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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 22nd October 1885:—

Bill No. 18 of 1885.

THE INDIAN TRAMWAYS BILL, 1885.

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A Bill to facilitate the construction and to regulate the working of Tramways.

WHEREAS it is expedient to facilitate the construction and to regulate the working of tramways; It is hereby enacted as follows:—

Preliminary.

Short title and commencement. 1. (1) This Act may be called the Indian Tramways Act, 1886; and

(2) It shall come into force at once.

Local extent.

2. (1) It extends in the first instance to the whole of British India, except the territories administered by the Governor of Fort Saint George in Council, the Governor of Bombay in Council, and the Lieutenant-Governor of Bengal.

(2) But the Governor of Fort Saint George in Council, the Governor of Bombay in Council or the Lieutenant-Governor of Bengal may, by notification in the official Gazette, extend this Act to the whole or any part of the territories under his administration.

3. In this Act, unless there is something repugnant in the subject or context,—

Definitions.

(1) "local authority" means a municipal committee, district board, body of port commissioners or other authority legally entitled to, or

entrusted by the Government with, the control or management of a municipal or local fund;

(2) "road" means the way of a road, street, thoroughfare, passage or place along or across which a tramway authorised under this Act is, or is intended to be, laid, and includes the surface soil and sub-soil of a road, and the footway and drains of a road, and any bridge, culvert or causeway forming part of a road:

(3) "road-authority", in relation to a road, means—

(a) if a local authority maintains and repairs the road, then that authority:

(b) if a local authority does not maintain and repair the road, and the road is neither vested in Her Majesty nor maintained and repaired by the Government, then the person in whom the road is vested; and

(c) if a local authority does not maintain and repair the road, and the road is vested in Her Majesty or maintained and repaired by the Government, then the Local Government:

(4) "circle", in relation to a local authority or road-authority, means the area within the control of that authority:

(5) "tramway" means a tramway, or any part of a tramway, or any siding, turnout, connection, line or track belonging to a tramway:

(6) "order" means an order authorising the construction of a tramway under this Act, and includes a further order substituted for, or amending, extending or varying, that order:

(7) "promoter" means a local authority or person in whose favour an order has been made, and includes a local authority or person on whom the rights and liabilities conferred and imposed on the promoter by this Act and the order and any rules made under the Act, as to the construction, maintenance and use of the tramway, have devolved:

(8) "undertaking" includes all moveable and immoveable property of the promoter suitable to and used by him for the purposes of the tramway:

(9) "carriage", in the case of a tramway on which steam-power or any other mechanical power is used, includes an engine worked on the tramway for the purpose of producing that power:

(10) "toll" includes any charge leviable in respect of the use of a tramway:

(11) "lessee" means a person to whom a lease has been granted of the right of user of a tramway and of demanding and taking the authorised tolls:

(12) "District Magistrate" includes an officer empowered by the Local Government by name or by virtue of his office to discharge within any local area all or any of the functions of a District Magistrate under this Act:

(13) "Collector" means the chief officer in charge of the revenue-administration of a district, and includes an officer empowered by the Local Government by name or by virtue of his office to discharge within any local area the functions of a Collector under this Act; and

(14) "prescribed" means prescribed by rules made by the Local Government under this Act.

[Act XXII, 1883, s. 2.]

[33 & 34 Vic. c. 78, s. 3.]

[33 & 34 Vic. c. 78, s. 3.]

Act XXII, 1883, s. 2.]

[33 & 34 Vic. c. 78, ss. 4, 24, 43 & 44; and Act XXII, 1883, Schedule, Articles 1 and 26.]

*The Indian Tramways Bill, 1885—Sections 4-7.**Orders authorising the Construction of Tramways.*

4. (1) The Local Government may make an order authorising the construction of a tramway in a circle on the

Application for and consent necessary to making of order.

application of—

- (a) the local authority of the circle, with, where that authority is not the road-authority of a road or part of a road to be traversed by the tramway, the consent of the road-authority in respect of that road or part; or
- (b) any person with the consent of the local authority and, where that authority is not the road-authority of a road or part of a road to be traversed by the tramway, of the road-authority in respect of that road or part:

Provided that, if any part of the proposed tramway is to traverse land which is not included within the limits of a municipality or of a cantonment, the Local Government shall not make the order without the previous sanction of the Governor-General in Council.

(2) A local authority shall not make an application for an order, or be deemed to consent to an application being made by any person for an order, unless the making of the application or the giving of the consent has been approved by the local authority in manner prescribed.

5. When it is proposed to lay a tramway in

Consent of local or road authority not necessary in certain cases.

two or more circles, and in a local authority or road-authority having control in either or any of the circles does not consent thereto, the Local Government may, nevertheless, make an order authorising the construction of the tramway in the circle, if, after considering the objections of the dissenting authority, and the benefit which the public is likely to derive from the tramway being laid in the circle of that authority, it is satisfied that the construction of the tramway therein is expedient.

6. (1) The Local Government on receiving an application shall consider

Procedure for making it, and, if satisfied as to order.

the propriety of proceeding thereon, publish in the official Gazette, and in such other manner as it deems sufficient for giving information to persons interested, a draft of a proposed order authorising the construction of the tramway.

(2) A notice shall be published with the draft stating that any objection or suggestion which any person may desire to make with respect to the proposed order will, if submitted to the Local Government on or before a date to be specified in the notice, be received and considered.

(3) If, after considering any objections or suggestions which may have been made with respect to the draft on or before the date so specified, the Local Government is of opinion that the application should be granted, with or without addition or modification, or subject or not to any restriction or condition, it may settle and make an order accordingly.

(4) Every order authorising the construction of a tramway shall be published in the official Gazette in English, and in the other prescribed language or languages, if any, and that publica-

tion shall be conclusive proof that the order has been made as required by this section.

7. (1) An order made under section 6 shall

empower the promoter

Contents of order.

therein specified to con-

struct and maintain the tramway therein described in the manner therein provided, and shall specify the time within which the tramway shall be commenced and the time within which it shall be completed and opened for public traffic.

(2) The order may also provide, in manner consistent with this Act, for all or any of the following, among other matters, that is to say:—

(a) a period before the expiration of which the tramway shall not be commenced, and the conditions subject to which the local authority, when it is not itself the promoter, may, within that period, elect to be substituted in the place of the promoter in respect of the undertaking or of so much thereof as is within its circle; and the limits of time within

which, and the terms upon which, the local authority may, after the tramway has been constructed, require the promoter to sell to it the undertaking or so much thereof as is within its circle;

(b) the acquisition by the promoter of land for the purposes of the tramway, and the disposal by him of land which has been acquired but is no longer required for those purposes;

(c) the conditions subject to which roads may be opened and broken up for the purposes of the construction or maintenance of the tramway or any part thereof, and the method of, and materials to be used in, the re-instating of the roads, and the approval of the method and materials by the Local Government or the road-authority before the commencement of the work;

(d) the conditions on which the tramway may be constructed over a bridge or across a railway or tramway when the carriage-way over the bridge is to form part of the tramway or when the tramway is to cross a railway or another tramway on the level;

(e) the space which shall ordinarily intervene between the outside of the carriage-way on either side of a road whereon the tramway is to be constructed and the nearest rail of the tramway, and the conditions on which a smaller space may be permitted;

(f) the gauge of the tramway; the rails to be used, and the mode in which, and the level at which, they shall be laid and maintained; and the adoption and application by the promoter of such improvements in the rails, and in their situation, and in the sub-structure upon which they rest, as the Local Government may require;

(g) the portion of the road or roads traversed by the tramway to be kept in repair by the promoter, the maintenance by the

provisional Order

provisional Order

provisional Order

[33 & 34 Vic., c. 78, s. 4.]

[33 & 34 Vic., c. 78, s. 8.]

[See 33 & 34 Vic., c. 78, s. 18, and a. 10 of this Bill.]

[Provisional Order Clause 21.]

[33 & 34 Vic., c. 78, s. 43.]

[33 & 34 Vic., c. 78, ss. 8 & 15; Provisional Order Clauses 2 and 5; and Report of House of Lords Committee, 1879, para-graph 11.]

[33 & 34 Vic., c. 78, ss. 26 & 27, and Provisional Order Clause 9.]

[33 & 34 Vic., c. 78, s. 26.]

[33 & 34 Vic., c. 78, s. 9, and Provisional Order Clause 13.]

[33 & 34 Vic., c. 78, s. 25, and Provisional Order Clauses 8 and 10.]

[33 & 34 Vic., c. 78, s. 25, and Provisional Order

[33 & 34 Vic., c. 78, s. 5.]

[33 & 34 Vic., c. 78, ss. 7 & 8; & Act XV, 1873, s. 68.]

*The Indian Tramway Bill, 1885—Sections 8-9.*Clauses 8, 11
& 12.]

promoter to the satisfaction of the Local Government or the road-authority, or both, of that portion of the road or roads, and the liability of the promoter, on the requisition of the Local Government, from time to time, to adopt and apply such improvements in the tramway as the Local Government may consider necessary or desirable for the safety and convenience of the public, and to alter the position or level of the tramway to suit future alterations in the road or roads;

[33 & 34 Vic.,
c. 78, s. 27,
and Provisional
Order Clause 17.]

(h) the application of material excavated by the promoter in the construction or maintenance of the tramway;

[Provisional
Order Clause
15.]

(i) the provision of such crossings, passing-places, sidings, junctions and other works, in addition to those specified in or authorised by the order, as may from time to time be necessary or convenient to the efficient working of the tramway;

[33 & 34 Vic.,
c. 78, s. 32,
and Provisional
Order Clause 18.]

(j) the powers which may from time to time be exercised by the Local Government, the local authority, the road-authority or any person in respect of sewers, drains, telegraph-lines, gas-pipes, or water-pipes in or on land occupied by the tramway; the notice (if any) to be given of the intended exercise of those powers; the manner in which the powers shall be exercised; and the extent to which the tramway and the traffic thereon may be interfered with in the exercise thereof;

[33 & 34 Vic.,
c. 78, ss. 30 &
31.]

(k) the conditions subject to which the promoter may from time to time interfere with, or alter or require the alteration of the position of, drains (not being sewers or main drains, telegraph-lines, gas-pipes or water-pipes);

[Provisional
Order Clause
16.]

(l) the provision of a temporary tramway in place of a part of a tramway which has been removed, or of which the use has been discontinued, by reason of the execution of any work affecting a road along which the part of the tramway was laid;

[33 & 34 Vic.,
c. 78, s. 34, and
Provisional
Order Clauses
25, 26 & 27.]

(m) the motive power to be used on the tramway, and the conditions on which steam-power or any other mechanical power may be used;

[33 & 34 Vic.,
c. 78, s. 34;
Schedule A to
form of Provisional
Order; and Regula-
tions and Bye-
laws of the
Board of
Trade with
respect to the
use of steam-
power on
tramways.]

(n) the nature, dimensions, fittings, appliances and apparatus of the carriages to be used on the tramway, and the inspection and examination thereof by officers of the Local Government or the local authority, and the liability of the promoter or lessee, on the requisition of the Local Government, from time to time, to adopt and apply such improvements in the carriages and in the fittings, appliances and apparatus, as the Local Government may consider necessary or desirable for the safety and convenience of the public;

[33 & 34 Vic.,
c. 78, s. 10
and Provisional
Order
Clauses 33 to
36 and 38 to
43.]

(o) the traffic which may be carried on the tramway, the traffic which the promoter or lessee shall be bound to carry, and the traffic which he may refuse to carry; the tolls to be leviable by the promoter or lessee, and the periodical revision thereof

by the Local Government; and the regulation of the traffic and of the levy of the tolls;

(p) the use of the tramway free of toll by the local authority, with its own carriages for specified purposes, during specified hours, with power to the local authority to make such sidings and other works as may be necessary for communication between its premises and the tramway;

[Provisional
Order Clause
37.]

(q) the conditions subject to which the promoter may transfer the undertaking, or any part thereof, by sale, mortgage, lease, exchange or otherwise; and the conditions subject to which the local authority may be the transferee;

[33 & 34 Vic.,
c. 78, s. 44,
and Provisional
Order
Clause 48.]

(r) the performance by the Local Government or by the local authority or road-authority of any work required by the Act or the order to be done by the promoter; and

[33 & 34 Vic.,
c. 78, s. 28,
proviso.]

(s) the penalty to be incurred by the promoter or lessee for failure to observe any condition or direction contained in the order and the application of the penalty when recovered.

[Provisional
Order Clauses
10, 11, 26, 27,
and 40.]

(3) The Local Government may, in providing in the order for the acquisition of land for the purposes of a tramway of which the promoter is not a company, direct that land may be acquired for the promoter under the provisions of the Land Acquisition Act, 1870, in the same manner and on the same conditions as it might be acquired for the purposes of the tramway if a company were the promoter.

[Report of
House of
Lords Com-
mittee, 1879,
para. 11.]

X of 1870.

(4) The order shall imply the condition—

(a) in the case of a tramway of which a local authority is the promoter, that a lease thereof shall be granted only in manner by this Act provided, and

(b) in the case of a tramway of which a local authority is not the promoter, that a lease thereof shall be only of the right of user and of demanding and taking the authorised tolls, and shall not confer or impose on the lessee any of the powers or duties of the promoter in respect of the construction or maintenance of the tramway.

8. (1) The Local Government may, on the application of the promoter, revoke, amend, extend or vary the order by a further order.

[33 & 34 Vic.,
c. 78, s. 16.]

(2) An application for a further order shall be made in the same manner and subject to the same conditions as an application for an order.

(3) The Local Government may, in its discretion, either grant or reject the application.

(4) If it grants the application, it shall make the further order in the same manner as an order, except that no addition to, or modification of, the rights, powers and authorities asked for in the application, or restriction or condition with respect thereto, shall be made or imposed by the further order without the consent in writing of the promoter.

9. (1) Subject to, and in accordance with, the provision of this Act, the Local Government may, on a joint application, or on two or more separate applications settle and make an order empowering two or more local

[33 & 34 Vic.,
c. 78, s. 17.]Power to authorise joint
work by local authorities.

The Indian Tramways Bill, 1885.—Sections 10-16.

authorities, respectively, jointly to construct the whole, or separately to construct parts, of a tramway, and jointly or separately to own the whole or parts thereof.

(2) All the provisions of this Act which relate to the construction of tramways shall extend and apply to the construction of the whole and the separate parts of the tramway, and the form of the order may be adapted to the circumstances of the case.

[33 & 34 Vic.,
c. 78, s. 18.]

10. (1) If a promoter authorised by an order Cesser of powers given to construct a tramway—by an order.

- (a) does not within the time specified in the order substantially commence the construction of the tramway, or
- (b) having commenced the construction, suspends it without a reason sufficient in the opinion of the local Government to warrant the suspension, or
- (c) does not within the time specified in the order complete the tramway and open it for public traffic,—

the following consequences shall ensue:—

- (i) the powers given by the order to the promoter for constructing the tramway and otherwise in relation thereto shall, unless the Local Government, by special direction in writing, prolongs the time or condones the suspension, cease to be exercised except as to so much of the tramway as is then completed:
- (ii) as to so much of the tramway as is then completed, the Local Government may either permit, or refuse to permit, the powers given by the order to continue;
- (iii) if the Local Government refuses to permit the powers to continue, then so much of the tramway as is then completed may be dealt with, under the provisions of this Act relating to the discontinuance of tramways, as a tramway of which the discontinuance has been proved to the satisfaction of the Local Government.

[Sections 19 &
20 of this
Bill.]

(2) A notification published by the Local Government in the official Gazette to the effect that on a date specified in the notification the construction of a tramway had not been substantially commenced or a tramway had not been completed and opened for public traffic, or that the construction of a tramway had been suspended without sufficient reason, shall, for the purposes of this section, be conclusive proof of the matter stated therein.

Construction and Maintenance of Tramways.

[33 & 34 Vic.,
c. 78, s. 25.]

11. A tramway shall be constructed and maintained in the manner Mode of formation of tramway.

[33 & 34 Vic.,
c. 78, s. 25, &
Act IV, 1879,
s. 5.]

12. A tramway, or portion or extension of, or addition to, a tramway, shall not be opened for public traffic until an engineer appointed in this behalf by the Local Government has inspected it and certified it to be fit for such traffic.

13. The road-authority and the promoter may from time to time enter into agreements with respect to the keeping in repair of the whole or a part of a road traversed by a tramway, and with respect to the proportion to be paid by either of them of the expense of keeping the road or part in repair.

Traffic on Tramways.

14. (1) The promoter of a tramway shall, subject to the provisions of sub-section (2) and to the other provisions of this Act and of the order, have the exclusive use of the tramway for carriages with flange-wheels or other wheels suitable to run on the rail described in the order as the rail to be used on the tramway:

Provided that nothing in this Act or the order or in any rule made under the Act shall affect the right of any person authorised to use a tramway or railway to pass across a tramway constructed under this Act with carriages having wheels suitable to run on the rail thereof.

(2) The public shall have a right to pass along or across any part of a road along or across which a tramway is constructed, whether on or off the tramway, with carriages not having flange-wheels or other wheels suitable to run on the rail of the tramway: provided—

- (a) that this sub-section shall not apply where the tramway is constructed on land the right to the exclusive possession of which has been acquired by the promoter, and
- (b) that the Local Government may by an order authorise the construction of a tramway on any part of a road with rails raised above the surface of the road, if it is satisfied that the convenience of the public will not be injuriously affected thereby.

15. (1) The promoter or lessee may demand and take, in respect of the tramway, tolls not exceeding the limits specified in or determinable under the order, or if the order contains no provision in this behalf, then such sums as may from time to time be fixed by the promoter or lessee with the previous sanction of the Local Government.

Tolls leviable by promoter or lessee.

[33 & 34 Vic.,
c. 78, s. 45.]

(2) A list of all the tolls authorised to be levied shall be exhibited, in such languages as the District Magistrate may direct, in a conspicuous place inside and outside each of the carriages used upon the tramway.

16. (1) A person shall not be entitled to carry, or to require to be carried, on a tramway constructed under this Act, any goods of a dangerous or offensive nature.

(2) A person taking such goods with him on the tramway shall, before entering the carriage, give notice of their nature to the servant of the promoter or lessee in charge of the carriage.

(3) A person sending such goods by the tramway shall distinctly mark their nature on the outside of the package containing them, or otherwise give notice thereof in writing to the servant of the promoter or lessee with whom he leaves them for the purpose of their being sent by the tramway.

[33 & 34 Vic.,
c. 78, s. 46,
and Act
XXII, 1883,
s. 13.]

The Indian Tramways Bill, 1885.—Sections 17-21.

(4) Any servant of the promoter or lessee may refuse to carry upon the tramway a parcel which he suspects to contain goods of a dangerous or offensive nature, and if any such parcel has been received for the purpose of being carried upon the tramway, may stop the transit thereof until he is satisfied as to the nature of its contents.

Licenses to use Tramways.

[33 & 34 Vic.,
c. 78, s. 35.]

17. If at any time after a tramway or part of a tramway has been for three years opened for public traffic in a circle, the local authority of the circle represents in writing to the local Government that the public is deprived of the full benefit of the tramway or of the part thereof, the Local Government may, if after such enquiry as it deems necessary it is satisfied as to the truth of the representation, grant a license to any person to use the tramway conformably to this Act and the order and to the rules made under the Act, subject to the following provisions, namely:—

- (a) the license shall be for a period not less than one year or more than three years from the date of the license, but the Local Government may in its discretion renew it;
- (b) the license shall be to use the whole of the tramway for the time being opened for public traffic, or such part or parts of the tramway as the Local Government, having regard to the cause for granting the license, thinks fit;
- (c) the license shall specify the number of carriages which the licensee shall run upon the tramway, the mode in which, and times at which, the carriages shall be run, the tolls to be paid to the promoter or lessee by the licensee for the use of the tramway, and the tolls, being those for the time being leviable by the promoter or lessee, which the licensee may demand and take for the use of his carriages;
- (d) the licensee and his officers and servants shall permit one person, duly authorised for that purpose by the promoter or lessee, to travel free of toll in or upon each carriage of the licensee run upon the tramway for the whole or any part of a journey; and
- (e) the Local Government may revoke, alter or modify the license for any cause sufficient in its opinion to warrant the revocation, alteration or modification thereof.

18. A licensee shall, on demand, give to an officer or servant authorised in that behalf by the promoter or lessee an exact account in writing, signed by the licensee, of the number of passengers, or number or quantity of goods, conveyed by any and every carriage used by him on the tramway.

Discontinuance of Tramways.

19. If it is proved to the satisfaction of the Local Government, at any time after the opening of a tramway for public traffic, that the working of the tramway, or any part thereof, has

been discontinued, for the space of three months, without a reason sufficient, in the opinion of the Local Government, to warrant the discontinuance, the Local Government, if it thinks fit, may, by notification in the official Gazette, declare that the powers of the promoter and of the lessee, if any, in respect of the tramway or the part thereof so discontinued, shall, from the date of the notification, be at an end, and thereupon the said powers shall cease and determine, except in so far as they may be purchased by a local authority in manner by this Act provided.

[Section 22 of
this Bill.]

[33 & 34 Vic.,
c. 78, s. 41.]

20. (1) Where a notification has been published under section 19, the road-authority may, at any time after the expiration of two months from

Powers of road-authority on cesser of powers of promoter.

the date of the notification, remove the tramway or part of the tramway so discontinued, and use the materials thereof in re-instating the road.

(2) The promoter shall pay to the road-authority the cost incurred by that authority in removing the tramway or the part thereof and in re-instating the road.

(3) The cost shall be certified by an officer of the road-authority, and his certificate, countersigned by the District Magistrate, shall be conclusive proof as to the cost incurred.

(4) If the promoter does not pay the amount so certified within one month after the delivery to him of the certificate or of a copy thereof, the road-authority may, without any previous notice to the promoter and without prejudice to any other remedy which it may have for the recovery of the amount, sell and dispose of such materials of the tramway or part thereof removed as it has not used in re-instating the road, either by public auction or by private sale, and for such sum or sums, and to such person or persons, as it thinks fit and may, out of the proceeds of the sale, pay and reimburse itself the amount of the cost aforesaid and of the expenses of the sale, and shall pay over the residue (if any) of the proceeds of the sale to the promoter.

[Section 36 of
this Bill.]

Insolvency of Promoter.

21. (1) If, at any time after the opening of a tramway in a circle for public traffic, it appears to the road authority or local authority of the circle that the promoter of the tramway is insolvent, so that he is unable to maintain the tramway, or work it with the advantage to the public, and either of those authorities makes a representation to that effect to the Local Government, the Local Government may, if after such enquiry as it deems necessary it is satisfied as to the truth of the representation, declare, by notification in the official Gazette, that the powers of the promoter shall, at the expiration of six months from the publication of the notification, be at an end; and the powers of the promoter shall cease and determine at the expiration of that period, except in so far as they may be purchased by a local authority in manner by this Act provided.

[33 & 34 Vic.,
c. 78, s. 42.]

Proceedings in case of insolvency of promoter.

(2) Where a notification has been published under sub-section (1), the road authority may, at any time after the expiration of six months

[Section 22 of
this Bill.]

[33 & 34 Vic.,
c. 78, s. 37.]

Licensee to give to promoter or lessee an account of traffic.

[33 & 34 Vic.,
c. 78, s. 41.]

Cesser of powers of promoter and lessee on discontinuance of tramway.

The Indian Tramways Bill, 1885.—Sections 22-24.

from the date thereof, remove the tramway in the same manner, and subject to the same provisions as to the payment of the cost of the removal, and to the same remedy for recovery of the cost, in every respect as in cases of removal under section 20.

Purchase of Tramways.

22. (1) Where the promoter of a tramway in a circle is not the local authority, the local authority, with the previous sanction of the Local Government, may—

- [33 & 34 Vic., c. 78, s. 43.]
- Future purchase of undertaking by local authority.
- (a) within such limits of time as may be specified in this behalf in the order, or
 - (b) if a time was not specified in the order, then within six months after the expiration of a period of twenty-one years from the date of the order, and within six months after the expiration of every subsequent period of seven years, or
 - (c) within two months after the publication of a notification under section 19 or within six months after the publication of a notification under section 21,—

by notice in writing, require the promoter to sell to the local authority his undertaking or the part thereof which is within the circle of the local authority; and thereupon the promoter shall sell the same upon the terms specified in the order, or, if the terms were not specified in the order, then upon the terms of paying the then value of the undertaking or of the part thereof, exclusive of any allowance for past or future profits of the undertaking or any compensation for compulsory sale or other consideration whatsoever.

(2) A requisition shall not be made under sub-section (1) unless the making thereof has been approved by the local authority in manner prescribed.

(3) When a sale has been made under this section, all the rights, powers and authorities of the promoter in respect of the undertaking or part thereof sold, or, where a notification has been published under section 19 or section 21, all the rights, powers and authorities of the promoter previous to the publication of the notification in respect of the undertaking or part thereof sold, shall be transferred to the authority to whom the undertaking or part has been sold, and shall vest in and may be exercised by, that authority in the same manner as if the tramway had been constructed by it under an order made under this Act.

(4) Subject to, and in accordance with, the preceding provisions of this section, two or more local authorities may jointly purchase an undertaking or so much thereof as is within their circles.

Working of Tramways owned by Local authorities.

[33 & 34 Vic., c. 78, s. 19.]

23. (1) When a local authority has under the authority of an order completed a tramway, or has under the provisions of this Act or of an order acquired possession of a tramway, it may, by lease to be approved by the Local Government, let to any person the right of user of the tramway and of demanding and taking the authorised tolls.

(2) On the determination of a lease, the local

authority may from time to time let the right for such further term and on such conditions as the Local Government may approve.

(3) Every lease made under this section shall imply a condition of re-entry if at any time after the making thereof it is proved to the satisfaction of the Local Government that the lessee has discontinued the working of the tramway leased, or of any part thereof, for the space of three months, without a reason sufficient, in the opinion of the Local Government, to warrant the discontinuance.

(4) Notice of the intention of the local authority to make a lease shall be given in manner prescribed.

(5) If the local authority cannot by means of a lease obtain what it deems to be a fair rent for the tramway, it may itself, with the previous sanction of the Local Government and for such term as the Local Government directs, place and run carriages upon the tramway, and demand and take the authorised tolls in respect of the use of the carriages.

Rules.

24. (1) In addition to any other power to make rules expressly or by implication conferred by this Act, the Local Government may make rules consistent with this Act—

[33 & 34 Vic., c. 78, ss. 46 & 64; and Act XXI, 1883, s. 20.]

- (a) as to the form in which an application for an order shall be made;
- (b) as to the costs to be paid by an applicant in respect of an order, and the time when, and the place where, those costs shall be paid;
- (c) as to the payment of money or lodgment of securities; by way of deposit, by the applicant for an order before the order is published under section 6, sub-section (4), or a further order is made under section 8; the investment of money so paid; the disposal of interest or dividends from time to time accruing due on money or securities so paid, lodged or invested; the application of the money or securities or the produce thereof to the discharge of any liability incurred by the promoter, and the forfeiture, repayment or return of the money or securities;
- (d) as to the plans and sections of any works to be deposited by applicants for orders or by promoters;
- (e) for regulating the use of steam-power or any other mechanical power on a tramway;
- (f) as to any matter specified in section 7, sub-section (2), clauses (c), (d), (e), (j) and (k), as a matter which may be provided for in an order, when that matter has not been so provided for, or has not, in the opinion of the Local Government, been effectually so provided for;
- (g) as to any matter respecting which rules may be made under this section by a local authority or a promoter or lessee; and,
- (h) generally, as to any other matter or thing in respect of which it may seem to the Local Government to be expedient to make

The Indian Tramways Bill, 1885.—Sections 25-29.

rules for the purpose of carrying this Act into execution.

(2) A local authority may from time to time with the previous sanction of the Local Government, make rules, consistent with this Act and the order and any rules made by the Local Government under the Act, for regulating—

- (a) the rate of speed to be observed in travelling upon a tramway within the circle of the local authority;
- (b) the use of animal power on the tramway;
- (c) the distances at which carriages using the tramway shall be allowed to follow one after the other;
- (d) the stopping of carriages using the tramway;
- (e) the traffic on roads along or across which the tramway is laid;
- (f) the number of passengers which may be carried in any carriage;
- (g) the licensing and control of drivers, conductors and other persons having charge of the carriages of the promoter or lessee or a licensee; and,
- (h) generally, the mode of use of the tramway.

(3) The promoter or lessee of a tramway may, from time to time, with the previous sanction of the Local Government, make rules consistent with this Act and the order and any rules made under the Act—

- (a) for preventing the commission of any nuisance in or upon any carriage, or in or against any premises belonging to him; and
- (b) for regulating the travelling in any carriage belonging to him.

25. The authority making any rule under section 24 may direct that a breach of it shall be punishable with fine which may extend—

- (a) if the authority making the rule is the Local Government, to two hundred rupees and
 - (b) if that authority is a local authority or a promoter or lessee, to twenty rupees; and, when the breach is a continuing breach, with a further fine which may extend—
 - (c) if the authority making the rule is the Local Government, to fifty rupees, and
 - (d) if that authority is a local authority or a promoter or lessee, to five rupees,
- for every day after the first during which the breach continues.

26. (1) Every authority having power to make rules under any section of this Act shall, before making the rules, publish a draft of the proposed rules for the information of persons likely to be affected thereby.

(2) The publication shall be made, in the case of rules made by the Local Government, in such manner as may in its opinion be sufficient for giving information to persons interested, and, in the case of rules made by a local authority or by a promoter or lessee, in manner prescribed.

(3) There shall be published with the draft a notice specifying a date, not earlier than the ex-

piration of one month after the date of publication at or after which the draft will be taken into consideration.

(4) The authority shall receive and consider any objection or suggestion which may be made by any person with respect to the draft before the date so specified.

(5) The publication in the official Gazette of a rule purporting to be made under this Act shall be conclusive proof that it has been duly made.

(6) The Local Government may cancel any rule made by a local authority or by a promoter or lessee, under section 24.

Offences.

27. If a promoter—

Penalty for failure of promoter, lessee or licensee to comply with Act or order.

- (a) constructs or maintains a tramway otherwise than in accordance with the order;
- (b) opens the tramway for traffic, or permits it to be so opened, before it has been inspected and certified in manner required by section 12; or
- (c) fails to observe any requirement or condition of the order for neglect or breach whereof no penalty has been expressly provided in the order;

[Act XXII, 1883, s. 14.]

or if a promoter, lessee or licensee runs a carriage on a tramway otherwise than in accordance with the order;—

he shall (without prejudice to the enforcement of specific performance of the requirements of this Act or of the order, or to any other remedy which may be obtained against him in a Court of Civil Judicature), on the complaint of the Local Government or of the local authority or road-authority or of any person injuriously affected thereby, be punished with fine which may extend to two hundred rupees, and in the case of a continuing offence to a further fine which may extend to fifty rupees for every day after the first during which the offence continues to be committed.

28. If any person without lawful excuse, the burden of proving which shall lie upon him, wilfully obstructs any person acting under the authority of the promoter in the lawful exercise of his powers in constructing or maintaining a tramway, or injures or destroys any mark made for the purpose of setting out the line of the tramway, he shall be punished with fine which may extend to fifty rupees.

[33 & 34 Vic., c. 78, s. 49, and Act XXII, 1883, s. 15.]

29. If any person without lawful excuse, the burden of proving which shall lie upon him, wilfully does any of the following things, namely:—

- (a) interferes with, removes or alters any part of a tramway constructed under this Act, or of the works connected therewith;
- (b) places or throws upon or across any such tramway any wood, stone, refuse or other things;
- (c) does anything in such a manner as to obstruct any carriage using any such tramway; or

[33 & 34 Vic., c. 78, s. 50, and Act XXII, 1883, s. 16.]

[33 & 34 Vic., c. 78, s. 46; and Act XXII, 1883, s. 20.]

[33 & 34 Vic., c. 78, s. 48.]

[Act XXII, 1883, s. 20.]

[33 & 34 Vic., c. 78, s. 46; and Act XXII, 1883, s. 20.]

[33 & 34 Vic., c. 78, s. 47.]

Power to impose penalty by rule.

[Act XXII, 1883, s. 14.]

[Act XXII, 1883, s. 20, sub-section (3).]

[Act XXII, 1883, s. 14.]

[33 & 34 Vic., c. 78, s. 47.]

Procedure for making and publication of rules.

The Indian Tramways Bill, 1885.—Sections 30-36.

(d) abets within the meaning of the Indian Penal Code the doing of, or attempts to do, anything mentioned in clause (a), clause (b) or clause (c),

he shall (without prejudice to any other remedy which may be obtained against him in a Court of Civil Judicature) be punished with fine which may extend to one hundred rupees.

30. If any person, except under a lease from, or by agreement with, the promoter, or under license from the Local Government granted under this Act, uses on a tramway, otherwise than as permitted by section 14, a carriage having flange-wheels or other wheels suitable to run on the rail of the tramway, he shall be punished with fine which may extend to two hundred rupees.

31. (1) If any person travelling or having travelled in a carriage of the promoter or lessee or a licensee evades or attempts to evade payment of toll, or if any person having paid toll for a certain distance wilfully proceeds in any such carriage beyond that distance and does not pay the additional toll for the additional distance or attempts to evade payment thereof, or if any person wilfully refuses or neglects on arriving at the point to which he has paid toll to quit the carriage, he shall be punished with fine which may extend to ten rupees.

(2) When a person commits an offence under this section and refuses, on demand of a servant of the promoter, lessee or licensee, to give his name and residence, or gives a name or residence which the servant has reason to believe to be false, he may be arrested and taken to the nearest police-station by the servant or any person whom the servant may call in for his assistance.

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

32. If any person takes or sends by a tramway any goods of a dangerous or offensive nature without giving the notice required by section 16, he shall be punished with fine which may extend to fifty rupees.

33. (1) If a licensee fails on demand to give the account mentioned in section 18, or, with intent to evade the payment of tolls, gives a false account when he is called upon to give an account under that section, he shall be punished with fine which may extend to fifty rupees.

(2) The fine shall be in addition to any tolls payable by the licensee to the promoter or lessee in respect of the passengers or goods conveyed by the carriage or carriages used by the licensee on the tramway.

34. Nothing in this Act shall prevent a person from being prosecuted under any other law for an act or omis-

sion which constitutes an offence against this Act or the rules made under it, or from being liable under that other law to any other or higher punishment or penalty than that provided by this Act or the rules made under it: Provided that a person shall not be punished twice for the same offence.

Settlement of Differences.

35. (1) If any difference arises between the promoter or lessee on the one hand and the Local Government, or the local authority, or the road-authority, or a person having the charge of any sewers, drains, telegraph lines, gas-pipes or water-pipes, on the other hand, with respect to any interference or control exercised or claimed to be exercised by, or on behalf of, either party by virtue of this or any other Act, or of the order, or of rules made under this Act, or with respect to the propriety of, or the mode of, the execution of any work, or with respect to any compensation to be made by or to the promoter or lessee, or to the question whether any work is such as ought reasonably to satisfy the Local Government or the road-authority or both, or with respect to any other subject or thing regulated by, or comprised in, this Act or the order or rules made under the Act, and not otherwise expressly provided for therein, the matter in difference shall, on the application of either party, be settled by a referee.

(2) Where the difference is between the promoter or lessee on the one hand and the Local Government, either as such or as the road-authority, on the other, the referee shall be the District Court within the jurisdiction of which the tramway is situate, or, where the tramway is within the jurisdiction of more than one District Court, the District Court within the jurisdiction of which the greater part of the tramway is situate.

(3) In other cases, the referee shall be appointed by the Local Government.

(4) The powers and procedure of the referee may be prescribed.

(5) The decision of the referee shall be binding and conclusive on both parties.

Recovery of Tolls.

36. Any of the following moneys, namely, any rent due to a local authority from a lessee, any penalty recoverable from a promoter or lessee under an order, any sum payable by a promoter or lessee under an award of a referee the cost of the performance under this Act by the Local Government or by a local authority or road-authority of any work required by this Act or an order to be done by a promoter, and the cost incurred by a road-authority in removing a tramway and re-instating a road under this Act, may, without prejudice to any other remedy the authority to which the money is due may have by suit or otherwise, be recovered by that authority, on application made in this behalf to the Collector, as if the sum due were an arrear of land revenue due by the promoter or lessee or his surety (if any):

Provided that nothing in this section shall authorise the arrest of the promoter or lessee

XLV of 1860.

33 & 34 Vic.,
c. 78, s. 54.][33 & 34 Vic.,
c. 78, s. 51,
and Act XXII,
1883, s. 18.][33 & 34 Vic.,
c. 78, s. 52,
Act XXII,
1883, s. 19,
and Act X,
1882, s. 57.]33 & 34 Vic.,
c. 78, s. 53,
and Act XXI,
1883, s. 17.][33 & 34 Vic.,
c. 78, s. 38.][Act XIII,
1884, s. 158.][33 & 34 Vic.,
c. 78, s. 33.]Differences between pro-
motors or lessees and
authorities.[33 & 34 Vic.
c. 78, s. 56; &
Act XIII,
1884, s. 61.]

The Indian Tramways Bill, 1885—Sections 37-48.

or his surety in execution of any process issued by the Collector.

Act XIII,
1884, s. 172.]

37. (1) If a licensee fails to pay on demand the tolls due for the use of a tramway, the promoter or lessee to whom the tolls are due may, without prejudice to the remedy which he may have by suit, apply to a Magistrate to recover the amount of the tolls, and the Magistrate may, after giving notice to the licensee if possible and allowing him an opportunity of being heard, proceed to recover the amount by distress and sale of any carriages or other moveable property of the licensee which may be found on the tramway or on premises connected therewith.

(2) When a licensee has failed to pay on demand the tolls due from him, the promoter or lessee to whom the tolls are due may seize any carriage or other moveable property of the licensee on the tramway or on premises connected therewith, and detain the same for forty-eight hours unless the tolls are sooner paid.

(3) When application is made to a Magistrate under sub-section (1), he may make an interim order of distraint pending his final decision.

Act XIII,
1884, s. 172.]

38. Any toll due to a promoter, lessee or licensee from a passenger may be recovered either by suit or, on application to a Magistrate having jurisdiction within any local area in which any part of the tramway is laid, by distress and sale of any moveable property belonging to the passenger within the local limits of the jurisdiction of the Magistrate.

Savings.

[33 & 34 Vic.,
c. 78, s. 57;
and Act XXII,
1883, s. 9.]

39. (1) Notwithstanding anything contained in this Act or in an order, a promoter shall not acquire any right other than that of user only over a road along or across which he lays a tramway, nor shall anything contained in this Act or in an order exempt the promoter of a tramway, or any other person using the tramway, from the payment of such charges as may lawfully be levied in respect of the use of a road or bridge along or across which the tramway is laid.

[Act VIII,
1851.]

[Act XVII,
1878, s. 18.]

(2) The Local Government may, if it thinks fit fix rates at which a promoter, lessee or licensee may compound for the charges payable in respect of the use of a road or bridge.

[33 & 34 Vic.,
c. 78, ss. 32
& 60.]

40. (1) Nothing in this Act or in an order shall take away or abridge any power which a road-authority, local authority or other person has by law to break up, widen, alter, divert or improve a road, railroad or tramway along or across which a tramway is laid.

(2) The road-authority, local authority or other person executing any work referred to in sub-section (1) shall not be liable to pay to a promoter, lessee or licensee any compensation for injury done to a tramway by the execution of the work or for loss of traffic occasioned by the reasonable use of any power lawfully exercised for the execution thereof.

41. Nothing in this Act or in an order shall affect the powers of a local authority or of a magistrate or police-officer to regulate the

Saving of power of local authority and police to regulate traffic on roads.

[33 & 34 Vic.,
c. 78, s. 61;
and Act XXII,
1883, s. 10.]

passage of traffic along or across a road along or across which a tramway is laid; and the authority, magistrate or officer aforesaid may exercise its or his powers as well on as off the tramway and with respect as well to the traffic of a promoter, lessee or licensee as to the traffic of other persons.

Supplemental Provisions.

42. A promoter, lessee or licensee shall be answerable for all injuries happening through his act or default, or through the act or default of any person in his employment, by reason or in consequence of any of his carriages or works, and shall save harmless all authorities and persons collectively and individually, and their officers and servants, from all damages and costs in respect of injuries so happening.

[33 & 34 Vic.,
c. 78, ss. 40 &
55.]

Promoters, lessees and licensees to be responsible for all injuries.

43. For the purposes of this Act, want of funds shall not be deemed to be a sufficient reason for the suspension of the construction, or the discontinuance of the working, of a tramway by a promoter or lessee.

[Act XXII,
1883, s. 21.]

Want of funds not a sufficient reason for default.

44. When a tramway is constructed under this Act within the limits of a municipality, the Local Government may exempt the animals, plant, rolling-stock, yards, workshops, engine-sheds and depôts of the promoter or lessee, for such period as it thinks fit, from all or any municipal taxes leviable within those limits.

[Act XXII,
1883, s. 21.]

Power to exempt from municipal taxation.

45. The fund to or with the control or management of which the local authority of a municipality, cantonment or district is entitled or entrusted shall, notwithstanding anything in any Act respecting the purposes to which that fund may be applied, be applicable, subject to the control of the Local Government, to the payment of expenses incidental to the exercise of the powers and functions which may be vested in or exercised by a local authority under this Act.

[33 & 34 Vic.,
c. 78, s. 20.]

Application by local authorities of local funds to tramways.

46. The Local Government may, with the consent of the local authority and road-authority and of the promoter, extend any part of this Act or of any rules made thereunder, either with or without modification, to the whole or any part of a tramway constructed, or authorised to be constructed, before the passing of this Act, and to any extension of, or addition to, any such tramway, and may withdraw any part of the Act so extended.

47. In section 54 of the Indian Railway Act, 1879, the word "tramway" shall have the meaning assigned to it by section 3 of this Act.

IV of 1879.

Meaning of "tramway" in Railway Act.

48. All powers conferred by this Act on a Local Government may be exercised from time to time as occasion requires.

[Act XIII
1884, s. 173.]

Powers of Local Government exercisable from time to time.

STATEMENT OF OBJECTS AND REASONS.

THE introduction of this Bill has been rendered necessary by the projected construction of tramways in parts of India beyond the reach of a local legislature. In 1883 a special Act was passed by the Governor General in Council to authorise the making, and regulate the working, of tramways in Rangoon. Since that year application has been made for special Acts for tramways in Lahore and Amritsar, and legislation would probably be found to be necessary to regulate the use of tramways in other large towns in which their construction has been approved by, or is under the consideration of, the local authorities.

2. The Bill has been drawn on the lines of the Tramways Act, 1870 (33 & 34 Vic., c. 78), and of the provisional orders and rules made by the Board of Trade under that statute. These orders and rules, and the fullest discussion on almost all points connected with the subject of tramways, will be found in Mr. Sutton's "Tramway Acts of the United Kingdom."

3. The Bill extends in the first instance to the whole of British India except the territories comprised within the sphere of a local legislature, and is extendible to those territories by the Local Government.

4. "Orders" take the place of the "provisional orders" of the English statute, but differ from those orders in not being "provisional" and not being confirmed by a subsequent Act of the Legislature. They also differ from provisional orders in that they must be consistent with the Act and cannot vary or except any part of it.

5. Sections 4 to 6 of the Bill prescribe the conditions on which, and the manner in which, an order may be made; and section 7 specifies the matters for which provision may be made in an order. A reference to the authorities cited against the several clauses of that section will show how those matters are now provided for in the United Kingdom. If an order is found on experience to be defective, it can be supplemented by a further order on the application of the person in whose favour the original order was made (section 8), or, in certain particulars, by rules (section 24).

6. When the order has been made, the tramway must be constructed, maintained and worked in the manner provided by the order (sections 11 and 27). If the tramway is constructed by a local authority, it will ordinarily be worked by a lessee (section 23). If it is constructed by a private speculator, it may be worked by him or by a lessee to whom he has let the right of user and of demanding and taking the authorised tolls (section 7, sub-section (4)). If the owner of the tramway or his lessee so works the tramway that the public is deprived of the full benefit of it, the Local Government may grant a license to any person to use the tramway on the payment of tolls to the owner or the lessee (section 17). If the owner discontinues the working of the tramway (section 19) or through want of funds is unable to maintain the tramway or work it with advantage to the public (section 21), the Local Government may revoke his powers. When the powers of the owner are so revoked, the tramway may either be removed by the authority which has charge of the road on which the tramway is laid (section 20 and section 21, sub-section (2)), or it may be purchased by the local authority (section 22).

7. Section 22 provides for tramways which have been constructed by companies and private persons being purchased by local authorities on the expiration of the periods, and upon the terms, specified in the order, or, if the periods and terms were not specified in the order, then on the expiration of the periods, and upon the terms, prescribed in the English statute.

8. When a tramway is purchased by a local authority, it will ordinarily be worked by a lessee. There may, however, be cases in which the authority would be unable to let a tramway for an adequate consideration. It has been provided, therefore (section 23), that in those cases the Local Government may authorise the local authority itself to engage in the business of running carriages.

9. Differences between owners or lessees of tramways and the Local Government or local authorities are to be settled by a referee (section 35), who, if the Local Government is directly interested, is to be the District Judge. The decision of the referee will be final.

10. Sections 36 to 38 provide for the recovery by suit or summary process of moneys due to and from owners, lessees and licensees of tramways.

11. Sections 39 to 41 contain the savings usually found in enactments and agreements relating to the construction of tramways, and section 44 enables the Local Government to exempt from local taxation the animals, plant, rolling-stock and premises of owners and lessees of tramways constructed within the limits of municipalities.

12. Section 46 enables the Local Government, with the consent of the owner and the local authorities, to extend any part of the Act, with or without modification, to a tramway or any part of a tramway constructed, or authorised to be constructed, before the passing of the Act.

The 22nd October 1885.

(Signed) C. P. ILBERT.

D. FITZPATRICK,
Secretary to the Government of India.

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 15th October, 1885:—

Bill No. 17 of 1885.

A Bill rendering it permissive to the members of the Maimon Community to declare themselves subject to Muhammadan Law.

WHEREAS there is in the Presidency of Bombay and elsewhere a class of persons known as Maimons, and questions have from time to time arisen in the case of some of those persons as to the law by which in certain particulars they are governed, and whereas some of those persons consider that they are governed or desire to be governed in those particulars by the Muhammadan law as established in the Hanafi School;

And whereas it is expedient that a procedure should be provided whereby the applicability of that law to them in those particulars could be placed beyond dispute;

It is hereby enacted as follows:—

Short title. 1. This Act may be called the Maimons Act, 1886.

2. (1) When any Maimon who has attained his majority has declared in manner next hereinafter provided that he desires to be governed by the

Declaration to be made by Maimons.

his majority has declared in manner next hereinafter provided that he desires to be governed by the

Muhammadan law as established in the Hanafi School, that law shall thereafter, notwithstanding any custom to the contrary, apply to him in each part of British India in the same particulars and to the same extent as it applies to other persons in that part of British India who are governed by it.

(2) A declaration to take effect under sub-section (1) must be made by a written instrument under the hand of the person making the same, in the form given in the schedule to this Act or in a form to the like effect, and must—

(a) if made in a part of British India in which the Indian Registration Act, 1877, is for the time being in force, be registered during his lifetime under that Act; and

(b) if made elsewhere, be executed before, and authenticated by, a notary public or a Court, Judge, Magistrate, British Consul or Vice-Consul or representative of Her Majesty or of the Government of India.

(3) Nothing in this Act shall prevent any person being or becoming subject to any form of Muhammadan law in any other manner than that provided by this Act.

THE SCHEDULE.

FORM OF DECLARATION.

I hereby declare that I wish to be governed to the extent provided by the Maimons Act, 1886, by the Muhammadan law as established in the Hanafi School.

STATEMENT OF OBJECTS AND REASONS.

1. THE Maimons, like the Khojás, were originally Hindus, and have been converted to Muhammadanism; but though they are said, as a rule, to be Muhammadans in a fuller sense than the great body of the Khojás, it has been held by the Courts that certain sections of them are in some particulars still governed by Hindu customs instead of by Muhammadan law.

2. From a petition lately received by the Government, it appears that to a large number of the Maimons in question this position is not satisfactory. They hold that they should be governed, or they wish to be governed, by the Muhammadan law of the Hanafi School, and they ask that it may be declared by the legislature that they are so governed.

3. It is not to be expected that any such declaration would be made by the legislature unless it were shown that it was desired by the entire community to which it would apply, and it must be admitted that there is a want of unanimity among them on this subject.

It seems but reasonable, however, that some simple procedure should be provided by which the petitioners and other members of the Maimon class, who may be of their way of thinking, would be enabled to secure the application to themselves of those portions of the Muhammadan law which are applied by our Courts to ordinary Muhammadans, and to avoid all risk of being held to be governed by customs which are distasteful to them, and which it is to be apprehended are far from being well settled.

4. Such a procedure is to be found in the clause which it has been proposed to insert in the Khojá Succession Bill now under consideration, and which provides that a Khojá of full age may by a registered declaration withdraw himself from the peculiar law of succession by which Khojás are to be governed and place himself under the Muhammadan law of succession.

The present Bill has been prepared with a view to providing a similar procedure for Maimons. It is, however, not restricted to the matter of succession, as the difficulty which it is intended to meet is not confined to that branch of the law; and as, from all that has appeared up to this, the Hanafi form of the Muhammadan law is the only one to which Maimons would desire to be subject, it provides for the application to them only of that form of the law.

5. As it is obviously undesirable that any doubt should be thrown on the legal position of Maimons who may be already fully subject to the Muhammandan law, or that it should be suggested that a Maimon could not after the passing of the Bill become fully subject to that law in any way in which he, in common with Hindus and others, might become subject to it at present, a clause has been inserted in the Bill providing that nothing therein contained shall prevent any person from being or becoming subject to any form of Muhammadan law in any other manner than that provided by the Bill.

The 15th October 1885.

(Signed) AMÍR ALÍ.

D. FITZPATRICK,
Secretary to 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 22nd October 1885:—

Bill No. 18 of 1885.

THE INDIAN TRAMWAYS BILL, 1885.

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A Bill to facilitate the construction and to regulate the working of Tramways.

WHEREAS it is expedient to facilitate the construction and to regulate the working of tramways; It is hereby enacted as follows:—

Preliminary.

Short title and commencement. 1. (1) This Act may be called the Indian Tramways Act, 1886; and

(2) It shall come into force at once.

Local extent. 2. (1) It extends in the first instance to the whole of British India, except the territories administered by the Governor of Fort Saint George in Council, the Governor of Bombay in Council, and the Lieutenant-Governor of Bengal.

(2) But the Governor of Fort Saint George in Council, the Governor of Bombay in Council or the Lieutenant-Governor of Bengal may, by notification in the official Gazette, extend this Act to the whole or any part of the territories under his administration.

3. In this Act, unless there is something repugnant in the subject or context,—

Definitions.

(1) "local authority" means a municipal committee, district board, body of port commissioners or other authority legally entitled to, or entrusted by the Government with, the control or management of a municipal or local fund;

(2) "road" means the way of a road, street, thoroughfare, passage or place along or across which a tramway authorised under this Act is, or is intended to be, laid, and includes the surface soil and sub-soil of a road, and the footway

and drains of a road, and any bridge, culvert or causeway forming part of a road:

(3) "road-authority", in relation to a road, means— [33 & 34 Vic. c. 78, s. 3.]

(a) if a local authority maintains and repairs the road, then that authority:

(b) if a local authority does not maintain and repair the road, and the road is neither vested in Her Majesty nor maintained and repaired by the Government, then the person in whom the road is vested; and

(c) if a local authority does not maintain and repair the road, and the road is vested in Her Majesty or maintained and repaired by the Government, then the Local Government:

(4) "circle", in relation to a local authority or road-authority, means the area within the control of that authority: [33 & 34 Vic. c. 78, s. 3.]

(5) "tramway" means a tramway, or any part of a tramway, or any siding, turnout, connection, line or track belonging to a tramway: Act XXII, 1883, s. 2.]

(6) "order" means an order authorising the construction of a tramway under this Act, and includes a further order substituted for, or amending, extending or varying, that order:

(7) "promoter" means a local authority or person in whose favour an order has been made, and includes a local authority or person on whom the rights and liabilities conferred and imposed on the promoter by this Act and the order and any rules made under the Act, as to the construction, maintenance and use of the tramway, have devolved: [33 & 34 Vic. c. 78, ss. 4, 24, 43 & 44; and Act XXII, 1883, Schedule, Articles 1 and 26.]

(8) "undertaking" includes all moveable and immoveable property of the promoter suitable to and used by him for the purposes of the tramway:

(9) "carriage", in the case of a tramway on which steam-power or any other mechanical power is used, includes an engine worked on the tramway for the purpose of producing that power:

(10) "toll" includes any charge leviable in respect of the use of a tramway:

(11) "lessee" means a person to whom a lease has been granted of the right of user of a tramway and of demanding and taking the authorised tolls:

(12) "District Magistrate" includes an officer empowered by the Local Government by name or by virtue of his office to discharge within any local area all or any of the functions of a District Magistrate under this Act:

(13) "Collector" means the chief officer in charge of the revenue-administration of a district, and includes an officer empowered by the Local Government by name or by virtue of his office to discharge within any local area the functions of a Collector under this Act; and

(14) "prescribed" means prescribed by rules made by the Local Government under this Act.

[Act XIII, 1885, s. 3, cl. 7.]

[Act XXII, 1883, s. 2.]

*The Indian Tramways Bill, 1885—Sections 4-7.**Orders authorising the Construction of Tramways.*

4. (1) The Local Government may make an order authorising the construction of a tramway in a circle on the application of—

- (a) the local authority of the circle, with, where that authority is not the road-authority of a road or part of a road to be traversed by the tramway, the consent of the road-authority in respect of that road or part; or
- (b) any person with the consent of the local authority and, where that authority is not the road-authority of a road or part of a road to be traversed by the tramway, of the road-authority in respect of that road or part:

Provided that, if any part of the proposed tramway is to traverse land which is not included within the limits of a municipality or of a cantonment, the Local Government shall not make the order without the previous sanction of the Governor-General in Council.

(2) A local authority shall not make an application for an order, or be deemed to consent to an application being made by any person for an order, unless the making of the application or the giving of the consent has been approved by the local authority in manner prescribed.

5. When it is proposed to lay a tramway in two or more circles, and a local authority or road-authority having control in either or any of the circles does not consent thereto, the Local Government may, nevertheless, make an order authorising the construction of the tramway in the circle, if, after considering the objections of the dissenting authority, and the benefit which the public is likely to derive from the tramway being laid in the circle of that authority, it is satisfied that the construction of the tramway therein is expedient.

6. (1) The Local Government on receiving an application shall consider it, and, if satisfied as to the propriety of proceeding thereon, publish in the official Gazette, and in such other manner as it deems sufficient for giving information to persons interested, a draft of a proposed order authorising the construction of the tramway.

(2) A notice shall be published with the draft stating that any objection or suggestion which any person may desire to make with respect to the proposed order will, if submitted to the Local Government on or before a date to be specified in the notice, be received and considered.

(3) If, after considering any objections or suggestions which may have been made with respect to the draft on or before the date so specified, the Local Government is of opinion that the application should be granted, with or without addition or modification, or subject or not to any restriction or condition, it may settle and make an order accordingly.

(4) Every order authorising the construction of a tramway shall be published in the official Gazette in English, and in the other prescribed language or languages, if any, and that publica-

tion shall be conclusive proof that the order has been made as required by this section.

7. (1) An order made under section 6 shall empower the promoter therein specified to construct and maintain the tramway therein described in the manner therein provided, and shall specify the time within which the tramway shall be commenced and the time within which it shall be completed and opened for public traffic.

(2) The order may also provide, in manner consistent with this Act, for all or any of the following, among other matters, that is to say:—

(a) a period before the expiration of which the tramway shall not be commenced, and the conditions subject to which the local authority, when it is not itself the promoter, may, within that period, elect to be substituted in the place of the promoter in respect of the undertaking or of so much thereof as is within its circle; and the limits of time within which, and the terms upon which, the tramway has been constructed, require the promoter to sell to it the undertaking or so much thereof as is within its circle;

(b) the acquisition by the promoter of land for the purposes of the tramway, and the disposal by him of land which has been acquired but is no longer required for those purposes;

(c) the conditions subject to which roads may be opened and broken up for the purposes of the construction or maintenance of the tramway or any part thereof, and the method of, and materials to be used in, the re-instating of the roads, and the approval of the method and materials by the Local Government or the road-authority before the commencement of the work;

(d) the conditions on which the tramway may be constructed over a bridge or across a railway or tramway when the carriage-way over the bridge is to form part of the tramway or when the tramway is to cross a railway or another tramway on the level;

(e) the space which shall ordinarily intervene between the outside of the carriage-way on either side of a road whereon the tramway is to be constructed and the nearest rail of the tramway, and the conditions on which a smaller space may be permitted;

(f) the gauge of the tramway; the rails to be used, and the mode in which, and the level at which, they shall be laid and maintained; and the adoption and application by the promoter of such improvements in the rails, and in their situation, and in the sub-structure upon which they rest, as the Local Government may require;

(g) the portion of the road or roads traversed by the tramway to be kept in repair by the promoter, the maintenance by the pro-

[33 & 34 Vic., c. 78, s. 4.]

[33 & 34 Vic., c. 78, s. 5.]

[33 & 34 Vic., c. 78, ss. 7 & 8; & Act XV, 1873, s. 68.]

[See 33 & 34 Vic., c. 78, s. 18, and s. 10 of this Bill.]

Provisional Order Clause 21.

[33 & 34 Vic., c. 78, s. 43.]

[33 & 34 Vic., c. 78, ss. 8 & 15; Provisional Order Clauses 2 and 5; and Report of House of Lords Committee, 1879, paragraph 11.]

[33 & 34 Vic., c. 78, ss. 26 & 27, and Provisional Order Clause 9.]

[33 & 34 Vic., c. 78, s. 26.]

[33 & 34 Vic., c. 78, s. 9, and Provisional Order Clause 13.]

[33 & 34 Vic., c. 78, s. 25, and Provisional Order Clauses 8 and 10.]

[33 & 34 Vic., c. 78, s. 28, and Provisional Order Clause 10.]

The Indian Tramways Bill, 1885—Sections 8-9.

Clauses 8, 11
& 12.]

moter to the satisfaction of the Local Government or the road-authority, or both, of that portion of the road or roads, and the liability of the promoter, on the requisition of the Local Government, from time to time, to adopt and apply such improvements in the tramway as the Local Government may consider necessary or desirable for the safety and convenience of the public, and to alter the position or level of the tramway to suit future alterations in the road or roads;

[32 & 34 Vic.,
c. 78, s. 27,
and Provisional
Order Clause 17.]

(h) the application of material excavated by the promoter in the construction or maintenance of the tramway;

[Provisional
Order Clause
15.]

(i) the provision of such crossings, passing-places, sidings, junctions and other works, in addition to those specified in or authorised by the order, as may from time to time be necessary or convenient to the efficient working of the tramway;

[33 & 34 Vic.,
c. 78, s. 32,
and Provisional
Order Clause 18.]

(j) the powers which may from time to time be exercised by the Local Government, the local authority, the road-authority or any person in respect of sewers, drains, telegraph-lines, gas-pipes, or water-pipes in or on land occupied by the tramway; the notice (if any) to be given of the intended exercise of those powers; the manner in which the powers shall be exercised; and the extent to which the tramway and the traffic thereon may be interfered with in the exercise thereof;

[33 & 34 Vic.,
c. 78, ss. 30 &
31.]

(k) the conditions subject to which the promoter may from time to time interfere with, or alter or require the alteration of the position of, drains (not being sewers or main drains, telegraph-lines, gas-pipes or water-pipes);

[Provisional
Order Clause
16.]

(l) the provision of a temporary tramway in place of a part of a tramway which has been removed, or of which the use has been discontinued, by reason of the execution of any work affecting a road along which the part of the tramway was laid;

[33 & 34 Vic.,
c. 78, s. 34; and
Provisional
Order Clauses
25, 26 & 27.]

(m) the motive power to be used on the tramway, and the conditions on which steam-power or any other mechanical power may be used;

[33 & 34 Vic.,
c. 78, s. 34;
Schedule A to
form of Provisional
Order; and Regula-
tions and By-laws of
the Board of
Trade with
respect to the
use of steam-
power on
tramways.]

(n) the nature, dimensions, fittings, appliances and apparatus of the carriages to be used on the tramway, and the inspection and examination thereof by officers of the Local Government or the local authority, and the liability of the promoter or lessee, on the requisition of the Local Government, from time to time, to adopt and apply such improvements in the carriages and in the fittings, appliances and apparatus, as the Local Government may consider necessary or desirable for the safety and convenience of the public;

[33 & 34 Vic.,
c. 78, s. 10
and Provisional
Order Clauses 33 to
36 and 38 to
43.]

(o) the traffic which may be carried on the tramway, the traffic which the promoter or lessee shall be bound to carry, and the traffic which he may refuse to carry; the tolls to be leviable by the promoter or lessee, and the periodical revision thereof

by the Local Government; and the regulation of the traffic and of the levy of the tolls;

(p) the use of the tramway free of toll by the local authority, with its own carriages for specified purposes, during specified hours, with power to the local authority to make such sidings and other works as may be necessary for communication between its premises and the tramway;

[Provisional
Order Clause
37.]

(q) the conditions subject to which the promoter may transfer the undertaking; or any part thereof, by sale, mortgage, lease, exchange or otherwise; and the conditions subject to which the local authority may be the transferee;

[33 & 34 Vic.,
c. 78, s. 44,
and Provisional
Order Clause 48.]

(r) the performance by the Local Government or by the local authority or road-authority of any work required by the Act or the order to be done by the promoter; and

[33 & 34 Vic.,
c. 78, s. 23,
proviso.]

(s) the penalty to be incurred by the promoter or lessee for failure to observe any condition or direction contained in the order and the application of the penalty when recovered.

[Provisional
Order Clauses
10, 11, 26, 27,
and 40.]

(3) The Local Government may, in providing in the order for the acquisition of land for the purposes of a tramway of which the promoter is not a company, direct that land may be acquired for the promoter under the provisions of the Land Acquisition Act, 1870, in the same manner and on the same conditions as it might be acquired for the purposes of the tramway if a company were the promoter.

[Report of
House of
Lords Com-
mittee, 1879,
para. 11.]

X of 1870.

(4) The order shall imply the condition—

(a) in the case of a tramway of which a local authority is the promoter, that a lease thereof shall be granted only in manner by this Act provided, and

(b) in the case of a tramway of which a local authority is not the promoter, that a lease thereof shall be only of the right of user and of demanding and taking the authorised tolls, and shall not confer or impose on the lessee any of the powers or duties of the promoter in respect of the construction or maintenance of the tramway.

8. (1) The Local Government may, on the application of the promoter, revoke, amend, [33 & 34 Vic.,
c. 78, s. 16.]

Further orders.

extend or vary the order by a further order.

(2) An application for a further order shall be made in the same manner and subject to the same conditions as an application for an order.

(3) The Local Government may, in its discretion, either grant or reject the application.

(4) If it grants the application, it shall make the further order in the same manner as an order, except that no addition to, or modification of, the rights, powers and authorities asked for in the application, or restriction or condition with respect thereto, shall be made or imposed by the further order without the consent in writing of the promoter.

9. (1) Subject to, and in accordance with, the provisions of this Act, the [33 & 34 Vic.,
c. 78, s. 17.]

Power to authorise joint
work by local authorities.

Local Government may, on a joint application, or on two or more separate applications settle and make an order empowering two or more local

The Indian Tramways Bill, 1885.—Sections 10-16.

authorities, respectively, jointly to construct the whole, or separately to construct parts, of a tramway, and jointly or separately to own the whole or parts thereof.

(2) All the provisions of this Act which relate to the construction of tramways shall extend and apply to the construction of the whole and the separate parts of the tramway, and the form of the order may be adapted to the circumstances of the case.

10. (1) If a promoter authorised by an order Cesser of powers given to construct a tramway— by an order.

- (a) does not within the time specified in the order substantially commence the construction of the tramway, or
- (b) having commenced the construction, suspends it without a reason sufficient in the opinion of the local Government to warrant the suspension, or
- (c) does not within the time specified in the order complete the tramway and open it for public traffic,—

the following consequences shall ensue:—

- (i) the powers given by the order to the promoter for constructing the tramway and otherwise in relation thereto shall, unless the Local Government, by special direction in writing, prolongs the time or condones the suspension, cease to be exercised except as to so much of the tramway as is then completed:
- (ii) as to so much of the tramway as is then completed, the Local Government may either permit, or refuse to permit, the powers given by the order to continue;
- (iii) if the Local Government refuses to permit the powers to continue, then so much of the tramway as is then completed may be dealt with, under the provisions of this Act relating to the discontinuance of tramways, as a tramway of which the discontinuance has been proved to the satisfaction of the Local Government.

(2) A notification published by the Local Government in the official Gazette to the effect that on a date specified in the notification the construction of a tramway had not been substantially commenced or a tramway had not been completed and opened for public traffic, or that the construction of a tramway had been suspended without sufficient reason, shall, for the purposes of this section, be conclusive proof of the matter stated therein.

Construction and Maintenance of Tramways.

11. A tramway shall be constructed and Mode of formation of maintained in the manner tramway. provided by the order.

12. A tramway, or portion or extension of, or addition to, a tramway, shall not be opened for public traffic until an engineer appointed in this behalf by the Local Government has inspected it and certified it to be fit for such traffic.

13. The road-authority and the promoter may Agreement between road- from time to time enter authority and promoter as into agreements with to repair of roadway. respect to the keeping in repair of the whole or a part of a road traversed by a tramway, and with respect to the proportion to be paid by either of them of the expense of keeping the road or part in repair.

Traffic on Tramways.

14. (1) The promoter of a tramway shall, sub- Rights of promoters and the public over tramways. ject to the provisions of sub-section (2) and to the other provisions of

this Act and of the order, have the exclusive use of the tramway for carriages with flange-wheels or other wheels suitable to run on the rail described in the order as the rail to be used on the tramway:

Provided that nothing in this Act or the order or in any rule made under the Act shall affect the right of any person authorised to use a tramway or railway to pass across a tramway constructed under this Act with carriages having wheels suitable to run on the rail thereof.

(2) The public shall have a right to pass along or across any part of a road along or across which a tramway is constructed, whether on or off the tramway, with carriages not having flange-wheels or other wheels suitable to run on the rail of the tramway: provided—

- (a) that this sub-section shall not apply where the tramway is constructed on land the right to the exclusive possession of which has been acquired by the promoter, and
- (b) that the Local Government may by an order authorise the construction of a tramway on any part of a road with rails raised above the surface of the road, if it is satisfied that the convenience of the public will not be injuriously affected thereby.

15. (1) The promoter or lessee may demand Tolls leviable by pro- and take, in respect of moter or lessee. the tramway, tolls not exceeding the limits specified in or determinable under the order, or if the order contains no provision in this behalf, then such sums as may from time to time be fixed by the promoter or lessee with the previous sanction of the Local Government.

(2) A list of all the tolls authorised to be levied shall be exhibited, in such languages as the District Magistrate may direct, in a conspicuous place inside and outside each of the carriages used upon the tramway.

16. (1) A person shall not be entitled to carry, Carriage of dangerous or offensive goods. or to require to be carried, on a tramway constructed under this Act, any

goods of a dangerous or offensive nature.

(2) A person taking such goods with him on the tramway shall, before entering the carriage, give notice of their nature to the servant of the promoter or lessee in charge of the carriage.

(3) A person sending such goods by the tramway shall distinctly mark their nature on the outside of the package containing them, or otherwise give notice thereof in writing to the servant of the promoter or lessee with whom he leaves them for the purpose of their being sent by the tramway.

[33 & 34 Vic., c. 78, s. 18.]

[Sections 19 & 20 of this Bill.]

[33 & 34 Vic., c. 78, s. 25.]

[33 & 34 Vic., c. 78, s. 25, & Act IV, 1879, s. 5.]

[33 & 34 Vic., c. 78, s. 29.]

[33 & 34 Vic., c. 78, ss. 34 & 62, and Act XXII, 1883, s. 8.]

[33 & 34 Vic., c. 78, s. 45.]

[33 & 34 Vic., c. 78, s. 53; and Act XXII, 1883, s. 13.]

The Indian Tramways Bill, 1885.—Sections 17-21.

(4) Any servant of the promoter or lessee may refuse to carry upon the tramway a parcel which he suspects to contain goods of a dangerous or offensive nature, and if any such parcel has been received for the purpose of being carried upon the tramway, may stop the transit thereof until he is satisfied as to the nature of its contents.

Licenses to use Tramways.

[33 & 34 Vic., c. 78, s. 35.] 17. If at any time after a tramway or part of

Grant to third parties a tramway has been for of licenses to use tramway three years opened for in certain events. public traffic in a circle, the local authority of the circle represents in writing to the local Government that the public is deprived of the full benefit of the tramway or of the part thereof, the Local Government may, if after such enquiry as it deems necessary it is satisfied as to the truth of the representation, grant a license to any person to use the tramway conformably to this Act and the order and to the rules made under the Act, subject to the following provisions, namely:—

- (a) the license shall be for a period not less than one year or more than three years from the date of the license, but the Local Government may in its discretion renew it;
- (b) the license shall be to use the whole of the tramway for the time being opened for public traffic, or such part or parts of the tramway as the Local Government, having regard to the cause for granting the license, thinks fit;
- (c) the license shall specify the number of carriages which the licensee shall run upon the tramway, the mode in which, and times at which, the carriages shall be run, the tolls to be paid to the promoter or lessee by the licensee for the use of the tramway, and the tolls, being those for the time being leviable by the promoter or lessee, which the licensee may demand and take for the use of his carriages;
- (d) the licensee and his officers and servants shall permit one person, duly authorised for that purpose by the promoter or lessee, to travel free of toll in or upon each carriage of the licensee run upon the tramway for the whole or any part of a journey; and
- (e) the Local Government may revoke, alter or modify the license for any cause sufficient in its opinion to warrant the revocation, alteration or modification thereof.

[33 & 34 Vic., c. 78, s. 37.]

18. A licensee shall, on demand, give to an officer or servant authorised in that behalf by the promoter or lessee an exact account in writing, signed by the licensee, of the number of passengers, or number or quantity of goods, conveyed by any and every carriage used by him on the tramway.

Discontinuance of Tramways.

[33 & 34 Vic., c. 78, s. 41.]

19. If it is proved to the satisfaction of the Local Government, at any time after the opening of a tramway for public traffic, that the working of the tramway, or any part thereof, has

been discontinued, for the space of three months, without a reason sufficient, in the opinion of the Local Government, to warrant the discontinuance, the Local Government, if it thinks fit, may, by notification in the official Gazette, declare that the powers of the promoter and of the lessee, if any, in respect of the tramway or the part thereof so discontinued, shall, from the date of the notification, be at an end, and thereupon the said powers shall cease and determine, except in so far as they may be purchased by a local authority in manner by this Act provided.

[Section 22 of this Bill.]

20. (1) Where a notification has been published under section 19, the road-authority may, at any time after the expiration of two months from the date of the notification, remove the tramway or part of the tramway so discontinued, and use the materials thereof in re-instating the road.

[33 & 34 Vic., c. 78, s. 41.]

(2) The promoter shall pay to the road-authority the cost incurred by that authority in removing the tramway or the part thereof and in re-instating the road.

(3) The cost shall be certified by an officer of the road-authority, and his certificate, countersigned by the District Magistrate, shall be conclusive proof as to the cost incurred.

(4) If the promoter does not pay the amount so certified within one month after the delivery to him of the certificate or of a copy thereof, the road-authority may, without any previous notice to the promoter and without prejudice to any other remedy which it may have for the recovery of the amount, sell and dispose of such materials of the tramway or part thereof removed as it has not used in re-instating the road, either by public auction or by private sale, and for such sum or sums, and to such person or persons, as it thinks fit and may, out of the proceeds of the sale, pay and reimburse itself the amount of the cost aforesaid and of the expenses of the sale, and shall pay over the residue (if any) of the proceeds of the sale to the promoter.

[Section 36 of this Bill.]

Insolvency of Promoter.

21. (1) If, at any time after the opening of a tramway in a circle for public traffic, it appears to the road authority or local authority of the circle that the promoter of the tramway is insolvent, so that he is unable to maintain the tramway, or work it with advantage to the public, and either of those authorities makes a representation to that effect to the Local Government, the Local Government may, if after such enquiry as it deems necessary it is satisfied as to the truth of the representation, declare, by notification in the official Gazette, that the powers of the promoter shall, at the expiration of six months from the publication of the notification, be at an end; and the powers of the promoter shall cease and determine at the expiration of that period, except in so far as they may be purchased by a local authority in manner by this Act provided.

[33 & 34 Vic., c. 78, s. 42.]

(2) Where a notification has been published under sub-section (1), the road authority may, at any time after the expiration of six months

[Section 22 of this Bill.]

Cesser of powers of promoter and lessee on discontinuance of tramway.

The Indian Tramways Bill, 1885.—Sections 22-24.

from the date thereof, remove the tramway in the same manner, and subject to the same provisions as to the payment of the cost of the removal, and to the same remedy for recovery of the cost, in every respect as in cases of removal under section 20.

Purchase of Tramways.

22. (1) Where the promoter of a tramway in a circle is not the local authority, the local authority, with the previous sanction of the Local Government, may—

- [33 & 34 Vic., c. 78, s. 43.]
- Future purchase of undertaking by local authority.
- (a) within such limits of time as may be specified in this behalf in the order, or
 - (b) if a time was not specified in the order, then within six months after the expiration of a period of twenty-one years from the date of the order, and within six months after the expiration of every subsequent period of seven years, or
 - (c) within two months after the publication of a notification under section 19 or within six months after the publication of a notification under section 21,—

by notice in writing, require the promoter to sell to the local authority his undertaking or the part thereof which is within the circle of the local authority; and thereupon the promoter shall sell the same upon the terms specified in the order, or, if the terms were not specified in the order, then upon the terms of paying the then value of the undertaking or of the part thereof, exclusive of any allowance for past or future profits of the undertaking or any compensation for compulsory sale or other consideration whatsoever.

(2) A requisition shall not be made under sub-section (1) unless the making thereof has been approved by the local authority in manner prescribed.

(3) When a sale has been made under this section, all the rights, powers and authorities of the promoter in respect of the undertaking or part thereof sold, or, where a notification has been published under section 19 or section 21, all the rights, powers and authorities of the promoter previous to the publication of the notification in respect of the undertaking or part thereof sold, shall be transferred to the authority to whom the undertaking or part has been sold, and shall vest in and may be exercised by, that authority in the same manner as if the tramway had been constructed by it under an order made under this Act.

(4) Subject to, and in accordance with, the preceding provisions of this section, two or more local authorities may jointly purchase an undertaking or so much thereof as is within their circles.

Working of Tramways owned by Local authorities.

[33 & 34 Vic., c. 78, s. 19.]

23. (1) Where a local authority has under the authority of an order completed a tramway, or has under the provisions of this Act or of an order acquired possession of a tramway, it may, by a lease to be approved by the Local Government, let to any person the right of user of the tramway and of demanding and taking the authorised tolls.

(2) On the determination of a lease, the local

authority may from time to time let the right for such further term and on such conditions as the Local Government may approve.

(3) Every lease made under this section shall imply a condition of re-entry if at any time after the making thereof it is proved to the satisfaction of the Local Government that the lessee has discontinued the working of the tramway leased, or of any part thereof, for the space of three months, without a reason sufficient, in the opinion of the Local Government, to warrant the discontinuance.

(4) Notice of the intention of the local authority to make a lease shall be given in manner prescribed.

(5) If the local authority cannot by means of a lease obtain what it deems to be a fair rent for the tramway, it may itself, with the previous sanction of the Local Government and for such term as the Local Government directs, place and run carriages upon the tramway, and demand and take the authorised tolls in respect of the use of the carriages.

Rules.

24. (1) In addition to any other power to make rules expressly or by implication conferred by this Act, the Local Government may make rules consistent with this Act—

[33 & 34 Vic., c. 78, ss. 46 & 64; and Act XXI, 1883, s. 20.]

- (a) as to the form in which an application for an order shall be made;
- (b) as to the costs to be paid by an applicant in respect of an order, and the time when, and the place where, those costs shall be paid;
- (c) as to the payment of money or lodgment of securities; by way of deposit, by the applicant for an order before the order is published under section 6, sub-section (4), or a further order is made under section 8; the investment of money so paid; the disposal of interest or dividends from time to time accruing due on money or securities so paid, lodged or invested; the application of the money or securities or the produce thereof to the discharge of any liability incurred by the promoter, and the forfeiture, repayment or return of the money or securities;
- (d) as to the plans and sections of any works to be deposited by applicants for orders or by promoters;
- (e) for regulating the use of steam-power or any other mechanical power on a tramway;
- (f) as to any matter specified in section 7, sub-section (2), clauses (c), (d), (e), (j) and (k), as a matter which may be provided for in an order, when that matter has not been so provided for, or has not, in the opinion of the Local Government, been effectually so provided for;
- (g) as to any matter respecting which rules may be made under this section by a local authority or a promoter or lessee; and,
- (h) generally, as to any other matter or thing in respect of which it may seem to the Local Government to be expedient to make

The Indian Tramways Bill, 1885.—Sections 25-29.

rules for the purpose of carrying this Act into execution.

[33 & 34 Vic., c. 78, s. 46; and Act XXII, 1883, s. 20.] (2) A local authority may from time to time with the previous sanction of the Local Government, make rules, consistent with this Act and the order and any rules made by the Local Government under the Act, for regulating—

(a) the rate of speed to be observed in travelling upon a tramway within the circle of the local authority;

(b) the use of animal power on the tramway;

(c) the distances at which carriages using the tramway shall be allowed to follow one after the other;

(d) the stopping of carriages using the tramway;

(e) the traffic on roads along or across which the tramway is laid;

(f) the number of passengers which may be carried in any carriage;

[33 & 34 Vic., c. 78, s. 49.] (g) the licensing and control of drivers, conductors and other persons having charge of the carriages of the promoter or lessee or a licensee; and,

[Act XXII, 1883, s. 20.] (h) generally, the mode of use of the tramway.

[33 & 34 Vic., c. 78, s. 46; and Act XXII, 1883, s. 20.] (2) The promoter or lessee of a tramway may, from time to time, with the previous sanction of the Local Government, make rules consistent with this Act and the order and any rules made under the Act—

(a) for preventing the commission of any nuisance in or upon any carriage, or in or against any premises belonging to him; and

(b) for regulating the travelling in any carriage belonging to him.

[33 & 34 Vic., c. 78, s. 47.] 25. The authority making any rule under section 24 may direct that a breach of it shall be punishable with fine which may extend—

(a) if the authority making the rule is the Local Government, to two hundred rupees and

[Act XXII, 1883, s. 14.] (b) if that authority is a local authority or a promoter or lessee, to twenty rupees; and, when the breach is a continuing breach, with a further fine which may extend—

[Act XXII, 1883, s. 14.] (c) if the authority making the rule is the Local Government, to fifty rupees, and

[33 & 24 Vic., c. 78, s. 47.] (d) if that authority is a local authority or a promoter or lessee, to five rupees,

for every day after the first during which the breach continues.

26. (1) Every authority having power to make rules under any section of this Act shall, before making the rules, publish a draft of the proposed rules for the information of persons likely to be affected thereby.

(2) The publication shall be made, in the case of rules made by the Local Government, in such manner as may in its opinion be sufficient for giving information to persons interested, and, in the case of rules made by a local authority or by a promoter or lessee, in manner prescribed.

(3) There shall be published with the draft a notice specifying a date, not earlier than the ex-

piration of one month after the date of publication at or after which the draft will be taken into consideration.

(4) The authority shall receive and consider any objection or suggestion which may be made by any person with respect to the draft before the date so specified.

(5) The publication in the official Gazette of a rule purporting to be made under this Act shall be conclusive proof that it has been duly made.

(6) The Local Government may cancel any rule made by a local authority or by a promoter or lessee, under section 24.

Offences.

Penalty for failure of promoter, lessee or licensee to comply with Act or order. 27. If a promoter—

(a) constructs or maintains a tramway otherwise than in accordance with the order;

(b) opens the tramway for traffic, or permits it to be so opened, before it has been inspected and certified in manner required by section 12; or [Act XXII, 1883, s. 14.]

(c) fails to observe any requirement or condition of the order for neglect or breach whereof no penalty has been expressly provided in the order;

or if a promoter, lessee or licensee runs a carriage on a tramway otherwise than in accordance with the order;—

he shall (without prejudice to the enforcement of specific performance of the requirements of this Act or of the order, or to any other remedy which may be obtained against him in a Court of Civil Judicature), on the complaint of the Local Government or of the local authority or road-authority or of any person injuriously affected thereby, be punished with fine which may extend to two hundred rupees, and in the case of a continuing offence to a further fine which may extend to fifty rupees for every day after the first during which the offence continues to be committed.

28. If any person without lawful excuse, the burden of proving which shall lie upon him, wilfully obstructs any person acting under the authority of the promoter in the lawful exercise of his powers in constructing or maintaining a tramway, or injures or destroys any mark made for the purpose of setting out the line of the tramway, he shall be punished with fine which may extend to fifty rupees. [33 & 34 Vic., c. 78, s. 49, and Act XXII, 1883, s. 15.]

Penalty for obstructing promoter in exercise of his powers. 29. If any person without lawful excuse, the burden of proving which shall lie upon him, wilfully does any of the following things, namely:—

(a) interferes with, removes or alters any part of a tramway constructed under this Act, or of the works connected therewith; [33 & 34 Vic., c. 78, s. 50, and Act XXII, 1883, s. 16.]

(b) places or throws upon or across any such tramway any wood, stone, refuse or other thing;

(c) does anything in such a manner as to obstruct any carriage using any such tramway; or

The Indian Tramways Bill, 1885.—Sections 30-36.

(d) abets within the meaning of the Indian Penal Code the doing of, or attempts to do, anything mentioned in clause (a), clause (b) or clause (c),

he shall (without prejudice to any other remedy which may be obtained against him in a Court of Civil Judicature) be punished with fine which may extend to one hundred rupees.

30. If any person, except under a lease from, Penalty for using tram- or by agreement with, way with carriage having the promotor, or under flange-wheels. license from the Local Government granted under this Act, uses on a tramway, otherwise than as permitted by section 14, a carriage having flange-wheels or other wheels suitable to run on the rail of the tramway, he shall be punished with fine which may extend to two hundred rupees.

31. (1) If any person travelling or having Penalty for evading pay- travelled in a carriage of ment of proper toll. the promotor or lessee or a licensee evades or attempts to evade payment of toll, or if any person having paid toll for a certain distance wilfully proceeds in any such carriage beyond that distance and does not pay the additional toll for the additional distance or attempts to evade payment thereof, or if any person wilfully refuses or neglects on arriving at the point to which he has paid toll to quit the carriage, he shall be punished with fine which may extend to ten rupees.

(2) When a person commits an offence under this section and refuses, on demand of a servant of the promotor, lessee or licensee, to give his name and residence, or gives a name or residence which the servant has reason to believe to be false, he may be arrested and taken to the nearest police-station by the servant or any person whom the servant may call in for his assistance.

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

32. If any person takes or sends by a tram- way any goods of a Penalty for taking or dangerous or offensiv- sending dangerous or offensiv- e nature without giving notice. the notice required by section 16, he shall be punished with fine which may extend to fifty rupees.

33. (1) If a licensee fails on demand to give the account mentioned in section 18, or, with intent to evade the payment of tolls, gives a false account when he is called upon to give an account under that section, he shall be punished with fine which may extend to fifty rupees.

(2) The fine shall be in addition to any tolls payable by the licensee to the promotor or lessee in respect of the passengers or goods conveyed by the carriage or carriages used by the licensee on the tramway.

34. Nothing in this Act shall prevent a person from being prosecuted under any other law for an act or omis-

sion which constitutes an offence against this Act or the rules made under it, or from being liable under that other law to any other or higher punishment or penalty than that provided by this Act or the rules made under it: Provided that a person shall not be punished twice for the same offence.

Settlement of Differences.

35. (1) If any difference arises between the [33 & 34 Vic., c. 78, s. 33.] promotor or lessee on the one hand and the Local Government, or the local authority, or the road-authority, or a person having the charge of any sewers, drains, telegraph lines, gas-pipes or water-pipes, on the other hand, with respect to any interference or control exercised or claimed to be exercised by, or on behalf of, either party by virtue of this or any other Act, or of the order, or of rules made under this Act, or with respect to the propriety of, or the mode of, the execution of any work, or with respect to any compensation to be made by or to the promotor or lessee, or to the question whether any work is such as ought reasonably to satisfy the Local Government or the road-authority or both, or with respect to any other subject or thing regulated by, or comprised in, this Act or the order or rules made under the Act, and not otherwise expressly provided for therein, the matter in difference shall, on the application of either party, be settled by a referee.

(2) Where the difference is between the promotor or lessee on the one hand and the Local Government, either as such or as the road-authority, on the other, the referee shall be the District Court within the jurisdiction of which the tramway is situate, or, where the tramway is within the jurisdiction of more than one District Court, the District Court within the jurisdiction of which the greater part of the tramway is situate.

(3) In other cases, the referee shall be appointed by the Local Government.

(4) The powers and procedure of the referee may be prescribed.

(5) The decision of the referee shall be binding and conclusive on both parties.

Recovery of Tolls.

36. Any of the following moneys, namely, any [33 & 34 Vic. c. 78, s. 56; & Act XIII, 1884, s. 61.] rent due to a local authority from a lessee, any penalty recoverable from a promotor or lessee

under an order, any sum payable by a promotor or lessee under an award of a referee the cost of the performance under this Act by the Local Government or by a local authority or road-authority of any work required by this Act or an order to be done by a promotor, and the cost incurred by a road-authority in removing a tramway and re-instating a road under this Act, may, without prejudice to any other remedy the authority to which the money is due may have by suit or otherwise, be recovered by that authority, on application made in this behalf to the Collector, as if the sum due were an arrear of land revenue due by the promotor or lessee or his surety (if any):

Provided that nothing in this section shall authorise the arrest of the promotor or lessee

XLV of 1860.

33 & 34 Vic., c. 78, s. 54.]

[33 & 34 Vic., c. 78, s. 51, and Act XXII, 1883, s. 18.]

[33 & 34 Vic., c. 78, s. 52, Act XXII, 1883, s. 19, and Act X, 1882, s. 57.]

33 & 34 Vic., c. 78, s. 53, and Act XXII, 1883, s. 17.]

[33 & 34 Vic., c. 78, s. 38.]

[Act XIII, 1884, s. 156.]

The Indian Tramways Bill, 1885—Sections 37-48.

or his surety in execution of any process issued by the Collector.

Act XIII,
1884, s. 172.]

37. (1) If a licensee fails to pay on demand the tolls due for the use of a tramway, the promoter or lessee to whom the tolls are due may, without prejudice to the remedy which he may have by suit, apply to a Magistrate to recover the amount of the tolls, and the Magistrate may, after giving notice to the licensee if possible and allowing him an opportunity of being heard, proceed to recover the amount by distress and sale of any carriages or other moveable property of the licensee which may be found on the tramway or on premises connected therewith.

(2) When a licensee has failed to pay on demand the tolls due from him, the promoter or lessee to whom the tolls are due may seize any carriage or other moveable property of the licensee on the tramway or on premises connected therewith, and detain the same for forty-eight hours unless the tolls are sooner paid.

(3) When application is made to a Magistrate under sub-section (1), he may make an interim order of distraint pending his final decision.

Act XIII,
1884, s. 172.]

38. Any toll due to a promoter, lessee or licensee from a passenger may be recovered either by suit or, on application to a Magistrate having jurisdiction within any local area in which any part of the tramway is laid, by distress and sale of any moveable property belonging to the passenger within the local limits of the jurisdiction of the Magistrate.

Savings.
39. (1) Notwithstanding anything contained in this Act or in an order, a promoter shall not acquire any right other than that of user only over a road along or across which he lays a tramway, nor shall anything contained in this Act or in an order exempt the promoter of a tramway, or any other person using the tramway, from the payment of such charges as may lawfully be levied in respect of the use of a road or bridge along or across which the tramway is laid.

(2) The Local Government may, if it thinks fit, fix rates at which a promoter, lessee or licensee may compound for the charges payable in respect of the use of a road or bridge.

40. (1) Nothing in this Act or in an order shall take away or abridge any power which a road-authority, local authority or other person has by law to break up, widen, alter, divert or improve a road, railroad or tramway along or across which a tramway is laid.

(2) The road-authority, local authority or other person executing any work referred to in sub-section (1) shall not be liable to pay to a promoter, lessee or licensee any compensation for injury done to a tramway by the execution of the work or for loss of traffic occasioned by the reasonable use of any power lawfully exercised for the execution thereof.

[33 & 34 Vic.,
c. 78, s. 61;
and Act XXII,
1883, s. 10.]

41. Nothing in this Act or in an order shall affect the powers of a local authority or of a magistrate or police-officer to regulate the

passage of traffic along or across a road along or across which a tramway is laid; and the authority, magistrate or officer aforesaid may exercise its or his powers as well on as off the tramway and with respect as well to the traffic of a promoter, lessee or licensee as to the traffic of other persons.

Supplemental Provisions.

42. A promoter, lessee or licensee shall be answerable for all injuries happening through his act or default, or through the act or default of any person in his employment, by reason or in consequence of any of his carriages or works, and shall save harmless all authorities and persons collectively and individually, and their officers and servants, from all damages and costs in respect of injuries so happening.

43. For the purposes of this Act, want of funds shall not be deemed to be a sufficient reason for the suspension of the construction, or the discontinuance of the working, of a tramway by a promoter or lessee.

44. When a tramway is constructed under this Act within the limits of a municipality, the Local Government may exempt the animals, plant, rolling-stock, yards, workshops, engine-sheds and depôts of the promoter or lessee, for such period as it thinks fit, from all or any municipal taxes leviable with those limits.

45. The fund to or with the control or management of which the local authority of a municipality, cantonment or district is entitled or entrusted shall, notwithstanding anything in any Act respecting the purposes to which that fund may be applied, be applicable, subject to the control of the Local Government, to the payment of expenses incidental to the exercise of the powers and functions which may be vested in or exercised by a local authority under this Act.

46. The Local Government may, with the consent of the local authority and road-authority and of the promoter, extend any part of this Act or of any rules made thereunder, either with or without modification, to the whole or any part of a tramway constructed, or authorised to be constructed, before the passing of this Act, and to any extension of, or addition to, any such tramway, and may withdraw any part of the Act so extended.

47. In section 54 of the Indian Railway Act, 1879, the word "tramway" shall have the meaning assigned to it by section 3 of this Act.

48. All powers conferred by this Act on a Local Government may be exercised from time to time as occasion requires.

[33 & 34 Vic.,
c. 78, ss. 40 &
55.]

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[Act XXII,
1883, s. 21.]

[Act XXII,
1883, s. 22.]

[33 & 34 Vic.
c. 78, s. 20.]

[Act VIII,
1851.]

[Act XVII,
1878, s. 18.]

IV of 1879.

[Act XIII,
1884, s. 173.]

STATEMENT OF OBJECTS AND REASONS.

THE introduction of this Bill has been rendered necessary by the projected construction of tramways in parts of India beyond the reach of a local legislature. In 1883 a special Act was passed by the Governor General in Council to authorise the making, and regulate the working, of tramways in Rangoon. Since that year application has been made for special Acts for tramways in Lahore and Amritsar, and legislation would probably be found to be necessary to regulate the use of tramways in other large towns in which their construction has been approved by, or is under the consideration of, the local authorities.

2. The Bill has been drawn on the lines of the Tramways Act, 1870 (33 & 34 Vic., c. 78), and of the provisional orders and rules made by the Board of Trade under that statute. These orders and rules, and the fullest discussion on almost all points connected with the subject of tramways, will be found in Mr. Sutton's "Tramway Acts of the United Kingdom."

3. The Bill extends in the first instance to the whole of British India except the territories comprised within the sphere of a local legislature, and is extendible to those territories by the Local Government.

4. "Orders" take the place of the "provisional orders" of the English statute, but differ from those orders in not being "provisional" and not being confirmed by a subsequent Act of the Legislature. They also differ from provisional orders in that they must be consistent with the Act and cannot vary or except any part of it.

5. Sections 4 to 6 of the Bill prescribe the conditions on which, and the manner in which, an order may be made; and section 7 specifies the matters for which provision may be made in an order. A reference to the authorities cited against the several clauses of that section will show how those matters are now provided for in the United Kingdom. If an order is found on experience to be defective, it can be supplemented by a further order on the application of the person in whose favour the original order was made (section 8), or, in certain particulars, by rules (section 24).

6. When the order has been made, the tramway must be constructed, maintained and worked in the manner provided by the order (sections 11 and 27). If the tramway is constructed by a local authority, it will ordinarily be worked by a lessee (section 23). If it is constructed by a private speculator, it may be worked by him or by a lessee to whom he has let the right of user and of demanding and taking the authorised tolls (section 7, sub-section (4)). If the owner of the tramway or his lessee so works the tramway that the public is deprived of the full benefit of it, the Local Government may grant a license to any person to use the tramway on the payment of tolls to the owner or the lessee (section 17). If the owner discontinues the working of the tramway (section 19) or through want of funds is unable to maintain the tramway or work it with advantage to the public (section 21), the Local Government may revoke his powers. When the powers of the owner are so revoked, the tramway may either be removed by the authority which has charge of the road on which the tramway is laid (section 20 and section 21, sub-section (2)), or it may be purchased by the local authority (section 22).

7. Section 22 provides for tramways which have been constructed by companies and private persons being purchased by local authorities on the expiration of the periods, and upon the terms, specified in the order, or, if the periods and terms were not specified in the order, then on the expiration of the periods, and upon the terms, prescribed in the English statute.

8. When a tramway is purchased by a local authority, it will ordinarily be worked by a lessee. There may, however, be cases in which the authority would be unable to let a tramway for an adequate consideration. It has been provided, therefore (section 23), that in those cases the Local Government may authorise the local authority itself to engage in the business of running carriages.

9. Differences between owners or lessees of tramways and the Local Government or local authorities are to be settled by a referee (section 35), who, if the Local Government is directly interested, is to be the District Judge. The decision of the referee will be final.

10. Sections 36 to 38 provide for the recovery by suit or summary process of moneys due to and from owners, lessees and licensees of tramways.

11. Sections 39 to 41 contain the savings usually found in enactments and agreements relating to the construction of tramways, and section 44 enables the Local Government to exempt from local taxation the animals, plant, rolling-stock and premises of owners and lessees of tramways constructed within the limits of municipalities.

12. Section 46 enables the Local Government, with the consent of the owner and the local authorities, to extend any part of the Act, with or without modification, to a tramway or any part of a tramway constructed, or authorised to be constructed, before the passing of the Act.

The 22nd October 1885.

(Signed) C. P. ILBERT.

D. FITZPATRICK,
Secretary to the Government of India.

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 22nd October 1885:—

Bill No. 18 of 1885.

THE INDIAN TRAMWAYS BILL, 1885.

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36. Recovery of moneys due from promoters and in certain cases, from lessees.
37. Recovery of tolls from licensees.
38. Recovery of tolls from passengers.

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SECTION.

Savings.

39. Promoter to have right of user only.
 40. Saving of power over roads traversed by tramways.
 41. Saving of power of local authority and police to regulate traffic on roads.

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42. Promoters, lessees and licensees to be responsible for all injuries.
 43. Want of funds not a sufficient reason for default.
 44. Power to exempt from municipal taxation.
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 46. Extension of Act to existing tramways.
 47. Meaning of "tramway" in Railway Act.
 48. Powers of Local Government exercisable from time to time.

A Bill to facilitate the construction and to regulate the working of Tramways.

WHEREAS it is expedient to facilitate the construction and to regulate the working of tramways; It is hereby enacted as follows:—

Preliminary.

- Short title and commencement. 1. (1) This Act may be called the Indian Tramways Act, 1886; and
 (2) It shall come into force at once.

Local extent. 2. (1) It extends in the first instance to the whole of British India, except the territories administered by the Governor of Fort Saint George in Council, the Governor of Bombay in Council, and the Lieutenant-Governor of Bengal.

(2) But the Governor of Fort Saint George in Council, the Governor of Bombay in Council or the Lieutenant-Governor of Bengal may, by notification in the official Gazette, extend this Act to the whole or any part of the territories under his administration.

3. In this Act, unless there is something repugnant in the subject or context,—

Definitions. (1) "local authority" means a municipal committee, district board, body of port commissioners or other authority legally entitled to, or entrusted by the Government with, the control or management of a municipal or local fund:

(2) "road" means the way of a road, street, thoroughfare, passage or place along or across which a tramway authorised under this Act is, or is intended to be, laid, and includes the surface soil and sub-soil of a road, and the footway

and drains of a road, and any bridge, culvert or causeway forming part of a road:

(3) "road-authority", in relation to a road, [33 & 34 Vic., c. 78, s. 3.] means—

(a) if a local authority maintains and repairs the road, then that authority:

(b) if a local authority does not maintain and repair the road, and the road is neither vested in Her Majesty nor maintained and repaired by the Government, then the person in whom the road is vested; and

(c) if a local authority does not maintain and repair the road, and the road is vested in Her Majesty or maintained and repaired by the Government, then the Local Government:

(4) "circle", in relation to a local authority or road-authority, means the area within the control of that authority: [33 & 34 Vic., c. 78, s. 3.]

(5) "tramway" means a tramway, or any part of a tramway, or any siding, turnout, connection, line or track belonging to a tramway: Act XXII, 1883, s. 2.]

(6) "order" means an order authorising the construction of a tramway under this Act, and includes a further order substituted for, or amending, extending or varying, that order:

(7) "promoter" means a local authority or person in whose favour an order has been made, and includes a local authority or person on whom the rights and liabilities conferred and imposed on the promoter by this Act and the order and any rules made under the Act, as to the construction, maintenance and use of the tramway, have devolved: [33 & 34 Vic., c. 78, ss. 4, 24, 43 & 44; and Act XXII, 1883, Schedule, Articles 1 and 26.]

(8) "undertaking" includes all moveable and immoveable property of the promoter suitable to and used by him for the purposes of the tramway:

(9) "carriage", in the case of a tramway on which steam-power or any other mechanical power is used, includes an engine worked on the tramway for the purpose of producing that power:

(10) "toll" includes any charge leviable in respect of the use of a tramway:

(11) "lessee" means a person to whom a lease has been granted of the right of user of a tramway and of demanding and taking the authorised tolls:

(12) "District Magistrate" includes an officer empowered by the Local Government by name or by virtue of his office to discharge within any local area all or any of the functions of a District Magistrate under this Act:

(13) "Collector" means the chief officer in charge of the revenue-administration of a district, and includes an officer empowered by the Local Government by name or by virtue of his office to discharge within any local area the functions of a Collector under this Act; and

(14) "prescribed" means prescribed by rules made by the Local Government under this Act.

[Act XIII, 1885, 5-3, cl. 7.]

[Act XXII, 1883, s. 2.]

The Indian Tramways Bill, 1885—Sections 4-7.

Orders authorising the Construction of Tramways.

[33 & 34 Vic.,
c. 78, s. 4.]

4. (1) The Local Government may make an order authorising the construction of a tramway in a circle on the application of—

- (a) the local authority of the circle, with, where that authority is not the road-authority of a road or part of a road to be traversed by the tramway, the consent of the road-authority in respect of that road or part; or
- (b) any person with the consent of the local authority and, where that authority is not the road-authority of a road or part of a road to be traversed by the tramway, of the road-authority in respect of that road or part:

Provided that, if any part of the proposed tramway is to traverse land which is not included within the limits of a municipality or of a cantonment, the Local Government shall not make the order without the previous sanction of the Governor-General in Council.

(2) A local authority shall not make an application for an order, or be deemed to consent to an application being made by any person for an order, unless the making of the application or the giving of the consent has been approved by the local authority in manner prescribed.

[33 & 34 Vic.,
c. 78, s. 5.]

5. When it is proposed to lay a tramway in two or more circles, and authority not necessary in a local authority or road-certain cases. authority having control in either or any of the circles does not consent thereto, the Local Government may, nevertheless, make an order authorising the construction of the tramway in the circle, if, after considering the objections of the dissenting authority, and the benefit which the public is likely to derive from the tramway being laid in the circle of that authority, it is satisfied that the construction of the tramway therein is expedient.

[33 & 34 Vic.,
c. 78, ss. 7 &
8; & Act XV,
1873, s. 68.]

6. (1) The Local Government on receiving an application shall consider it, and, if satisfied as to the propriety of proceeding thereon, publish in the official Gazette, and in such other manner as it deems sufficient for giving information to persons interested, a draft of a proposed order authorising the construction of the tramway.

(2) A notice shall be published with the draft stating that any objection or suggestion which any person may desire to make with respect to the proposed order will, if submitted to the Local Government on or before a date to be specified in the notice, be received and considered.

(3) If, after considering any objections or suggestions which may have been made with respect to the draft on or before the date so specified, the Local Government is of opinion that the application should be granted, with or without addition or modification, or subject or not to any restriction or condition, it may settle and make an order accordingly.

(4) Every order authorising the construction of a tramway shall be published in the official Gazette in English, and in the other prescribed language or languages, if any, and that publica-

tion shall be conclusive proof that the order has been made as required by this section.

7. (1) An order made under section 6 shall empower the promoter therein specified to construct and maintain the tramway therein described in the manner therein provided, and shall specify the time within which the tramway shall be commenced and the time within which it shall be completed and opened for public traffic.

[33 & 34 Vic.,
c. 78, s. 8.]

[See 33 & 34
Vic., c. 78, s.
18, and s. 10
of this Bill.]

(2) The order may also provide, in manner consistent with this Act, for all or any of the following, among other matters, that is to say:—

- (a) a period before the expiration of which the tramway shall not be commenced, and the conditions subject to which the local authority, when it is not itself the promoter, may, within that period, elect to be substituted in the place of the promoter in respect of the undertaking or of so much thereof as is within its circle; and the limits of time within which, and the terms upon which, the local authority may, after the tramway has been constructed, require the promoter to sell to it the undertaking or so much thereof as is within its circle;
- (b) the acquisition by the promoter of land for the purposes of the tramway, and the disposal by him of land which has been acquired but is no longer required for those purposes;

Provisional
Order Clause
21.

[33 & 34 Vic.,
c. 78, s. 43.]

[33 & 34 Vic.,
c. 78, ss. 8 &
15; Provisional
Order Clauses
2 and 5; and Report of
House of Lords
Committee,
1879, para-
graph 11.]

- (c) the conditions subject to which roads may be opened and broken up for the purposes of the construction or maintenance of the tramway or any part thereof, and the method of, and materials to be used in, the re-instating of the roads, and the approval of the method and materials by the Local Government or the road-authority before the commencement of the work;

[33 & 34 Vic.,
c. 78, ss. 26 &
27, and Provi-
sional Order
Clause 9.]

- (d) the conditions on which the tramway may be constructed over a bridge or across a railway or tramway when the carriage-way over the bridge is to form part of the tramway or when the tramway is to cross a railway or another tramway on the level;

[33 & 34 Vic.,
c. 78, s. 26.]

- (e) the space which shall ordinarily intervene between the outside of the carriage-way on either side of a road whereon the tramway is to be constructed and the nearest rail of the tramway, and the conditions on which a smaller space may be permitted;

[33 & 34 Vic.,
c. 78, s. 9, and
Provisional
Order Clause
13.]

- (f) the gauge of the tramway; the rails to be used, and the mode in which, and the level at which, they shall be laid and maintained; and the adoption and application by the promoter of such improvements in the rails, and in their situation, and in the sub-structure upon which they rest, as the Local Government may require;

[33 & 34 Vic.,
c. 78, s. 23,
and Provi-
sional Order
Clauses 8 and
10.]

- (g) the portion of the road or roads traversed by the tramway to be kept in repair by the promoter, the maintenance by the

[33 & 34 Vic.,
c. 78, s. 28,
and Provi-
sional Order

The Indian Tramways Bill, 1885—Sections 8-9.

[Clauses 8, 11 & 12.]

motor to the satisfaction of the Local Government or the road-authority, or both, of that portion of the road or roads, and the liability of the promoter, on the requisition of the Local Government, from time to time, to adopt and apply such improvements in the tramway as the Local Government may consider necessary or desirable for the safety and convenience of the public, and to alter the position or level of the tramway to suit future alterations in the road or roads;

[32 & 34 Vic., c. 78, s. 27, and Provisional Order Clause 17.]

(h) the application of material excavated by the promoter in the construction or maintenance of the tramway;

[Provisional Order Clause 15.]

(i) the provision of such crossings, passing-places, sidings, junctions and other works, in addition to those specified in or authorised by the order, as may from time to time be necessary or convenient to the efficient working of the tramway;

[33 & 34 Vic., c. 78, s. 32, and Provisional Order Clause 18.]

(j) the powers which may from time to time be exercised by the Local Government, the local authority, the road-authority or any person in respect of sewers, drains, telegraph-lines, gas-pipes, or water-pipes in or on land occupied by the tramway; the notice (if any) to be given of the intended exercise of those powers; the manner in which the powers shall be exercised; and the extent to which the tramway and the traffic thereon may be interfered with in the exercise thereof;

[33 & 34 Vic., c. 78, s. 30 & 31.]

(k) the conditions subject to which the promoter may from time to time interfere with, or alter or require the alteration of the position of, drains (not being sewers or main drains, telegraph-lines, gas-pipes or water-pipes);

[Provisional Order Clause 16.]

(l) the provision of a temporary tramway in place of a part of a tramway which has been removed, or of which the use has been discontinued, by reason of the execution of any work affecting a road along which the part of the tramway was laid;

[33 & 34 Vic., c. 78, s. 34; and Provisional Order Clauses 25, 26 & 27.]

(m) the motive power to be used on the tramway, and the conditions on which steam-power or any other mechanical power may be used;

[33 & 34 Vic., c. 78, s. 34; Schedule A to form of Provisional Order; and Regulations and Bye-laws of the Board of Trade with respect to the use of steam-power on tramways.]

(n) the nature, dimensions, fittings, appliances and apparatus of the carriages to be used on the tramway, and the inspection and examination thereof by officers of the Local Government or the local authority, and the liability of the promoter or lessee, on the requisition of the Local Government, from time to time, to adopt and apply such improvements in the carriages and in the fittings, appliances and apparatus, as the Local Government may consider necessary or desirable for the safety and convenience of the public;

[33 & 34 Vic., c. 78, s. 10 and Provisional Order clauses 33 to 36 and 38 to 43.]

(o) the traffic which may be carried on the tramway, the traffic which the promoter or lessee shall be bound to carry, and the traffic which he may refuse to carry; the tolls to be leviable by the promoter or lessee, and the periodical revision thereof

by the Local Government; and the regulation of the traffic and of the levy of the tolls;

(p) the use of the tramway free of toll by the local authority, with its own carriages for specified purposes, during specified hours, with power to the local authority to make such sidings and other works as may be necessary for communication between its premises and the tramway;

[Provisional Order Clause 37.]

(q) the conditions subject to which the promoter may transfer the undertaking, or any part thereof, by sale, mortgage, lease, exchange or otherwise; and the conditions subject to which the local authority may be the transferee;

[33 & 34 Vic., c. 78, s. 44, and Provisional Order Clause 48.]

(r) the performance by the Local Government or by the local authority or road-authority of any work required by the Act or the order to be done by the promoter; and

[33 & 34 Vic., c. 78, s. 28, proviso.]

(s) the penalty to be incurred by the promoter or lessee for failure to observe any condition or direction contained in the order and the application of the penalty when recovered.

[Provisional Order Clauses 10, 11, 26, 27, and 40.]

(3) The Local Government may, in providing in the order for the acquisition of land for the purposes of a tramway of which the promoter is not a company, direct that land may be acquired for the promoter under the provisions of the Land Acquisition Act, 1870, in the same manner and on the same conditions as it might be acquired for the purposes of the tramway if a company were the promoter.

[Report of House of Lords Committee, 1879, para. 11.]

X of 1870.

(4) The order shall imply the condition—

(a) in the case of a tramway of which a local authority is the promoter, that a lease thereof shall be granted only in manner by this Act provided, and

(b) in the case of a tramway of which a local authority is not the promoter, that a lease thereof shall be only of the right of user and of demanding and taking the authorised tolls, and shall not confer or impose on the lessee any of the powers or duties of the promoter in respect of the construction or maintenance of the tramway.

8. (1) The Local Government may, on the application of the promoter, revoke, amend, extend or vary the order by a further order.

[33 & 34 Vic., c. 78, s. 16.]

(2) An application for a further order shall be made in the same manner and subject to the same conditions as an application for an order.

(3) The Local Government may, in its discretion, either grant or reject the application.

(4) If it grants the application, it shall make the further order in the same manner as an order, except that no addition to, or modification of, the rights, powers and authorities asked for in the application, or restriction or condition with respect thereto, shall be made or imposed by the further order without the consent in writing of the promoter.

9. (1) Subject to, and in accordance with, the provisions of this Act, the Local Government may, on a joint application, or on two or more separate applications settle and make an order empowering two or more local

[33 & 34 Vic., c. 78, s. 17.]

Power to authorise joint work by local authorities.

Local Government may, on a joint application, or on two or more separate applications settle and make an order empowering two or more local

The Indian Tramways Bill, 1885.—Sections 10-16.

authorities, respectively, jointly to construct the whole, or separately to construct parts, of a tramway, and jointly or separately to own the whole or parts thereof.

(2) All the provisions of this Act which relate to the construction of tramways shall extend and apply to the construction of the whole and the separate parts of the tramway, and the form of the order may be adapted to the circumstances of the case.

[33 & 34 Vic., c. 78, s. 13.]
10. (1) If a promoter authorised by an order Ceases of powers given to construct a tramway—by an order.

- (a) does not within the time specified in the order substantially commence the construction of the tramway, or
- (b) having commenced the construction, suspends it without a reason sufficient in the opinion of the local Government to warrant the suspension, or
- (c) does not within the time specified in the order complete the tramway and open it for public traffic,—

the following consequences shall ensue :—

- (i) the powers given by the order to the promoter for constructing the tramway and otherwise in relation thereto shall, unless the Local Government, by special direction in writing, prolongs the time or condones the suspension, cease to be exercised except as to so much of the tramway as is then completed :
- (ii) as to so much of the tramway as is then completed, the Local Government may either permit, or refuse to permit, the powers given by the order to continue ;
- (iii) if the Local Government refuses to permit the powers to continue, then so much of the tramway as is then completed may be dealt with, under the provisions of this Act relating to the discontinuance of tramways, as a tramway of which the discontinuance has been proved to the satisfaction of the Local Government.

(2) A notification published by the Local Government in the official Gazette to the effect that on a date specified in the notification the construction of a tramway had not been substantially commenced or a tramway had not been completed and opened for public traffic, or that the construction of a tramway had been suspended without sufficient reason, shall, for the purposes of this section, be conclusive proof of the matter stated therein.

Construction and Maintenance of Tramways.

[33 & 34 Vic., c. 78, s. 25.]
11. A tramway shall be constructed and Mode of formation of maintained in the manner tramway. provided by the order.

[33 & 34 Vic., c. 78, s. 25, & Act IV, 1879, s. 5.]
12. A tramway, or portion or extension of, or addition to, a tramway, shall not be opened for public traffic until an engineer appointed in this behalf by the Local Government has inspected it and certified it to be fit for such traffic.

13. The road-authority and the promoter may [33 & 34 Vic. c. 78, s. 29.] Agreement between road-authority and promoter as to repair of roadway. from time to time enter into agreements with respect to the keeping in repair of the whole or a part of a road traversed by a tramway, and with respect to the proportion to be paid by either of them of the expense of keeping the road or part in repair.

Traffic on Tramways.

14. (1) The promoter of a tramway shall, sub- [33 & 34 Vic., c. 78, ss. 34 & 62, and Act XXII, 1883, s. 8.] Rights of promoters and the public over tramways. ject to the provisions of sub-section (2) and to the other provisions of

this Act and of the order, have the exclusive use of the tramway for carriages with flange-wheels or other wheels suitable to run on the rail described in the order as the rail to be used on the tramway :

Provided that nothing in this Act or the order or in any rule made under the Act shall affect the right of any person authorised to use a tramway or railway to pass across a tramway constructed under this Act with carriages having wheels suitable to run on the rail thereof.

(2) The public shall have a right to pass along or across any part of a road along or across which a tramway is constructed, whether on or off the tramway, with carriages not having flange-wheels or other wheels suitable to run on the rail of the tramway : provided—

- (a) that this sub-section shall not apply where the tramway is constructed on land the right to the exclusive possession of which has been acquired by the promoter, and
- (b) that the Local Government may by an order authorise the construction of a tramway on any part of a road with rails raised above the surface of the road, if it is satisfied that the convenience of the public will not be injuriously affected thereby.

15. (1) The promoter or lessee may demand [33 & 34 Vic., c. 78, s. 45.] Tolls leviable by promoter or lessee. and take, in respect of the tramway, tolls not exceeding the limits

specified in or determinable under the order, or if the order contains no provision in this behalf, then such sums as may from time to time be fixed by the promoter or lessee with the previous sanction of the Local Government.

(2) A list of all the tolls authorised to be levied shall be exhibited, in such languages as the District Magistrate may direct, in a conspicuous place inside and outside each of the carriages used upon the tramway.

16. (1) A person shall not be entitled to carry, or to require to be carried, [33 & 34 Vic., c. 78, s. 53; and Act XXII, 1883, s. 13.] Carriage of dangerous or offensive goods. on a tramway constructed under this Act, any goods of a dangerous or offensive nature.

(2) A person taking such goods with him on the tramway shall, before entering the carriage, give notice of their nature to the servant of the promoter or lessee in charge of the carriage.

(3) A person sending such goods by the tramway shall distinctly mark their nature on the outside of the package containing them, or otherwise give notice thereof in writing to the servant of the promoter or lessee with whom he leaves them for the purpose of their being sent by the tramway.

The Indian Tramways Bill, 1885.—Sections 17-21.

(4) Any servant of the promoter or lessee may refuse to carry upon the tramway a parcel which he suspects to contain goods of a dangerous or offensive nature, and if any such parcel has been received for the purpose of being carried upon the tramway, may stop the transit thereof until he is satisfied as to the nature of its contents.

Licenses to use Tramways.

17. If at any time after a tramway or part of a tramway has been for three years opened for public traffic in a circle, the local authority of the circle represents in writing to the local Government that the public is deprived of the full benefit of the tramway or of the part thereof, the Local Government may, if after such enquiry as it deems necessary it is satisfied as to the truth of the representation, grant a license to any person to use the tramway conformably to this Act and the order and to the rules made under the Act, subject to the following provisions, namely:—

- (a) the license shall be for a period not less than one year or more than three years from the date of the license, but the Local Government may in its discretion renew it;
- (b) the license shall be to use the whole of the tramway for the time being opened for public traffic, or such part or parts of the tramway as the Local Government, having regard to the cause for granting the license, thinks fit;
- (c) the license shall specify the number of carriages which the licensee shall run upon the tramway, the mode in which, and times at which, the carriages shall be run, the tolls to be paid to the promoter or lessee by the licensee for the use of the tramway, and the tolls, being those for the time being leviable by the promoter or lessee, which the licensee may demand and take for the use of his carriages;
- (d) the licensee and his officers and servants shall permit one person, duly authorised for that purpose by the promoter or lessee, to travel free of toll in or upon each carriage of the licensee run upon the tramway for the whole or any part of a journey; and
- (e) the Local Government may revoke, alter or modify the license for any cause sufficient in its opinion to warrant the revocation, alteration or modification thereof.

18. A licensee shall, on demand, give to an officer or servant authorised in that behalf by the promoter or lessee an exact account in writing, signed by the licensee, of the number of passengers, or number or quantity of goods, conveyed by any and every carriage used by him on the tramway.

Discontinuance of Tramways.

19. If it is proved to the satisfaction of the Local Government, at any time after the opening of a tramway for public traffic, that the working of the tramway, or any part thereof, has

been discontinued, for the space of three months, without a reason sufficient, in the opinion of the Local Government, to warrant the discontinuance, the Local Government, if it thinks fit, may, by notification in the official Gazette, declare that the powers of the promoter and of the lessee, if any, in respect of the tramway or the part thereof so discontinued, shall, from the date of the notification, be at an end, and thereupon the said powers shall cease and determine, except in so far as they may be purchased by a local authority in manner by this Act provided.

20. (1) Where a notification has been published under section 19, the road-authority may, at any time after the expiration of two months from the date of the notification, remove the tramway or part of the tramway so discontinued, and use the materials thereof in re-instating the road.

(2) The promoter shall pay to the road-authority the cost incurred by that authority in removing the tramway or the part thereof and in re-instating the road.

(3) The cost shall be certified by an officer of the road-authority, and his certificate, countersigned by the District Magistrate, shall be conclusive proof as to the cost incurred.

(4) If the promoter does not pay the amount so certified within one month after the delivery to him of the certificate or of a copy thereof, the road-authority may, without any previous notice to the promoter and without prejudice to any other remedy which it may have for the recovery of the amount, sell and dispose of such materials of the tramway or part thereof removed as it has not used in re-instating the road, either by public auction or by private sale, and for such sum or sums, and to such person or persons, as it thinks fit and may, out of the proceeds of the sale, pay and reimburse itself the amount of the cost aforesaid and of the expenses of the sale, and shall pay over the residue (if any) of the proceeds of the sale to the promoter.

Insolvency of Promoter.

21. (1) If, at any time after the opening of a tramway in a circle for public traffic, it appears to the road authority or local authority of the circle that the promoter of the tramway is insolvent, so that he is unable to maintain the tramway, or work it with advantage to the public, and either of those authorities makes a representation to that effect to the Local Government, the Local Government may, if after such enquiry as it deems necessary it is satisfied as to the truth of the representation, declare, by notification in the official Gazette, that the powers of the promoter shall, at the expiration of six months from the publication of the notification, be at an end; and the powers of the promoter shall cease and determine at the expiration of that period, except in so far as they may be purchased by a local authority in manner by this Act provided.

(2) Where a notification has been published under sub-section (1), the road authority may, at any time after the expiration of six months

[33 & 34 Vic., c. 78, s. 35.]

[Section 22 of this Bill.]

[33 & 34 Vic., c. 78, s. 41.]

[Section 36 of this Bill.]

[33 & 34 Vic., c. 78, s. 37.]

Licenses to give to promoter or lessee an account of traffic.

[33 & 34 Vic., c. 78, s. 42.]

[33 & 34 Vic., c. 78, s. 41.]

Cesser of powers of promoter and lessee on discontinuance of tramway.

[Section 22 of this Bill.]

The Indian Tramways Bill, 1885.—Sections 22-24.

from the date thereof, remove the tramway in the same manner, and subject to the same provisions as to the payment of the cost of the removal, and to the same remedy for recovery of the cost, in every respect as in cases of removal under section 20.

Purchase of Tramways.

22. (1) Where the promoter of a tramway in a circle is not the local authority, the local authority, with the previous sanction of the Local Government, may—

- [33 & 34 Vic., c. 78, s. 43.]
Future purchase of undertaking by local authority.
- (a) within such limits of time as may be specified in this behalf in the order, or
 - (b) if a time was not specified in the order, then within six months after the expiration of a period of twenty-one years from the date of the order, and within six months after the expiration of every subsequent period of seven years, or
 - (c) within two months after the publication of a notification under section 19 or within six months after the publication of a notification under section 21,—

by notice in writing, require the promoter to sell to the local authority his undertaking or the part thereof which is within the circle of the local authority; and thereupon the promoter shall sell the same upon the terms specified in the order, or, if the terms were not specified in the order, then upon the terms of paying the then value of the undertaking or of the part thereof, exclusive of any allowance for past or future profits of the undertaking or any compensation for compulsory sale or other consideration whatsoever.

(2) A requisition shall not be made under subsection (1) unless the making thereof has been approved by the local authority in manner prescribed.

(3) When a sale has been made under this section, all the rights, powers and authorities of the promoter in respect of the undertaking or part thereof sold, or, where a notification has been published under section 19 or section 21, all the rights, powers and authorities of the promoter previous to the publication of the notification in respect of the undertaking or part thereof sold, shall be transferred to the authority to whom the undertaking or part has been sold, and shall vest in and may be exercised by, that authority in the same manner as if the tramway had been constructed by it under an order made under this Act.

(4) Subject to, and in accordance with, the preceding provisions of this section, two or more local authorities may jointly purchase an undertaking or so much thereof as is within their circles.

Working of Tramways owned by Local authorities.

[33 & 34 Vic., c. 78, s. 19.]
23. (1) When a local authority has under the lease of, or working of, tramway by local authority, authority of an order completed a tramway, or has under the provisions of this Act or of an order acquired possession of a tramway, it may, by lease to be approved by the Local Government, let to any person the right of user of the tramway and of demanding and taking the authorised tolls.

(2) On the determination of a lease, the local

authority may from time to time let the right for such further term and on such conditions as the Local Government may approve.

(3) Every lease made under this section shall imply a condition of re-entry if at any time after the making thereof it is proved to the satisfaction of the Local Government that the lessee has discontinued the working of the tramway leased, or of any part thereof, for the space of three months, without a reason sufficient, in the opinion of the Local Government, to warrant the discontinuance.

(4) Notice of the intention of the local authority to make a lease shall be given in manner prescribed.

(5) If the local authority cannot by means of a lease obtain what it deems to be a fair rent for the tramway, it may itself, with the previous sanction of the Local Government and for such term as the Local Government directs, place and run carriages upon the tramway, and demand and take the authorised tolls in respect of the use of the carriages.

Rules.

24. (1) In addition to any other power to make rules expressly or by implication conferred by this Act, the Local Government may make rules consistent with this Act—

[33 & 34 Vic., c. 78, ss. 66 & 64; and Act XXII, 1885, s. 20.]

- (a) as to the form in which an application for an order shall be made;
- (b) as to the costs to be paid by an applicant in respect of an order, and the time when, and the place where, those costs shall be paid;
- (c) as to the payment of money or lodgment of securities; by way of deposit, by the applicant for an order before the order is published under section 6, sub-section (4), or a further order is made under section 8; the investment of money so paid; the disposal of interest or dividends from time to time accruing due on money or securities so paid, lodged or invested; the application of the money or securities or the produce thereof to the discharge of any liability incurred by the promoter, and the forfeiture, repayment or return of the money or securities;
- (d) as to the plans and sections of any works to be deposited by applicants for orders or by promoters;
- (e) for regulating the use of steam-power or any other mechanical power on a tramway;
- (f) as to any matter specified in section 7, sub-section (2), clauses (c), (d), (e), (j) and (k), as a matter which may be provided for in an order, when that matter has not been so provided for, or has not, in the opinion of the Local Government, been effectually so provided for;
- (g) as to any matter respecting which rules may be made under this section by a local authority or a promoter or lessee; and,
- (h) generally, as to any other matter or thing in respect of which it may seem to the Local Government to be expedient to make

The Indian Tramways Bill, 1885.—Sections 25-29.

rules for the purpose of carrying this Act into execution.

[33 & 34 Vic., c. 78, s. 46; and Act XXII, 1883, s. 20.]

(2) A local authority may from time to time with the previous sanction of the Local Government, make rules, consistent with this Act and the order and any rules made by the Local Government under the Act, for regulating—

- (a) the rate of speed to be observed in travelling upon a tramway within the circle of the local authority;
- (b) the use of animal power on the tramway;
- (c) the distances at which carriages using the tramway shall be allowed to follow one after the other;
- (d) the stopping of carriages using the tramway;
- (e) the traffic on roads along or across which the tramway is laid;
- (f) the number of passengers which may be carried in any carriage;
- (g) the licensing and control of drivers, conductors and other persons having charge of the carriages of the promoter or lessee or a licensee; and,
- (h) generally, the mode of use of the tramway.

[33 & 34 Vic., c. 78, s. 48.]

[Act XXII, 1883, s. 20.]

[33 & 34 Vic., c. 78, s. 46; and Act XXII, 1883, s. 20.]

(3) The promoter or lessee of a tramway may, from time to time, with the previous sanction of the Local Government, make rules consistent with this Act and the order and any rules made under the Act—

- (a) for preventing the commission of any nuisance in or upon any carriage, or in or against any premises belonging to him; and
- (b) for regulating the travelling in any carriage belonging to him.

[33 & 34 Vic., c. 78, s. 47.]

25. The authority making any rule under section 24 may direct that a breach of it shall be punishable with fine which may extend—

Power to impose penalty by rule.

tion 24 may direct that a breach of it shall be punishable with fine which

(a) if the authority making the rule is the Local Government, to two hundred rupees and

[Act XXII, 1883, s. 14.]

(b) if that authority is a local authority or a promoter or lessee, to twenty rupees; and, when the breach is a continuing breach, with a further fine which may extend—

[Act XXII, 1883, s. 20, sub-section (3)]

(c) if the authority making the rule is the Local Government, to fifty rupees, and

[Act XXII, 1883, s. 14.]

(d) if that authority is a local authority or a promoter or lessee, to five rupees,

[33 & 34 Vic., c. 78, s. 47.]

for every day after the first during which the breach continues.

26. (1) Every authority having power to make

rules under any section of this Act shall, before making the rules, publish a draft of the proposed rules for the information of persons likely to be affected thereby.

(2) The publication shall be made, in the case of rules made by the Local Government, in such manner as may in its opinion be sufficient for giving information to persons interested, and, in the case of rules made by a local authority or by a promoter or lessee, in manner prescribed.

(3) There shall be published with the draft a notice specifying a date, not earlier than the ex-

Procedure for making, and publication of, rules.

piration of one month after the date of publication at or after which the draft will be taken into consideration.

(4) The authority shall receive and consider any objection or suggestion which may be made by any person with respect to the draft before the date so specified.

(5) The publication in the official Gazette of a rule purporting to be made under this Act shall be conclusive proof that it has been duly made.

(6) The Local Government may cancel any rule made by a local authority or by a promoter or lessee, under section 24.

Offences.

27. If a promoter—

Penalty for failure of promoter, lessee or licensee to comply with Act or order.

- (a) constructs or maintains a tramway otherwise than in accordance with the order;
- (b) opens the tramway for traffic, or permits it to be so opened, before it has been inspected and certified in manner required by section 12; or
- (c) fails to observe any requirement or condition of the order for neglect or breach whereof no penalty has been expressly provided in the order;

[Act XXII, 1883, s. 14.]

or if a promoter, lessee or licensee runs a carriage on a tramway otherwise than in accordance with the order;—

he shall (without prejudice to the enforcement of specific performance of the requirements of this Act or of the order, or to any other remedy which may be obtained against him in a Court of Civil Judicature), on the complaint of the Local Government or of the local authority or road-authority or of any person injuriously affected thereby, be punished with fine which may extend to two hundred rupees, and in the case of a continuing offence to a further fine which may extend to fifty rupees for every day after the first during which the offence continues to be committed.

28. If any person without lawful excuse, the

burden of proving which shall lie upon him, wilfully obstructs any person acting under the authority of the promoter in the lawful exercise of his powers in constructing or maintaining a tramway, or injures or destroys any mark made for the purpose of setting out the line of the tramway, he shall be punished with fine which may extend to fifty rupees.

29. If any person without lawful excuse, the burden of proving which shall lie upon him, wilfully does any of the following things, namely:—

(a) interferes with, removes or alters any part of a tramway constructed under this Act, or of the works connected therewith;

(b) places or throws upon or across any such tramway any wood, stone, refuse or other thing;

(c) does anything in such a manner as to obstruct any carriage using any such tramway; or

[33 & 34 Vic., c. 78, s. 49, and Act XXII, 1883, s. 15.]

[33 & 34 Vic., c. 78, s. 50, and Act XXII, 1883, s. 16.]

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(d) abets within the meaning of the Indian Penal Code the doing of, or attempts to do, anything mentioned in clause (a), clause (b) or clause (c), he shall (without prejudice to any other remedy which may be obtained against him in a Court of Civil Judicature) be punished with fine which may extend to one hundred rupees.

30. If any person, except under a lease from, or by agreement with, the promoter, or under license from the Local Government granted under this Act, uses on a tramway, otherwise than as permitted by section 14, a carriage having flange-wheels or other wheels suitable to run on the rail of the tramway, he shall be punished with fine which may extend to two hundred rupees.

31. (1) If any person travelling or having travelled in a carriage of the promoter or lessee or a licensee evades or attempts to evade payment of toll, or if any person having paid toll for a certain distance wilfully proceeds in any such carriage beyond that distance and does not pay the additional toll for the additional distance or attempts to evade payment thereof, or if any person wilfully refuses or neglects on arriving at the point to which he has paid toll to quit the carriage, he shall be punished with fine which may extend to ten rupees.

(2) When a person commits an offence under this section and refuses, on demand of a servant of the promoter, lessee or licensee, to give his name and residence, or gives a name or residence which the servant has reason to believe to be false, he may be arrested and taken to the nearest police-station by the servant or any person whom the servant may call in for his assistance.

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

32. If any person takes or sends by a tramway any goods of a dangerous or offensive nature without giving the notice required by section 16, he shall be punished with fine which may extend to fifty rupees.

33. (1) If a licensee fails on demand to give the account mentioned in section 18, or with intent to evade the payment of tolls, gives a false account when he is called upon to give an account under that section, he shall be punished with fine which may extend to fifty rupees.

(2) The fine shall be in addition to any tolls payable by the licensee to the promoter or lessee in respect of the passengers or goods conveyed by the carriage or carriages used by the licensee on the tramway.

34. Nothing in this Act shall prevent a person from being prosecuted under any other law for an act or omis-

sion which constitutes an offence against this Act or the rules made under it, or from being liable under that other law to any other or higher punishment or penalty than that provided by this Act or the rules made under it: Provided that a person shall not be punished twice for the same offence.

Settlement of Differences.

35. (1) If any difference arises between the promoter or lessee on the one hand and the Local Government, or the local authority, or the road-

authority, or a person having the charge of any sewers, drains, telegraph lines, gas-pipes or water-pipes, on the other hand, with respect to any interference or control exercised or claimed to be exercised by, or on behalf of, either party by virtue of this or any other Act, or of the order, or of rules made under this Act, or with respect to the propriety of, or the mode of, the execution of any work, or with respect to any compensation to be made by or to the promoter or lessee, or to the question whether any work is such as ought reasonably to satisfy the Local Government or the road-authority or both, or with respect to any other subject or thing regulated by, or comprised in, this Act or the order or rules made under the Act, and not otherwise expressly provided for therein, the matter in difference shall, on the application of either party, be settled by a referee.

(2) Where the difference is between the promoter or lessee on the one hand and the Local Government, either as such or as the road-authority, on the other, the referee shall be the District Court within the jurisdiction of which the tramway is situate, or, where the tramway is within the jurisdiction of more than one District Court, the District Court within the jurisdiction of which the greater part of the tramway is situate.

(3) In other cases, the referee shall be appointed by the Local Government.

(4) The powers and procedure of the referee may be prescribed.

(5) The decision of the referee shall be binding and conclusive on both parties.

Recovery of Tolls.

36. Any of the following moneys, namely, any rent due to a local authority from a lessee, any penalty recoverable from a promoter or lessee

Recovery of moneys due from promoters and, in certain cases, from lessees.

under an order, any sum payable by a promoter or lessee under an award of a referee the cost of the performance under this Act by the Local Government or by a local authority or road-authority of any work required by this Act or an order to be done by a promoter, and the cost incurred by a road-authority in removing a tramway and re-instating a road under this Act, may, without prejudice to any other remedy the authority to which the money is due may have by suit or otherwise, be recovered by that authority, on application made in this behalf to the Collector, as if the sum due were an arrear of land revenue due by the promoter or lessee or his surety (if any):

Provided that nothing in this section shall authorise the arrest of the promoter or lessee

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[33 & 34 Vic., c. 78, s. 54.]

[33 & 34 Vic., c. 78, s. 51, and Act XXII, 1883, s. 18.]

[33 & 34 Vic., c. 78, s. 52, Act XXI, 1883, s. 19, and Act X, 1882, s. 57.]

[33 & 34 Vic., c. 78, s. 53, and Act XXII, 1883, s. 17.]

[33 & 34 Vic., c. 78, s. 38.]

[Act XIII, 1884, s. 159.]

[33 & 34 Vic., c. 78, s. 33.]

[33 & 34 Vic., c. 78, s. 56; & Act XIII, 1884, s. 61.]

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or his surety in execution of any process issued by the Collector.

[Act XIII, 1884, s. 172.]

37. (1) If a licensee fails to pay on demand the tolls due for the use of a tramway, the promoter or lessee to whom the tolls are due, may, without prejudice to the remedy which he may have by suit, apply to a Magistrate to recover the amount of the tolls, and the Magistrate may, after giving notice to the licensee if possible and allowing him an opportunity of being heard, proceed to recover the amount by distress and sale of any carriages or other moveable property of the licensee which may be found on the tramway or on premises connected therewith.

(2) When a licensee has failed to pay on demand the tolls due from him, the promoter or lessee to whom the tolls are due may seize any carriage or other moveable property of the licensee on the tramway or on premises connected therewith, and detain the same for forty-eight hours unless the tolls are sooner paid.

(3) When application is made to a Magistrate under sub-section (1), he may make an interim order of distraint pending his final decision.

[Act XIII, 1884, s. 172.]

38. Any toll due to a promoter, lessee or licensee from a passenger may be recovered either by suit or, on application to a Magistrate having jurisdiction within any local area in which any part of the tramway is laid, by distress and sale of any moveable property belonging to the passenger within the local limits of the jurisdiction of the Magistrate.

Savings

39. (1) Notwithstanding anything contained in this Act or in an order, a promoter shall not acquire any right other than that of user only over a road along or across which he lays a tramway, nor shall anything contained in this Act or in an order exempt the promoter of a tramway, or any other person using the tramway, from the payment of such charges as may lawfully be levied in respect of the use of a road or bridge along or across which the tramway is laid.

(2) The Local Government may, if it thinks fit, fix rates at which a promoter, lessee or licensee may compound for the charges payable in respect of the use of a road or bridge.

40. (1) Nothing in this Act or in an order shall take away or abridge any power which a road-authority, local authority or other person has by law to break up, widen, alter, divert or improve a road, railroad or tramway along or across which a tramway is laid.

(2) The road-authority, local authority or other person executing any work referred to in sub-section (1) shall not be liable to pay to a promoter, lessee or licensee any compensation for injury done to a tramway by the execution of the work or for loss of traffic occasioned by the reasonable use of any power lawfully exercised for the execution thereof.

41. Nothing in this Act or in an order shall affect the powers of a local authority or of a magistrate or police-officer to regulate the

passage of traffic along or across a road along or across which a tramway is laid; and the authority, magistrate or officer aforesaid may exercise its or his powers as well on as off the tramway and with respect as well to the traffic of a promoter, lessee or licensee as to the traffic of other persons.

Supplemental Provisions.

42. A promoter, lessee or licensee shall be answerable for all injuries happening through his act or default, or through the act or default of any person in his employment, by reason or in consequence of any of his carriages or works, and shall save harmless all authorities and persons collectively and individually, and their officers and servants, from all damages and costs in respect of injuries so happening.

[33 & 34 Vic., c. 78, ss. 40 & 55.]

43. For the purposes of this Act, want of funds shall not be deemed to be a sufficient reason for the suspension of the construction, or the discontinuance of the working, of a tramway by a promoter or lessee.

[Act XXII, 1883, s. 21.]

44. When a tramway is constructed under this Act within the limits of a municipality, the Local Government may exempt the animals, plant, rolling-stock, yards, workshops, engine-sheds and depôts of the promoter or lessee, for such period as it thinks fit, from all or any municipal taxes leviable within those limits.

[Act XXII, 1883, s. 22.]

45. The fund to or with the control or management of which the local authority of a municipality, cantonment or district is entitled or entrusted shall, notwithstanding anything in any Act respecting the purposes to which that fund may be applied, be applicable, subject to the control of the Local Government, to the payment of expenses incidental to the exercise of the powers and functions which may be vested in or exercised by a local authority under this Act.

[33 & 34 Vic., c. 78, s. 20.]

46. The Local Government may, with the consent of the local authority and road-authority and of the promoter, extend any part of this Act or of any rules made thereunder, either with or without modification, to the whole or any part of a tramway constructed, or authorised to be constructed, before the passing of this Act, and to any extension of, or addition to, any such tramway, and may withdraw any part of the Act so extended.

47. In section 54 of the Indian Railway Act, 1879, the word "tramway" shall have the meaning assigned to it by section 3 of this Act.

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48. All powers conferred by this Act on a Local Government may be exercised from time to time as occasion requires.

[Act XIII, 1884, s. 173.]

[33 & 34 Vic., c. 78, s. 57; and Act XXII, 1883, s. 9.]

[Act VIII, 1851.]

[Act XVII, 1878, s. 18.]

[33 & 34 Vic., c. 78, ss. 32 & 60.]

[33 & 34 Vic., c. 78, s. 61; and Act XXII, 1883, s. 10.]

STATEMENT OF OBJECTS AND REASONS.

THE introduction of this Bill has been rendered necessary by the projected construction of tramways in parts of India beyond the reach of a local legislature. In 1883 a special Act was passed by the Governor General in Council to authorise the making, and regulate the working, of tramways in Rangoon. Since that year application has been made for special Acts for tramways in Lahore and Amritsar, and legislation would probably be found to be necessary to regulate the use of tramways in other large towns in which their construction has been approved by, or is under the consideration of, the local authorities.

2. The Bill has been drawn on the lines of the Tramways Act, 1870 (33 & 34 Vic., c. 78), and of the provisional orders and rules made by the Board of Trade under that statute. These orders and rules, and the fullest discussion on almost all points connected with the subject of tramways, will be found in Mr. Sutton's "Tramway Acts of the United Kingdom."

3. The Bill extends in the first instance to the whole of British India except the territories comprised within the sphere of a local legislature, and is extendible to those territories by the Local Government.

4. "Orders" take the place of the "provisional orders" of the English statute, but differ from those orders in not being "provisional" and not being confirmed by a subsequent Act of the Legislature. They also differ from provisional orders in that they must be consistent with the Act and cannot vary or except any part of it.

5. Sections 4 to 6 of the Bill prescribe the conditions on which, and the manner in which, an order may be made; and section 7 specifies the matters for which provision may be made in an order. A reference to the authorities cited against the several clauses of that section will show how those matters are now provided for in the United Kingdom. If an order is found on experience to be defective, it can be supplemented by a further order on the application of the person in whose favour the original order was made (section 8), or, in certain particulars, by rules (section 24).

6. When the order has been made, the tramway must be constructed, maintained and worked in the manner provided by the order (sections 11 and 27). If the tramway is constructed by a local authority, it will ordinarily be worked by a lessee (section 23). If it is constructed by a private speculator, it may be worked by him or by a lessee to whom he has let the right of user and of demanding and taking the authorised tolls (section 7, sub-section (b)). If the owner of the tramway or his lessee so works the tramway that the public is deprived of the full benefit of it, the Local Government may grant a license to any person to use the tramway on the payment of tolls to the owner or the lessee (section 17). If the owner discontinues the working of the tramway (section 19) or through want of funds is unable to maintain the tramway or work it with advantage to the public (section 21), the Local Government may revoke his powers. When the powers of the owner are so revoked, the tramway may either be removed by the authority which has charge of the road on which the tramway is laid (section 20 and section 21, sub-section (2)), or it may be purchased by the local authority (section 22).

7. Section 22 provides for tramways which have been constructed by companies and private persons being purchased by local authorities on the expiration of the periods, and upon the terms, specified in the order, or, if the periods and terms were not specified in the order, then on the expiration of the periods, and upon the terms, prescribed in the English statute.

8. When a tramway is purchased by a local authority, it will ordinarily be worked by a lessee. There may, however, be cases in which the authority would be unable to let a tramway for an adequate consideration. It has been provided, therefore (section 23), that in those cases the Local Government may authorise the local authority itself to engage in the business of running carriages.

9. Differences between owners or lessees of tramways and the Local Government or local authorities are to be settled by a referee (section 35), who, if the Local Government is directly interested, is to be the District Judge. The decision of the referee will be final.

10. Sections 36 to 38 provide for the recovery by suit or summary process of moneys due to and from owners, lessees and licensees of tramways.

11. Sections 39 to 41 contain the savings usually found in enactments and agreements relating to the construction of tramways, and section 44 enables the Local Government to exempt from local taxation the animals, plant, rolling-stock and premises of owners and lessees of tramways constructed within the limits of municipalities.

12. Section 46 enables the Local Government, with the consent of the owner and the local authorities, to extend any part of the Act, with or without modification, to a tramway or any part of a tramway constructed, or authorised to be constructed, before the passing of the Act.

The 22nd October 1885.

(Signed) C. P. ILBERT.

D. FITZPATRICK,
Secretary to the Government of India.