qualified medical practitioner named in the order and not being a witness on either side, and may make such order with respect to the costs of the examination as it or he thinks fit.

Provision for compulsory medical examination of person injured in railway accident.

CHAPTER IX.

PENALTIES AND OFFENCES.

Forfeitures by Railway Companies.

86. If a railway company fails to comply with any requisition made [Act IV, 1879, s. 52.] under section 13, it shall forfeit to the Government the sum of two hundred rupees for the default and a further sum of fifty rupees for every day after the first during which the default continues. [Pros., P. W. D., January 1868, Nos. 60 to 64, E.I.R., 34-36.]

87. If a railway company moves any rolling-stock upon a railway by [Act IV, 1883, s. 4.] steam or other mechanical power in contravention of section 16, sub-section (2), or opens or uses any railway or work in contravention of section 18, section 19, section 20 or section 21, or re-opens any railway or uses any rolling-stock in contravention of section 24, it shall forfeit to the Government the sum of two

Penalty for contravention of section 16, 18, 19, 20, 21 or 24.

Penalty for default in compliance with requisition under section 13.

*The Indian Railways Bill.**(Chapter IX.—Penalties and Offences.—Sections 88-97.)*

hundred rupees for every day during which the motive power, railway, work or rolling-stock is used in contravention of any of those sections.

[Pros., P. W. D., January 1868, Nos. 60 to 64, Despatch, para. 21.] **88.** If a railway company fails to comply with the provisions of section 46, section 48, sub-section (6), section 55, sub-section (2), or section 65, with respect to the books or other documents to be kept open to inspection or conspicuously posted at stations on its railway, it shall forfeit to the Government the sum of fifty rupees for every day during which the default continues.

[Act IV, 1879, s. 23.] **89.** If a railway company fails to comply with the provisions of section 48 with respect to the making of general rules, it shall forfeit to the Government the sum of fifty rupees for every day during which the default continues.

[Act IV, 1879, s. 23.] **90.** If a railway company fails to comply with the provisions of section 53 or section 34 with respect to the submission of any return, it shall forfeit to the Government the sum of fifty rupees for every day during which the default continues after the fourteenth day from the date prescribed for the submission of the return.

[General Rule No. 14.] **91.** If a railway company contravenes the provisions of section 54 or section 63, with respect to the maximum load to be carried in any wagon or truck, or the maximum number of passengers to be carried in any compartment, or the exhibition of such load on the wagon or truck or of such number on the compartment, or knowingly suffers any person owning a wagon or truck passing over its railway to contravene the provisions of the former of those sections, it shall forfeit to the Government the sum of twenty rupees for every day during which either section is contravened.

[31 & 32 Vict., c. 119, s. 22.] **92.** If a railway company fails to comply with any requisition of the Governor General in Council under section 62 for the provision and maintenance in proper order, in any train worked by it which carries passengers, of such efficient means of communication as the Governor General in Council has approved, it shall forfeit to the Government the sum of twenty rupees for each train run in disregard of the requisition.

[Act IV, 1879, s. 23.] **93.** If a railway company omits to give such notice of an accident as is required by section 82 and the rules for the time being in force under section 83, it shall forfeit

to the Government the sum of one hundred rupees for every day during which the omission continues.

94. (1) When a railway company has through [New.] any act or omission forfeited any sum to the Government under the foregoing provisions of this Chapter, the sum shall be recoverable by suit in the District Court having jurisdiction in the place where the act or omission or any part thereof occurred.

(2) The suit must be instituted with the previous sanction of the Governor General in Council, and the plaintiff therein shall be the Secretary of State for India in Council.

(3) The Governor General in Council may remit the whole or any part of any sum forfeited by a railway company to the Government under the foregoing provisions of this Chapter.

95. Nothing in those provisions shall be [New.] construed to preclude the Government from resorting to any other mode of proceeding instead of, or in addition to, such a suit as is mentioned in the last foregoing section, for the purpose of compelling a railway company to discharge any obligation imposed upon it by this Act.

Offences by Railway Servants.

96. If a railway servant— [Act IV, 1879, s. 25: and 5 & 6 Vict., c. 55, s. 17.]

- (a) is in a state of intoxication whilst actually employed upon a railway in the discharge of any duty, or
- (b) negligently or wilfully omits to perform his duty,

he shall, on complaint made by the railway administration or by a railway servant appointed by the railway administration in this behalf, be punished with fine which may extend to fifty rupees.

97. If a railway servant, when on duty, endangers the safety of any person— [Act IV, 1879, s. 26: 3 & 4 Vict., c. 97, ss. 13 & 14: and 5 & 6 Vict., c. 55, s. 17.]

- (a) by disobeying any general rule made, sanctioned, published and notified under this Act, or
- (b) by disobeying any rule or order which is not inconsistent with any such general rule, and which such servant was bound by the terms of his employment to obey, and of which he had notice, or

(c) by any rash or negligent act or omission, he shall be punished with imprisonment for a term which may extend to two years, or with fine which may extend to five hundred rupees, or with both.

*The Indian Railways Bill.**(Chapter IX.—Penalties and Offences.—Sections 98-108.)*[Act IV,
1879, s. 28.]

98. If a railway servant compels or attempts to compel any passenger to enter a compartment already full, which already contains the maximum number of passengers exhibited thereon under section 63, he shall be punished with fine which may extend to twenty rupees.

[Act IV,
1879, s. 24.]

99. If a station-master or a railway servant in charge of a section of a railway omits to give such notice of an accident as is required by section 82 and the rules for the time being in force under section 83, he shall be punished with fine which may extend to fifty rupees.

[26 & 27 Vict.,
c. 92, s. 5.]

100. If a railway servant without lawful excuse allows any rolling-stock to stand across a place where the railway crosses a public road on the level, he shall be punished with fine which may extend to twenty rupees.

[34 & 35
Vict., c. 78, s.
10.]

101. If any return which is required by this Act is false in any particular to the knowledge of any person who signs it, that person shall be punished with fine which may extend to five hundred rupees, or with imprisonment which may extend to one year, or with both.

Other Offences.[Act IV, 1879,
s. 29 & 30, s. 92,
c. 20, s. 99.]

102. If a person requested under section 60 to give an account of the quantity and description of any goods neglects or refuses to give the account, or gives an account which is materially false, he and, if he is not the owner of the goods, the owner also shall be punished with fine which may extend to ten rupees for every maund or part of a maund (of three thousand two hundred tolas) of the goods, and the fine shall be in addition to any rate or other charge to which the goods may be liable.

[Act IV, 1879,
s. 30 & 31, s. 152,
I. L. R. 1 All.
60.]

103. If a person in contravention of section 61 takes with him any dangerous or offensive goods upon a railway, or tenders or delivers any such goods for carriage upon a railway, he shall be punished with fine which may extend to five hundred rupees, and shall also be responsible for any loss, injury or damage which may be caused by reason of such goods having been so brought upon the railway.

[31 & 32 Vict.,
c. 119, s. 22:
and Act IV,
1879, s. 40.]

104. If a passenger, without reasonable and sufficient cause, makes use of or interferes with any means provided by a railway administration for communication between passengers and the railway servants in charge of a train, he shall be punished with fine which may extend to fifty rupees.

105. (1) If a passenger, having entered a compartment already containing the maximum number of passengers exhibited thereon under section 63, refuses to leave it when required to do so by any railway servant, he shall be punished with fine which may extend to ten rupees.

Entering compartment already full or resisting entry into a compartment not full.

(2) If any person resists the lawful entry of any other person into a compartment not already containing the maximum number of passengers exhibited thereon under section 63, he shall be punished with fine which may extend to fifty rupees.

106. (1) If a person, without the consent of his fellow-passengers, if any, in the same compartment smokes in any compartment except a compartment specially provided for the purpose, he shall be punished with fine which may extend to twenty rupees.

Smoking.

(2) If any person persists in so smoking after being warned by any railway servant to desist, he may, in addition to incurring the liability mentioned in sub-section (1), be removed by any railway servant from the carriage in which he is travelling and from the railway.

(3) Where a person is removed from the railway under the last foregoing sub-section, he shall forfeit any fare which he has paid and any pass or ticket which he has obtained or purchased.

107. If a person, without authority in this behalf, pulls down or defaces public notices, injures any board or document set up or posted on a railway by order of a railway administration, or obliterates any of the letters or figures upon any such board or document, he shall be punished with fine which may extend to fifty rupees.

Defacing public notices.

108. (1) If a passenger travels in a train without having a pass or ticket with him, or being in or having alighted from a train, fails or refuses to present for examination or to deliver up his pass or ticket immediately on requisition being made therefor under section 69, he shall be liable to pay, on the demand of any railway servant appointed by the railway administration in this behalf, the penalty hereinafter in this section mentioned, in addition to the ordinary single fare for the distance which he has travelled or, where there is any doubt as to the station from which he started, the ordinary single fare from the station from which the train originally started, or, if the tickets of passengers travelling in the train have been examined since the original starting of the train, the ordinary single fare from the place where the tickets were examined or, in case of their having been examined more than once, were last examined.

Travelling without pass or ticket or with insufficient pass or ticket or beyond authorised distance.

[Act IV, 1879, ss. 31 & 32: I. L. R. 1 Bom. 52 & 12 Cal. 192: and French and German Railway Law.]

*The Indian Railways Bill.**(Chapter IX.—Penalties and Offences.—Sections 109-116.)*

(2) If a passenger travels or attempts to travel in or on a carriage, or by a train, of a higher class than that for which he has obtained a pass or purchased a ticket, or travels in or on a carriage beyond the place authorised by his pass or ticket, he shall be liable to pay, on the demand of any railway servant appointed by the railway administration in this behalf, the penalty hereinafter in this section mentioned, in addition to any difference between any fare paid by him and the fare payable in respect of such journey as he has made.

(3) The penalty referred to in sub-section (1) and sub-section (2) shall,—

(a) where the passenger has immediately after incurring the penalty and before being detected by a railway servant notified to the railway servant in charge of the train the fact of the penalty having been incurred, be one rupee, two annas or eight annas, and

(b) in any other case, be six rupees, one rupee or three rupees,

according as the passenger is travelling or has travelled or has attempted to travel in a carriage of the highest class or in a carriage of the lowest class or in a carriage of any other class or kind.

(4) If a passenger liable to pay the penalty and fare mentioned in sub-section (1), or the penalty and any difference of fare mentioned in sub-section (2), fails or refuses to pay the same on demand being made therefor under one or other of those sub-sections, as the case may be, he may, if in the train, be removed therefrom, and the sum payable by him shall, on application made to any Magistrate by any railway servant appointed by the railway administration in this behalf, be recovered by the Magistrate from the passenger as if it were a fine imposed on the passenger by the Magistrate and shall, as it is recovered, be paid to the railway administration.

[English Bye-law No. 2: Act IV, 1879, s. 32.]

109. If a person uses or attempts to use a pass or ticket on any day for which the pass or ticket is not available, or uses or attempts to use a single pass or ticket which has already been used on a previous journey or, in the case of a return ticket, a half thereof which has already been so used, he shall be punished with fine which may extend to one hundred rupees, in addition to the amount of the single fare for any distance which he has travelled.

[English Bye-law No. 5: Act IV, 1879, s. 32.]

110. If a person sells or attempts to sell, or transfers return half of return ticket, parts or attempts to part with the possession of, the return half of a return ticket in order to enable any other person to travel therewith, or purchases such half of a return ticket or travels or attempts to travel therewith, he shall be punished with fine which may extend to fifty rupees, in addition to the amount of the single fare for the return journey authorised by the ticket.

111. That portion of any fine imposed under either of the two last foregoing sections which represents the single fare therein mentioned shall, as the fine is recovered, be paid to the railway administration before any portion of the fine is credited to the Government.

112. If a passenger wilfully alters or defaces his pass or ticket so as to render the date, number or any material portion thereof illegible, he shall be punished with fine which may extend to fifty rupees.

113. If a person suffering from an infectious disorder enters or travels on a railway in contravention of section 71, sub-section (2), he, and any person having charge of him upon the railway when he so entered or travelled thereon, shall be punished with fine which may extend to twenty rupees, in addition to the forfeiture of any fare which either of them may have paid, and of any pass or ticket which either of them may have obtained or purchased, and may be removed from the railway by any railway servant.

114. (1) If a passenger enters or leaves, or attempts to enter or leave, any carriage while the train is in motion, or elsewhere than at the side of the carriage adjoining the platform or other place appointed by the railway administration for passengers to enter or leave the carriage, or opens the door of any carriage while the train is in motion, he shall be punished with fine which may extend to twenty rupees.

(2) If a passenger, after being warned by a railway servant to desist, persists in travelling on the roof, steps or footboard of any carriage or on an engine, or in any other part of a train not intended for the use of passengers, he shall be punished with fine which may extend to fifty rupees, and may be removed from the railway by any railway servant.

115. If a male person, knowing a carriage, compartment, room or other place to be reserved by a railway administration for the exclusive use of females, enters the place without lawful excuse, or, having entered it, remains therein after having been desired by any railway servant to leave it, he shall be punished with fine which may extend to one hundred rupees, in addition to the forfeiture of any fare which he may have paid and of any pass or ticket which he may have obtained or purchased, and may be removed by any railway servant from the place and from the railway.

116. If a person in any railway carriage or upon any part of a railway—

Drunkenness or nuisance on a railway.

[Act IV, 1879, s. 32.]

[English Bye-law No. 4: Act IV, 1879, s. 32.]

[English Bye-law No. 16.]

[English Bye-law No. 11: Act IV, 1879, s. 33.]

[Suggested at Railway Conference, 1886.]

[Act IV, 1879, s. 37.]

[Act IV, 1879, s. 36.]

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- (a) is in a state of intoxication, or
 (b) commits any nuisance or act of indecency, or uses obscene or abusive language, or
 (c) wilfully and without lawful excuse interferes with the comfort of any passenger or extinguishes any lamp,

he shall be punished with fine which may extend to fifty rupees, in addition to the forfeiture of any fare which he may have paid and of any pass or ticket which he may have obtained or purchased, and may be removed by any railway servant from the railway.

[Act IV, 1879, s. 38: & 3 & 4 Vict., c. 97, s. 16.] **117.** If a person wilfully obstructs or impedes any railway servant in the discharge of his duty, he shall be punished with fine which may extend to one hundred rupees.

[Act IV, 1879, s. 41: & 3 & 4 Vict., c. 97, s. 16: U. O. desist from trespass. Reg. No. 899 of 1883: and of 1883: P. W. D., January, 1868, Nos. 60 to 64, Despatch, para. 16.] **118.** (1) If a person wilfully trespasses upon a railway, he shall be punished with fine which may extend to twenty rupees.

(2) If a person so trespassing refuses to leave the railway on being requested to do so by any railway servant, or by any other person on behalf of the railway administration, he shall be punished with fine which may extend to fifty rupees, and may be removed from the railway by such servant or other person.

[Act IV, 1879, s. 47.] **119.** If a driver or conductor of a tramcar, omnibus, carriage or other vehicle while upon the premises of a railway disobeys the reasonable directions of any railway servant or police-officer, he shall be punished with fine which may extend to twenty rupees.

[Act IV, 1879, s. 43: and S. Vict., c. 20, s. 75.] **120.** In either of the following cases, namely:—

- (a) if a person, knowing or having reason to believe that an engine or train is approaching along a railway, opens any gate set up on either side of the railway across a road, or passes or attempts to pass, or drives or takes, or attempts to drive or take, any vehicle, animal or other thing across the railway,

- (b) if, in the absence of a gatekeeper, a person omits to shut and fasten such a gate as aforesaid as soon as he and any vehicle, animal or other thing under his charge have passed through the gate,

the person shall be punished with fine which may extend to fifty rupees.

[Act IV, 1879, s. 42.] **121.** (1) The owner or person in charge of any cattle straying on a railway provided with fences suitable for the exclusion of cattle shall be punished with fine which may extend to five rupees for each head of cattle, in addition to any amount which may have been recovered or may be recoverable under the Cattle-trespass Act, 1871.

(2) If any cattle are wilfully driven, or knowingly permitted to be, on a railway provided with fences suitable for the exclusion of cattle, or are wilfully driven, or knowingly permitted to be, on a railway not so provided otherwise than for the purpose of lawfully crossing the railway at an authorised crossing or for any other lawful purpose, the person in charge of the cattle or, at the option of the railway administration, the owner of the cattle shall be punished with fine which may extend to ten rupees for each head of cattle, in addition to any amount which may have been recovered or may be recoverable under the Cattle-trespass Act, 1871.

(3) Any fine imposed under this section may, if the Court so directs, be recovered in manner provided by section 25 of the Cattle-trespass Act, 1871.

(4) The expression "public road" in sections 11 and 26 of the Cattle-trespass Act, 1871, shall be deemed to include a railway, and any railway servant may exercise the powers conferred on officers of police by the former of those sections.

(5) If the Governor General in Council has, by notification in the *Gazette of India*, declared, with respect to any railway, that it is provided with fences suitable for the exclusion of cattle, a Court shall, so long as the declaration remains uncancelled, presume the suitability for that purpose of the fences referred to in the declaration.

Maliciously wrecking or attempting to wreck a railway. **122.** If a person unlawfully and maliciously—

- (a) puts or throws upon or across any railway any wood, stone or other matter or thing, or
 (b) takes up, removes or displaces any rail, sleeper or other matter or thing belonging to any railway, or
 (c) turns, moves or diverts any points or other machinery belonging to any railway, or
 (d) makes or shows, or hides or removes, any signal or light upon or near to any railway, or
 (e) does or causes to be done any other matter or thing in relation to any railway,

with intent, or with knowledge that he is likely, to endanger the safety of any person travelling or being upon the railway, he shall be punished with transportation for life or for any term not less than seven years, or with imprisonment for a term which may extend to two years.

123. If a person unlawfully and maliciously throws or causes to fall or strike at, against, into or upon any rolling-stock forming part of a train any wood, stone or other matter or thing with intent, or with knowledge that he is likely, to endanger the safety of any person being in or upon such rolling-stock or in or upon any other

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rolling-stock forming part of the same train, he shall be punished with transportation for life or for any term not less than seven years, or with imprisonment for a term which may extend to two years.

[24 & 25 Vict.,
c. 100, s. 34;
and
24 & 25 Vict.,
c. 97, s. 36.]

124. If a person, by any unlawful act or by any wilful omission or neglect, endangers or causes to be endangered the safety of any person travelling or being upon any railway, or obstructs or causes to be obstructed any rolling-stock upon any railway, he shall be punished with imprisonment for a term which may extend to two years.

125. If a person rashly or negligently does any act, or omits to do what he is legally bound to do, and the act or omission is likely to endanger the safety of any person travelling or being upon a railway, he shall be punished with imprisonment for a term which may extend to one year, or with fine, or with both.

[Act IV, 1879,
s. 46.]

126. (1) If a minor under the age of twelve years is with respect to any railway guilty of any of the acts or omissions mentioned or referred to in any of the four last foregoing sections, he shall be deemed to have committed an offence, and the Court convicting him may, if it thinks fit, in addition to any punishment to which it may sentence the minor, require his father or guardian, within such time as the Court may fix, to execute a bond binding himself, in such penalty as the Court directs, to prevent the minor from being again guilty of any of those acts or omissions.

[Act IV, 1879,
s. 44.]

(2) The amount of the bond, if forfeited, shall be recoverable by the Court as if it were a fine imposed by itself.

(3) If a father or guardian fails to execute a bond under sub-section (1) within the time fixed by the Court, he shall be punished with fine.

Procedure.

[Act IV, 1879,
s. 49; U. O.
Register No.
2382 of 1880;
and Prov., P.
W. D., Jan.,
1868, Nos. 60
to 64, E. I. R.
19, 20 & 25.]

127. (1) If a person contravenes a general rule the breach whereof has been made punishable with fine under section 43, sub-section (2), or commits any offence mentioned in section 96, 97, 115, 116, 117, 122, 123, 124, 125 or 126, he may be arrested without warrant or other written authority by any railway servant or police-officer, or by any other person whom such servant or officer may call to his aid.

(2) A person so arrested shall, without unnecessary delay, be taken before a Magistrate having authority to try him or commit him for trial.

128. (1) If a person commits any offence under this Act other than an offence mentioned in the last foregoing section, or incurs any penalty or other liability under section 108, and there is reason to believe that he will abscond, or his name and address are unknown and he refuses on demand to give his name and address, or there is reason to believe that the name or address given by him is incorrect, any railway servant or police-officer, or any other person whom such railway servant or police-officer may call to his aid, may, without warrant or other written authority, arrest him and take him with all convenient despatch to the nearest police-station.

(2) When the person is taken to the police-station he shall with the least possible delay be taken before the nearest Magistrate having jurisdiction, unless his true name and address are ascertained, in which case he shall be released on his executing a bond for his appearance before a Magistrate when required.

129. No Magistrate other than a Presidency Magistrate or than a Magistrate whose powers are not less than those of a Magistrate of the second class shall try any offence under this Act.

130. (1) Any person committing any offence against this Act or any rule thereunder shall be triable for such offence in any place in which he may be found or which the Local Government may notify in this behalf, as well as in any other place in which he might be tried under any law for the time being in force.

(2) Every notification under sub-section (1) shall be published in the local official Gazette, and a copy thereof shall be exhibited for the information of the public in some conspicuous place at each of such railway stations as the Local Government may direct.

CHAPTER X.

SUPPLEMENTAL PROVISIONS.

131. Notwithstanding anything to the contrary in any enactment, or in any agreement or award based on any enactment, the following rules shall regulate the levy of taxes in respect of railways and from railway administrations in aid of the funds of local authorities, namely:—

(1) A railway administration shall not be liable to pay any tax in aid of the funds of any local authority unless the Governor General in Council has, by an order in writing, declared the railway administration to be liable to pay the tax.

(2) While an order made by the Governor General in Council under clause (1) of this section is in force, the railway administration shall be

[Act IV, 1879,
s. 48; and 8
Vict., c. 16,
s. 133.]

[36 W. R.
367.]

[Act IV, 1879,
s. 50.]

[Act IV, 1879,
s. 50.]

[C. R. No.
3525 of 1884:
U. O. Regr.
Nos. 587 of
1883 and 191
of 1884: 9
Bom. H.C.R.
217, and Red-
field, Part XI.]

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liable to pay to the local authority either the tax mentioned in the order or, in lieu thereof, such sum, if any, as an officer appointed in this behalf by the Governor General in Council may, having regard to all the circumstances of the case, from time to time determine to be fair and reasonable.

(3) The Governor General in Council may at any time revoke or vary an order under clause (1) of this section.

(4) Nothing in this section is to be construed as debarring any railway administration from entering into a contract with any local authority for the supply of water or light, or for the scavenging of railway premises, or for any other service which the local authority may be rendering or be prepared to render within any part of the local area under its control.

(5) "Local authority" in this section means a local authority as defined in the General Clauses Act, 1857, and includes any authority legally entitled to or entrusted with the control or management of any fund for the maintenance of watchmen or for the conservancy of a river.

132. (1) None of the rolling-stock, machinery, plant, tools, fittings, materials or effects used or provided by a railway administration for the purpose of the traffic on its railway, or of its stations or workshops, shall be liable to be taken in execution of any decree or order of any Court without the previous sanction of the Governor General in Council.

(2) Nothing in sub-section (1) is to be construed as affecting the authority of any Court to attach the earnings of a railway in execution of a decree or order.

133. (1) Every railway servant shall be deemed to be a public servant for the purposes of Chapter IX of the Indian Penal Code.

(2) In the definition of "legal remuneration" in section 161 of that Code the word "Government" shall, for the purposes of sub-section (1), be deemed to include any employer of a railway servant as such.

(3) A railway servant shall not—
(a) purchase or bid for, either in person or by agent, in his own name or in that of another, or jointly or in shares with others, any property put up to auction under section 56 or section 57, or,
(b) in contravention of any direction of the railway administration in this behalf, engage in trade.

(4) Notwithstanding anything in section 21 of the Indian Penal Code, a railway servant shall not be deemed to be a public servant for any of the purposes of that Code except those mentioned in sub-section (1).

134. If a railway servant is discharged or suspended from his office, or dies, absconds or absents himself, and he or his wife or widow, or any of his family or representatives, refuses or neglects, after notice in writing for that purpose, to deliver up to the railway administration, or to a person appointed by the railway administration in this behalf, any station, dwelling-house, office or other building, with its appurtenances, or any books, papers or other matters, belonging to the railway administration and in the possession or custody of such railway servant at the occurrence of any such event as aforesaid, any Magistrate may, on application made by or on behalf of the railway administration, order any police-officer, with proper assistance, to enter upon the building and remove any person found therein and take possession thereof, or to take possession of the books, papers or other matters, and to deliver the same to the railway administration or a person appointed by the railway administration in that behalf.

Procedure for summary delivery to railway administration of property detained by a railway servant.

135. Any notice, determination, direction, requisition, appointment, expression of opinion, approval or sanction to be given or signified on the part of the Governor General in Council, for any of the purposes of, or in relation to, this Act, or any of the powers or provisions, therein contained, shall be sufficient and binding if in writing signed by a Secretary, Deputy Secretary, Under Secretary or Assistant Secretary to the Government of India, or by any other officer or servant authorised to act on behalf of the Governor General in Council in respect of the matters to which the same may relate, and the Governor General in Council shall not in any case be bound in respect of any of the matters aforesaid unless by some writing signed in manner aforesaid.

Mode of signifying communications from the Governor General in Council.

136. Any notice or other document required or authorised by this Act to be served on a railway administration may be served, in the case of a railway administered by the Government or a Native State, on the Manager and, in the case of a railway administered by a railway company, on the Agent in India of the railway company—

(a) by delivering the notice or other document to the Manager or Agent, or
(b) by leaving it at his office, or
(c) by forwarding it by post in a prepaid letter addressed to the Manager or Agent at his office and registered under Part III of the Indian Post Office Act, 1866.

137. Any notice or other document required or authorised by this Act to be served on any person by a railway administration may be served—

[Act XI, 1881, s. 5.]

[Act XX, 1856, Bom. Act I, 1863] of 1887.

[30 & 31 Vict., c. 127, s. 4.]

Restriction on execution against railway property.

[Act IV, 1879, s. 27; Pros. Foreign Dept., Ext., Nov., 1887, Nos. 145 to 158.]

XIV of 1860

[Act XLV, 1860, ss. 168 and 169.]

[8 Vict., c. 20, s. 106.]

[Railway and Canal Traffic Bill, 1887, s. 44; and 51 & 52 Vict., c. 25, s. 53.]

[Pros., P. W. D., Jan., 1868, Nos. 60 to 64, Despatch, para. 24.]

XIV of 1866.

[8 Vict., c. 16, s. 136; and 8 Vict., c. 20, s. 34.]

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The First Schedule.—Enactments repealed.)*

- (a) by delivering it to the person, or
 (b) by leaving it at the usual or last known place of abode of the person, or
 (c) by forwarding it by post in a prepaid letter addressed to the person at his usual or last known place of abode and registered under Part III of the Indian Post Office Act, 1866.

XIV of 1866.

[Act II, 1886, s. 46.] **138.** Where a notice or other document is served by post, it shall be deemed to have been served at the time when the letter containing it would be delivered in the ordinary course of post, and in proving such service it shall be sufficient to prove that the letter containing the notice or other document was properly addressed and registered.

Presumption where notice is served by post.

any of those sections or under section 48, sub-section (4), shall not take effect until it has been published in the *Gazette of India*.

[Act IV, 1879, s. 8; and ss. 22, 35, 48 and 83 of this Bill.] **139.** (1) A rule under section 22, section 35 or section 83, or the cancellation, rescission or variation of a rule under any of those sections or under section 48, sub-section (4), shall not take effect until it has been published in the *Gazette of India*.

Provisions with respect to rules.

(2) Where any rule made under this Act, or the cancellation, rescission or variation of any such rule, is required by this Act to be published in the *Gazette of India*, it shall, besides being so published, be further notified to persons affected thereby in such manner as the Governor General in Council, by general or special order, directs.

(3) The Governor General in Council may cancel or vary any rule made by him under this Act.

[New: Pros. P. W. D., January, 1868, Nos. 60 to 64, Despatch, para. 5; and Act IV, 1879, s. 54.] **140.** (1) The Governor General in Council may, by notification in the *Gazette of India*, invest any Local Government with any of the powers or functions of the Governor General in Council under this Act with respect to any railway, and may, by that or a like notification, declare what Local Government shall, for the purposes of the exercise of powers or functions so conferred, be deemed to be the Local Government in respect of the railway.

Delegation of powers of Governor General in Council.

(2) The provisions of section 135 with respect to proceedings of the Governor General in Council shall, so far as they can be made applicable, apply to proceedings of a Local Government exercising the powers or discharging the functions of the Governor General in Council in pursuance of a notification under sub-section (1).

[New.]

141. (1) The Manager of a railway administered by the Government or a Native State, and the Agent in India of a railway administered by a railway company, may, by instrument in writing, authorise any railway servant or other person to act for or represent him in any proceeding before any Civil, Criminal or other Court,

Representation of Managers and Agents of Railways in Courts.

(2) A person authorised by a Manager or Agent to conduct prosecutions on behalf of a railway administration shall, as regards such prosecutions, be deemed to be a Public Prosecutor for the purpose of section 495 of the Code of Criminal Procedure, 1882.

X of 1882.

142. The Governor General in Council may, by notification in the *Gazette of India*, extend this Act or any portion thereof to any tramway worked by steam or other mechanical power.

Power to extend Act to steam-tramways.

143. The Governor General in Council may, by a like notification, exempt any railway from any of the provisions of this Act.

Power to exempt railways from Act.

144. (1) For the purposes of section 3 sub-sections (4) and (5), and sections 4 to 19 (both inclusive), 48, 53, 61, 79, 82 to 85 (both inclusive), 90, 93 to 97 (both inclusive), 99, 103, 107, 114, 118, 120 to 128 (both inclusive), 130 to 134 (both inclusive), 136, 137, 140, 141 and 143, the word "railway", whether it occurs alone or as a prefix to another word, has reference to a railway or portion of a railway under construction and to a railway or portion of a railway not used for the public carriage of passengers, animals or goods as well as to a railway falling within the definition of that word in section 3, sub-section (2).

(2) For the purposes of sections 82, 96, 97, 99, 117, 118, 121 and 133, sub-sections (1), (2) and (4), and section 134, the expression "railway servant" includes a person employed upon a railway in connection with the service thereof by a person fulfilling a contract with the railway administration.

145. In sections 194 and 195 of the Indian Penal Code, for the words "by this Code or the law of England" the words "by the law of British India or England" shall be substituted.

Amendment of sections 194 and 195 of the Indian Penal Code.

THE FIRST SCHEDULE.

ENACTMENTS REPEALED.

(See section 2.)

Number and year.	Title.	Extent of repeal.
<i>Acts of the Governor General in Council.</i>		
III of 1865.	Carriers Act, 1865...	Section 10.
IV of 1879.	Indian Railway Act, 1879.	The whole.
IV of 1883.	Indian Railway Act, 1883.	The whole.
XI of 1886.	Indian Tramways Act, 1886.	Section 49.

*The Indian Railways Bill.**(The First Schedule.—Enactments repealed. The Second Schedule.—Articles to be declared and insured.)*

Number and year.	Title.	Extent of repeal.
<i>Act of the Lieutenant-Governor of Bengal in Council.</i>		
II of 1882.	Bengal Embankment Act, 1882.	Section 16, and in section 17 the proviso to the first paragraph of that section and the words "or rail road" wherever they occur.

THE SECOND SCHEDULE.

ARTICLES TO BE DECLARED AND INSURED.

(See section 75.)

- (a) gold and silver, coined or uncoined, manufactured or unmanufactured;
- (b) plated articles;
- (c) cloths and tissue and lace of which gold or silver forms part, not being the uniform or part of the uniform of an officer, soldier, sailor, police-officer or person enrolled as

a volunteer under the Indian Volunteers XX of 1869. Act, 1869, or of any public officer, British or foreign, entitled to wear uniform;

- (d) precious stones, jewellery and trinkets;
- (e) watches, clocks and timepieces of any description;
- (f) Government securities;
- (g) Government stamps;
- (h) bills of exchange, hundis, promissory notes, bank-notes, and orders or other securities for payment of money;
- (i) maps, writings and title-deeds;
- (j) paintings, engravings, lithographs, photographs, carvings, sculpture and other works of art;
- (k) art pottery and all articles made of glass, china or marble;
- (l) silks in a manufactured or unmanufactured state, and whether wrought up or not wrought up with other materials;
- (m) shawls;
- (n) lace and furs;
- (o) opium;
- (p) ivory, ebony, coral and sandalwood;
- (q) musk, sandalwood-oil and other essential oils used in the preparation of *it*r or other perfume;
- (r) musical and scientific instruments.

[4 Bom. H. C. R. O. C. J. 129; I. L. R. 6 Mad. 420.]

[Addition of "coral" suggested at Railway Conference, 1888.]

STATEMENT OF OBJECTS AND REASONS.

The preparation of an Indian Railway Code consistent, so far as public interests permit, with the letter of the contracts subsisting between the Government and railway companies has been under consideration for many years, and the Indian Railways Bill has been drawn with special reference to the objections to which the drafts prepared in 1866 and in 1884 were considered both in India and in England to be open.

2. The references in the margin indicate generally the documents which have been considered in the preparation of the Bill. But some of those documents are not accessible to the public, and partly for this reason, and partly for the purpose of explaining the changes which it is proposed to introduce into the law relating to railways in India, the following portions of the Bill appear to call for special remark:—

- (1) *Section 2, sub-section (1).*—Among the enactments to be repealed are section 10 of the Carriers Act, 1865, which was superseded by the last paragraph of section 2 of the Indian Railway Act, 1879, and will be rendered unnecessary by section 72, sub-section (3), of the Bill. As regards section 16 of the Bengal Embankment Act, 1882, it is considered that the retention by the Collector of the power conferred upon him by that section will be undesirable if sections 11 and 12 of the Bill become law. Section 3, sub-section (1), and section 142 of the Bill take the place of section 54, Act IV of 1879, and section 49, Act XI of 1886.
- (2) *Section 3, clause (3), sub-clause (d).*—Sub-clause (d) of the definition of "railway" has been restricted to such vessels as are used on rivers and other inland waters within the local extent of the Act. It has been held that the corresponding clause in Act IV of 1879 must be read in this restricted sense, as, apart from the local extent of that Act, a wider construction of the clause might bring the Railways Act into collision with the Merchant Shipping Acts and the provisions of the general law relating to the carriage of passengers and goods by sea.

- (3) *Section 3, clauses (3) and (6).*—These clauses are supplemented by sub-section (1) of section 144, which applies certain portions of the proposed Act to railways under construction and to railways not used for the public carriage of passengers, animals or goods, and by sub-section (2) of the same section, which declares the expression "railway servant" in certain sections of the Act to include the servants of railway contractors.
- (4) *Section 3, clause (5).*—For the purposes of Chapter VII of the Bill, relating to the responsibility of railway administrations as carriers, it is proper to define the expression "railway administration", in the case of a railway administered by the Government or a Native State, to include the Government or State, as the case may be.
- (5) *Section 3, clause (13), and sections 44 et seqq.*—These provisions are in the terms of sections 55 and 24, respectively, of the Railway and Canal Traffic Act, 1888.
- (6) *Section 5, clause (c).*—In accordance with a suggestion made by one of the railway companies with reference to draft Bill of 1884, communications between railway companies and their legal advisers have been expressly excepted from the documents of which an Inspector of Railways may require the production.
- (7) *Section 7.*—This section follows generally the terms of an English enactment, but supercedes any local enactments which prohibit the construction of railways over gas-pipes and the like without the previous permission of municipal commissioners. The expense of diverting the course of railway for the purpose of avoiding a gas-pipe would usually be out of all proportion to any damage which might possibly be caused by the railway passing over the pipe.
- (8) *Section 8.*—This section confers on railway administrations a power which the telegraph authority has under the Indian Telegraph Act, 1885.
- (9) *Sections 11 and 12.*—The former of these sections imposes on the railway administration the duty, subject to certain exceptions, of constructing such accommodation works for the use of owners and occupiers of lands as are proved to be necessary within ten years from the date on which the railway passing through the lands was first opened for public traffic. Under the latter section an owner or occupier may require any reasonable accommodation work to be constructed by a railway administration at his expense after the expiration of the ten years.
- (10) *Section 13.*—This section provides for the erection of fences in pursuance of express requisitions by the Governor General in Council, instead of under rules which can hardly be so drawn as to be applicable to all cases. The section also empowers the Governor General in Council to require the construction of screens in places where there is danger of horses being frightened by the sight or noise of rolling stock moving on a railway.
- (11) *Section 14.*—This section reproduces the substance of section 7 of the Railways Clauses Act, 1863, and, following section 16 of the Railway and Canal Traffic Act, 1888, reserves to the Governor General in Council power to require as a condition of an order being made on a railway administration for the construction of works at a level-crossing that the local authority, if any, which maintains the road crossed on the level shall undertake to pay the whole or a fair share of the cost of the works.
- (12) *Section 15.*—In permitting a railway administration to act in a case of emergency without the permission of a Magistrate, and so going beyond the provisions of the corresponding section of the Indian Telegraph Act, 1885, this section confers a power which it is deemed essential that railway authorities should possess.
- (13) *Chapter IV.*—Section 16, sub-section (2), is designed to prevent the recurrence of the very serious accidents which have from time to time occurred from the unregulated use of locomotive power on railways under construction.

Provision has been made in sections 21 and 22 for the opening of a railway, without the sanction of the Governor General in Council or an Inspector, where there has been an accident resulting in a temporary suspension of traffic or where works are of so important a character that the application to them of the general law relating to the opening of railways is unnecessary.

- (14) *Chapter V.*—This Chapter is the most important part of the Bill, and in its preparation careful regard has been had to the Railway and Canal Traffic Act, 1888, and to the Annual Reports of the Railway Commissioners.

Closely following the law in England, the Chapter imposes on railway administrations the general duty of arranging to receive, forward and deliver traffic without unreasonable delay and without partiality or undue preference, and the special duty of so treating through traffic at through rates. If the Governor General in Council is satisfied that any person has just ground of complaint against a railway administration for breach of either duty, he may refer the case to a Railway Commission for decision. Such a Commission is to be appointed only when there are cases to be referred to it, and it will be deemed to be dissolved as soon as it has decided those cases. It is to consist of a Law Commissioner who is to be a Judge of the High Court having jurisdiction in reference to European British subjects under the Code of Criminal Procedure, 1882,

in the place where the Governor General in Council has ordered the Commission to sit, and of two Lay Commissioners, of whom one must be an expert in railway business and one may be a representative of the mercantile community or any other person whom the Governor General in Council sees fit to appoint. The Commission so constituted may in any case referred to it make any order, by way of injunction, which may in the circumstances appear to the Commissioners to be suitable. If two of the Commissioners concur upon a question of fact, their decision on that question is to be conclusive. From other decisions of the Commissioners an appeal will lie to a bench of not less than three Judges of the High Court of which the Law Commissioner was a member or, from a decision of a Railway Commission in Burma, to such a bench of the High Court of Judicature at Fort William in Bengal. Orders made by a Railway Commission are to be enforced by the High Court of which the Law Commissioner was a member as if they were orders made by the High Court in the exercise of its original civil jurisdiction.

Sections 46 and 47, following English law, require railway administrations to keep open to the inspection of the public a book showing the rates for the time being charged for the carriage of animals and goods, and to comply with requisitions for details of gross charges made by and paid to them for the carriage of goods.

Clauses (b) and (c) of section 28 provide for the reference to Railway Commissions of other differences than such as relate to traffic facilities.

- (15) *Sections 48.*—This section will remove any doubt as to the validity of any existing rules, and provides that, when rules have once been published in the *Gazette of India* they may be extended to a railway by a reference to that *Gazette* and an announcement of their adoption for the railway, without being again published at length in the *Gazette*.
- (16) *Section 49.*—This section provides for the settlement by the Governor General in Council of differences between railway administrations respecting the use of any common terminus or line of rails where the differences are such as to be likely to affect the safety of the public.
- (17) *Sections 50, 51 and 52.*—The effect of these sections will be to confer on railway companies domiciled in India the same privileges as are enjoyed by Indian railway companies domiciled in the United Kingdom.
- (18) *Section 55.*—Some such clause is considered necessary for the purpose of covering the conditions which all railway administrations in India do in fact impose and in their quarterly hand books of fares and rates published for the information of the public.
- (19) *Sections 57, 58 and 59.*—The first of these sections legalizes the existing practice with respect to the disposal of unclaimed property. The second and third of them have been suggested partly by existing practice, partly by the case of *Eagleton v. The East Indian Railway Company* (8 B. L. R. 581), and partly by the proposal to give railway receipts the same effect as bills of lading.

The proposal to give such an effect to railway receipts has not been adopted in the Bill, because railway administrations are understood to be averse to it and it is not justified by existing legislation elsewhere.

- (20) *Sections 60, 78, and 102.*—The very common practice of falsely and fraudulently classifying goods is held to justify these clauses.
- (21) *Section 64.*—This section requires every railway administration to reserve in every passenger-train at least one compartment of the lowest class for the exclusive use of females.
- (22) *Section 67.*—The provisions of section 18 of the Indian Railway Act, 1879, respecting the preferential rights of ticket-holders have been omitted as being unnecessary and in practice unworkable. The carriage of troops on railways administered by companies is regulated by the contracts between the Government and the companies.
- (23) *Sections 70 and 110.*—These sections prohibit the transfer of return tickets.
- (24) *Chapter VII.*—This Chapter follows the rule embodied in section 10 of the Indian Railway Act, 1879. There have been very few complaints against the practical operation of this rule, which is based upon a judgment of the Bombay High Court reported at I. L. R. 3 Bom. 109; and, though the soundness of that judgment has been questioned, the Government of India, as at present advised, is of opinion that experience does not justify any material modification of existing legislation.

Section 73, respecting the carriage of animals, reproduces the substance of section 7 of the Railway and Canal Traffic Act of 1854; and section 75, following section 1 of the Carriers Act (1 Will. IV, c. 68), restricts the obligation of declaring the contents of parcels containing gold, silver and other precious articles to cases in which the value of the articles exceeds one hundred rupees.

Section 77 is designed to prevent the preferring of stale claims against railway administrations; section 79 saves certain military regulations; section 80 provides for suits for compensation for injury to through-booked traffic; and section 81 limits

substantially in accordance with the law of England, the liability of a railway administration in respect of accidents happening at sea to passengers, animals or goods which the administration has contracted to carry partly by railway and partly by sea.

- (25) *Section 94.*—This section provides that penalties incurred by railway administrations must be recovered in a District Court at the suit of the Secretary of State for India in Council, and authorises the Governor General in Council to remit such penalties.
- (26) *Section 100.*—The object of this section is to abate the nuisance caused by rolling-stock being kept standing on level-crossings.
- (27) *Sections 108 and 128.*—In the framing of these sections regard has been had to both French and German law. The provisions of sections 31 and 32 of the Indian Railway Act, 1879, are, like the English bye-laws on which they were based (36 W. R. 726), ineffective for their purpose, the difficulty of proving fraud under the latter section, even when it clearly exists, being often found in practice to be insuperable.
- (28) *Section 131.*—In this section it is proposed to deal with the question of the taxation of railways by municipal committees, cantonment committees, district boards and other like authorities. In the opinion of the Government of India the exemption which Guaranteed and State railways enjoy in some provinces from assessment to local rates on land should be extended to all railways throughout India. As regards municipal taxes, it is considered that such as have been levied hitherto in any municipality or cantonment may generally continue to be levied there, though possibly in a commuted form.
- (29) *Section 132.*—The necessity of such a section was illustrated recently by the attachment, in the North-Western Provinces, at the instance of a private decree-holder, of the engine attached to a mail-train.
- (30) *Section 133.*—The expansion of section 27 of the Indian Railway Act, 1879, has been suggested by a case in which a railway servant engaged in trade in contravention of rules which were binding on him and to the prejudice of the railway administration which he was serving.
- (31) *Section 134.*—Much inconvenience to railway administrations in India is said to result from there being no means of summarily ejecting from railway buildings persons who have ceased to be entitled to occupy them.
- (32) *Section 141.*—There have been instances of subordinate Courts objecting to the manager of a State railway appearing before them by deputy even where the attendance of the representative of the railway is required for purely formal purposes. There have also been many instances of great and unnecessary expense being imposed on railway administrations by reason of subordinate Courts refusing to allow petty prosecutions to be conducted by railway servants.
- (33) *Section 145.*—This section is suggested by section 122 of the Bill.

The 22nd October 1888.

(Signed) ANDREW R. SCOBLE.

S. HARVEY JAMES,
Secretary to the Government of India.

THE



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1889.

PART VI.

BILLS

OF THE

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