

Thursday, March 13, 1879

ABSTRACT OF THE PROCEEDINGS

COUNCIL OF THE GOVERNOR GENERAL OF INDIA

LAWS AND REGULATIONS.

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ABSTRACT OF THE PROCEEDINGS

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Council of the Governor General of India,

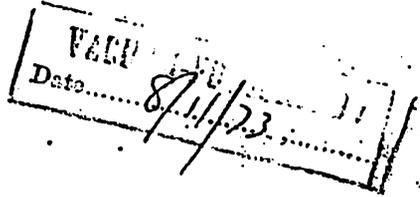
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1880.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., Cap. 67.

The Council met at Government House on Thursday, the 13th March, 1879.

P R E S E N T :

His Excellency the Viceroy and Governor General of India, G.M.S.I.,
presiding.

His Honour the Lieutenant-Governor of Bengal, K.C.S.I.

The Hon'ble Sir A. J. Arbuthnot, K.C.S.I.

Colonel the Hon'ble Sir Andrew Clarke, R.E., K.C.M.G., C.B., C.I.E.

General the Hon'ble Sir E. B. Johnson, K.C.B., C.I.E., R.A.

The Hon'ble Whitley Stokes, C.S.I.

The Hon'ble Rivers Thompson, C.S.I.

The Hon'ble Mumtáz-ud-Daulah Nawáb Sir Muhammad Faiz Alí Khán
Bahádur, K.C.S.I.

The Hon'ble T. H. Thornton, D.C.L., C.S.I.

The Hon'ble G. H. P. Evans.

The Hon'ble E. C. Morgan.

The Hon'ble F. R. Cockerell.

The Hon'ble Sayyad Ahmad Khán Bahádur, C.S.I.

Lieutenant-General the Hon'ble Sir M. K. Kennedy, R.E., K.C.S.I.

The Hon'ble T. C. Hope, C.S.I.

The Hon'ble B. W. Colvin.

The Hon'ble Maharájá Jotíndra Mohan Tagore.

INDIAN RAILWAY BILL.

Colonel the Hon'ble SIR ANDREW CLARKE moved that the Reports of the Select Committee on the Bill to consolidate and amend the law relating to Railways in India be taken into consideration. In doing so, he said :—

“ My Lord, At an earlier stage of the measure, when presenting our first report from the Committee, I said I would, when at this stage, explain how we had dealt with the very many suggestions and varied criticisms we had received from public Administrations and from private individuals ; and this explanation will be best afforded by a perusal of the Bill, in which many of the suggestions will be found adopted and criticisms given due weight.

“ Where we have not thought it desirable to embody any specific recommendation or to adopt any alteration, we have, by the very large and liberal powers conferred in the eighth clause on Railway-Administrations, enabled those bodies, when experience proves the necessity and the public interests require, to make such rules and arrangements consistent with the law as will meet any omission which we have made.

“ That the law even now is complete, or that we have anticipated every contingency, is what we cannot claim. A recent case will show this. We had discussed at our last meeting the propriety of considering what course should be adopted in the case of persons who were travelling, or sought to travel, on Railways, whilst suffering from dangerous, infectious or contagious diseases, and we left the subject believing that we had sufficiently provided for this contingency, when an incident that happened subsequent to this decision of ours showed that there was still something wanting. That deficiency we have now supplied, and the subject is to be dealt with by special rules.

“ The Committee has adhered as closely as possible to the existing law and practice, and has limited its task to the definition of what might have been before obscure, and to the simplification of what might have been confusing.

“ The greatest innovation in this measure, strange to say, is to be found in the fourth clause, which gives legality to the employment of locomotives in our Railways—a power which, although we have embarked during the last quarter of a century on the construction and working of some thousands of miles of Railway, we do not now possess; by this omission State and Company being rendered liable to be indicted for the use of engines as perpetrators of a common nuisance or disturbers of the public peace and safety.

“ We have extended the provisions and protection of the law to Railways owned by private individuals and to those in Native States, and we have also brought within its influence the auxiliary carriage by water of the fleets and ferries working on our great rivers in connection with our land-lines.

“ A small, but by no means unimportant, extension of what constitutes a Railway-servant has been made, and this will now include those most independent of gentlemen—the coolies—employed by the sub-agents of Contractors of the Companies for loading and unloading trains. Their exemption, hitherto, from the application of the law had left the Railway-Administration and its customers completely at their mercy, and this was sorely felt during the recent heavy famine-traffic.

“ Although, hitherto, it has not been the custom to permit public running on a line until it had been certified after inspection as fit for traffic, yet this prohibition has not been compulsory as it is in England, and I now ask for power to make it so here also.

“ The new law in reference to accidents will slightly increase the number of accidents to be reported over those hitherto required to be brought to notice ; but the extension will not entail much additional labour on the Railway-staff.

“ By the Bill, as last settled, it was left optional to the various Railway Companies to make at their own will and pleasure such general rules as they might think fit for the working and management of their lines. It is most satisfactory to me to have to say that I carried the late Railway Conference entirely with me, in rendering it obligatory to make these rules. Under this provision, the very many suggestions for securing the safety, comfort and convenience of the travelling public will be from time to time considered and drafted as the case and circumstances may dictate.

“ The legislation regulating the carriage of property by Railway has been brought within this Bill, and has been removed altogether from the operation of the Carriers Act of 1865, by which the Railways in their arrangements with their customers have been hitherto guided.

“ To avoid my making any error or giving cause for any misunderstanding, and to render unnecessary any attempt by me to explain a very intricate and technical matter, I should prefer to quote in full paragraphs 9, 10, 11, 12, 13 and 14 of the Report of the Select Committee. They are as follows :—

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

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

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

* See, as regards the Railway Act, the Statement of Objects and Reasons of the Carriers Act, 1865.

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

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

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

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

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

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

“14. Our attention having been directed since the submission of our previous report to the danger to which carriers by Railway in this country are exposed of having fraudulent claims brought against them in respect of valuable property of small bulk alleged to have been lost in transit (a point dwelt on at some length by the Select Committee in the Act of 1854), we have deemed it well to omit the limitation of Rs. 100, which we introduced into Bill No. II, and to require (section 11) that such property shall (as at present) be declared in all cases, whatever be its value.’

“The very great importance of this subject to the trade of India must plead for me in giving the Council so long a quotation. In case of goods lost or damaged, a subject on which we have received many communications, we have, in accordance with the Carriers Act of 1865, section 91, relieved the owner from, and thrown upon the carrier, the onus of showing how the loss or damage was occasioned. By section 14, we have somewhat enlarged the powers now held by the Railway Companies to get rid of property left on their hands beyond the reasonable time in which it may be expected that the owner should remove it, and provision has been made to prevent speculative persons from using the Station-premises to the serious injury of traffic by blocking it up with their goods. A recent incident in Southern India has led to power being taken to deal with persons suffering from infectious diseases. This power is necessary, but in giving it effect, the Railway-Administration will not be relieved from its duty of taking care to see that everything proper for the protection and convenience of the person removed shall be attended to.

“We have mitigated the penalties hitherto following any one who smoked tobacco whilst travelling by Railway. Some other alterations have been made, which involve no actual change in the law, but which were principally made in order to secure simplicity and clearness. With these I will not trouble the Council. The Committee has received many suggestions, all of which have been carefully considered, and have more or less led to the moulding of the present measure. But whilst the Committee has jealously guarded the interests of the public, the users and customers of the Railway, it is to me a source of very considerable satisfaction, and bearing in mind how legislation in this direction was formerly met from the Railway authorities, it is a source of congratulation to this Council, that I am able to present for its acceptance and adoption, and for Your Lordship’s approval, a measure complete, I think, and sufficient in itself, and one which has at the same time received the sanction and approbation of the very able and efficient Agents and Managers of the various Railway Companies of India. I take this occasion to thank those gentlemen for the aid and co-operation which they have afforded me in this matter as well as in others, and I would desire to record my appreciation of the relations that now

exist between their Administrations and the Department with which I am connected—relations which cannot fail to be beneficial to the trade, the commerce, and the industry of India.

“A few words here, my Lord, illustrating the present condition and prospects of the Railways of India, may not at this moment be inopportune, because representations have of late been put forth which are not by any means favourable to Railway enterprise in this country.

“The total outlay on the Capital Account of the Guaranteed Railways up to the 30th March of this year (1879) may be taken at about 97 millions sterling, including debenture capital. The nett receipts of these lines for this coming year ending in March 1880 are estimated at 528 lákhs, or about £4,861,000 at the current rates of exchange, and this will yield a dividend of 5 per cent. on the aggregate investment.

“As from these nett receipts the State has to pay to certain Companies earning profits in excess of the guaranteed interest, a moiety of the surplus, this dividend is slightly decreased; but it is not till one comes to review the present condition of the Capital Account that the practical value of Railway enterprise as inaugurated by Lord Dalhousie becomes more apparent and, to say the very least, hopeful and encouraging. This has been put to the test by the recent arrangement for the purchase of the East Indian Railway. This line is to be acquired at a premium of 25 per cent. In 1877 it yielded a return of 9 per cent.; this last year its returns we may take with safety at 8½ per cent. From these figures it is clear that had not the Company been obliged to pay the State one half the surplus profits in excess of the guaranteed capital, coupled with the power of the State to effect a compulsory purchase, the value of the shares would have stood very much higher.

“I do not consider that I shall be making at all too bold a statement in saying that this purchase will have been effected at 30 per cent. below what would have been the market-value of the property had it not been subject to the condition to which I have alluded.

“The Great Indian Peninsula, Bombay, Baroda and Central India Railways are also surplus-paying lines with their shares at high premiums. The Oudh and Rohilkhand has almost risen to its guarantee, and when once it has been linked on to the East Indian Railway by the bridge now authorized over the Ganges at Benares, and when its present northern terminus has been extended, there is every prospect of this line also paying a considerable surplus.

“The total capital outlay on State Railways up to the end of this financial year will be Rs. 22,20,00,000, and the probable nett revenue for the ensuing year will be Rs. 32,87,000 ; but in this very early stage, and in the very incomplete condition of these lines, no fair judgment can be pronounced on these figures. We must rather compare them, as I have done, with the history of the older lines.

“I must here rather qualify my concurrence in the wisdom of executing Railways by the State, and subject to the same rules and conditions as all other State expenditure, and this method certainly leads to make our State lines compare unfavourably with the Guaranteed lines. I do not find fault with these rules in themselves ; but their application must, and does, frequently retard the progress of works at most critical periods. This, in addition to the reason I have given, is often due to the financial necessities of the State ; but, however right or proper it may be, that the State having undertaken the duty of constructing Railways must, in doing so, subject its proceedings to its ordinary rules, and must be guided by its financial necessities, this does not the less remove the fact that the progress of a Railway is often interrupted for want of funds, and that this delay must tend to enhance its cost very considerably. Owing to this, the lines constructed by the State are severely weighted in any comparison which may be made between them and their more fortunate neighbours, the Guaranteed lines, that have not been subject to similar checks and restrictions.

“A few words, illustrating especially the financial position and prospects of the State lines, may not be without interest, and may dispel some of the fears and anxieties which I have seen expressed by those who are no doubt well-wishers to the success of these undertakings.

“I have never concealed my own doubts as to the wisdom of the policy of working, whatever I may be prepared to admit as to the advantages of constructing, lines under the direct authority of the State, and then only through the agency of responsible contractors ; so that in bearing my testimony to the efficiency, under many drawbacks—not the least of them being the difficulty of obtaining for an administration working under the hard and stiff rules of a Government bureau, that elasticity and freedom of action which is the very essence of commercial enterprise—I cannot but admit that whilst a Manager or an Administration is seeking superior authority, through the tortuous routes by which it can usually be only approached, a market may be lost or a traffic diverted. The public suffers a double loss, for it suffers through the individual and through its Government.

“But in spite of all this, and remembering that the older enterprises run from one certain mart to another through known and well-beaten tracks of long established trade-routes, the light lines opened during the last four years, though still far from complete, and though even yet fragmentary in every detail and in equipment, give results far more promising as to their future than the heavier lines which have passed beyond all the trials of their early youth.

“The receipt and expenditure per traffic train-mile of the State lines compare very favourably with similar statements of the Guaranteed lines; I will not weary the Council with the figures in detail, but will prefer, because it will, I think, more clearly describe what I want to show, to confine myself to a comparison of the nett receipts of the older with the younger lines.

“The East Indian Railway in the first six years of its life never touched 7 per cent. any one half-year. The Rájputána gave the last half-year of which the returns are complete, and within four years of its opening, 2·55 per cent. The Jabalpur line in its sixth year had a percentage of nett earning of 2·36. The Tirhut line barely into its second year gave 1·32.

“The Neemuch and Holkar line, equally heavily weighted as was the Great Indian Peninsula Railway, gave the first year a return exceeding 2 per cent. the latter not reaching that till its fourth year.

“The Sind, Panjáb and Delhi, as well as the Oudh and Rohilkhand, had in their earlier existence to some extent still to labour under conditions adverse to doing a good business, and are in the same category as some of our State lines, broken up or interlaced with other systems; but even admitting all this, the early progress of the latter will stand a comparison with the former.

“This success—a success which, I think, no one will now question—was hardly even anticipated at so early a stage of the railway-life of India by the great proconsul who was its originator; and coming down to more recent times, when a further forecast was made of railway development during the rule of Lord Lawrence, I find that it was even then calculated that the general revenues of India would have to be bearing at the present moment a burden of interest amounting to more than one million sterling. As a matter of actual fact, we have to-day a mileage of open lines in excess of what was contemplated at the time of the forecast, and the nett receipts from these lines are almost in equilibrium with the charge for interest on their capital cost.

“One feature in connection with the capital expended on railways in India has an almost exceptional interest, namely, that this capital represents the total amount which these undertakings have cost. Mistakes have been made, some money has been perhaps used unwisely, nay, possibly, even extravagantly. But on the whole in return for this capital which represents every shilling that has been expended on these undertakings, the community has received full value, and this value has been secured without the loss or ruin which has so often attended the earlier history of similar enterprises in other parts of the world.

“Satisfactory and hopeful then as are our railway interests, I can only regret the circumstances which are now somewhat checking the further progress of those lines which this Empire so much needs, though I believe and trust that the very caution that we are now exercising will eventually justify, and that at no distant date, vigorous and consistent measures for completing the main arterial systems of railway-communication throughout this peninsula.”

The Motion was put and agreed to.

The Hon'ble MR. THORNTON said that, although the Bill had been greatly improved by the Select Committee both in arrangement and in substance, and although the objections he had to many provisions in Bill No. II had been remedied in Bill No. III, there were some points in the Bill under consideration in regard to which he would invite explanation from the Hon'ble the Mover.

The object of his first question was to ascertain whether sufficient provision had been made in the Bill for securing the reasonable comfort and convenience of travellers, and especially Native travellers. He observed, and observed with satisfaction, that section 8 of the Bill did impose upon Railway-Administrations the obligation to make rules for preventing over-crowding of carriages and “for regulating the travelling upon, and the use, working and management of, Railways,” and that these rules were subject to the approval of the Government of India; but he would ask whether the wording of the latter clause was sufficiently wide to make it obligatory on Railway-Administrations to provide for the reasonable wants of travellers, and especially Native travellers, at stations, such as suitable waiting-accommodation, drinking-water and other necessary requirements. In the case of English travellers the want of a legal obligation was to a great extent supplied by the pressure brought to bear upon Railway-Administrations by public opinion in the newspapers; but this force was in great measure non-existent in the case of Native travellers. He would suggest, therefore, that, if there was any doubt upon the subject, it might be removed by a suitable amendment of clause (*d*) of section 8.

The next question he would ask the Hon'ble the Mover related to a small matter—contained in section 29. That section declared that persons neglecting or refusing to give an account of the quantity and description of property tendered for conveyance by rail, or giving a false account of such property, shall be punished with fine which may extend to one hundred rupees for every ton of such property, or for any parcel exceeding one hundred-weight, &c., &c. Why, he would ask, was the quantity of goods referred to in this section expressed in weights taken from the English system? In India we had, in the *ser*, a legal unit of weight familiar to the people. Why should not the quantities in question be expressed in multiples of the *ser*, instead of in weights which were unknown quantities to nine-tenths of the people affected by the section and, he would add, to most of the Native Judges who would have to decide cases under its provisions? He would venture to recommend that, in this section, for the word “hundred-weight,” the words “forty sers” should be read; and for the word “ton,” the words “eight hundred sers”—amounts which would be popularly known as “one maund” and “twenty maunds” respectively.

The third point in regard to which he would invite explanation from the Hon'ble Mover was of more importance. It related to section 42, which imposed penalties on the owners and persons in charge of cattle straying or driven on to Railways. The section provided, *inter alia*, that—

“The owner or person in charge of any bulls, cows, &c., straying on any Railway provided with fences suitable for the exclusion of such animals, shall be punished with fine which may extend to ten rupees for each animal, in addition to any amount that may be recovered under the Cattle-Trespass Act, 1871.”

And again that—

“Whenever any such animals are wilfully driven, or knowingly permitted to be, on any Railway not so provided, otherwise than for the purpose of lawfully crossing the Railway, or for any other lawful purpose, the person in charge of such animals, or if he cannot be identified, then the owner of the said animals, shall be punished with fine which may extend to fifty rupees for each animal, in addition to any amount that may be recovered under the same Act.”

In regard to these clauses—or rather the corresponding clauses in Bill No. II,—the Panjáb Government wrote as follows:—

“Section 40”—that is, section 42 of the present Bill—“in a country like the Panjáb is one of great importance; and, unless the Act, in respect of clause 2 of this section, be amended, the Lieutenant-Governor is of opinion that it will give rise to great oppression and unpopularity, as the draft section throws upon the owners of cattle a very unjust burden. The clause is similar to one which was proposed in 1871, but which was rejected. No penalties should be imposed on the owners of cattle found on the railway unless the line be fenced. Where a fence

considered sufficient is in existence, then no claim for damage to owners of cattle should lie; but the Lieutenant-Governor would strongly protest against the enactment of clause 2, or the imposition of any penalties before railways are properly fenced."

Notwithstanding the strong protest he had just read, the clauses referred to had been retained by the Select Committee. In the course they had adopted, the Committee were doubtless influenced by cogent reasons; but these reasons had nowhere been explained. The matter was not referred to in the report of the Committee, nor was it, so far as he could hear, touched upon by the Hon'ble the Mover in his speech. It seemed due to the Lieutenant-Governor of the Panjáb that some explanation should be afforded of the grounds on which his strongly-felt objections had been over-ruled.

Colonel the Hon'ble SIR ANDREW CLARKE said that the whole point of his Hon'ble friend's last objection turned upon whether the men in charge of herds of cattle wilfully allowed the cattle of which they were in charge to graze upon railway-embankments. It was only when they *wilfully* did that, that they would be liable to penalty. The Council could, from their own experience of herdsmen in this country, say whether it was not their common practice to turn their herds on wherever they found good pasturage; the banks of railway-lines were covered with excellent pasturage, and therefore herdsmen were in the habit of driving cattle to feed upon it. Where the Police drove the cattle off they found it necessary, in some instances, to follow them up to the owners. Personally, he should like to see every railway-line fenced, but it was uncommonly hard upon the travelling public that their lives should be risked in consequence of cattle being wilfully driven upon the line to graze. The question had been frequently raised in the interests of the public, and he thought that the principle of the clause to which objection had been taken was a right one. It seemed to him a self-evident proposition that such a provision should be made to prevent accidents.

His Excellency THE PRESIDENT supported the view which was taken by the Hon'ble Member in charge of the Bill. Herdsmen in this country, as was well known, were in the habit of deliberately driving their cattle and leaving them to feed on the best pasturage they could find, quite irrespective of the ownership of the land. If, as a matter of necessity, there must be lines of railway which were unfenced, then he thought some punishment must be provided for wilfully driving cattle to feed on the banks of such railways.

Colonel the Hon'ble SIR ANDREW CLARKE said, with reference to the other points raised by his Hon'ble friend, that the various proposals respecting the comfort and convenience of passengers were so many and in such detail that

the Select Committee thought them beyond the scope of a legislative enactment. But by making it obligatory on the Railway Companies to make rules in consultation with the Consulting Engineer to Government, and providing that those rules should be subject to the sanction of Government, the Committee thought that it would be in the power of Government to secure all that was necessary for the comfort and convenience of passengers. He thought that, as a general rule, the desire of the Railway Companies and Administrations was to provide, as far as possible, for the various wants of passengers. A great deal in that respect had been done in recent years, but it was not an easy task to provide all that was necessary, and there were, no doubt, deficiencies in many of the railways.

With reference to the over-crowding of passengers, his experience was that the Natives themselves were to blame, for they would force themselves into carriages in which there was no available room, and he thought it was not the desire of the Railway-Administration to put more persons into a carriage than the carriage was intended to accommodate.

His Honour THE LIEUTENANT-GOVERNOR suggested the addition of a few words to clause (b) of section 8. He could not agree with Sir A. Clarke that Native passengers were alone to blame themselves for over-crowding. He believed that they were helpless in the matter and were ill-treated by railway-servants. He had himself very often seen passengers forced by guards into carriages where there was no room. He thought it necessary to pass rules to regulate the accommodation of passengers in such matters as water-supply, shelter from the sun, and other station-accommodation.

General the Hon'ble SIR E. B. JOHNSON said that he had constantly, when travelling as Quarter Master General, seen Native third class passengers locked up and utterly unable to leave their carriages when passengers of the first and second classes were allowed to parade the platform of a railway-station. If there was time to allow passengers to leave the train, he thought that the Natives should also be allowed to quit their carriages. He would require Station-masters to open the doors of all the carriages at each halting station.

The Hon'ble MR. STOKES agreed with His Honour the Lieutenant-Governor that the Bill as it stood did not make it compulsory on Railway Companies to make general rules to provide for the comfort and convenience of passengers. He would therefore suggest the addition to section 8, clause (b), of the words "and the provision to be made for the accommodation and convenience of passengers."

With respect to the other question, regarding the use of the English words "ton" and "hundred-weight," it ought to be remembered that this Bill was a consolidating measure, and those words were in the existing law, Act XVIII of 1854, section 14, and had never, so far as he knew, given rise to the slightest difficulty. As to the propriety of using the Hindústáni term "ser" because it was the name of the standard weight recognised by the Indian legislature, he regretted to say that that was only nominally so; the ser was declared to be the standard weight of India by an Act (No. XXXI of 1871) which, though passed more than seven years ago, had unfortunately not been brought into force.

Colonel the Hon'ble SIR ANDREW CLARKE observed that, as a general rule in all Guaranteed Railways, the maximum carrying capacity of every wagon was marked on it both in tons and in maunds for the information both of the public and the servants of the Company.

The Hon'ble MR HOPE said the report of the Select Committee on the Bill, although it was dated 26th February, was only in the hands of the Members some time on Friday last. No sufficient time was thus afforded for consideration. Moreover, when he glanced at the report, it struck him that the Committee was an exceedingly limited one. There seemed to be more than one conspicuous omission of well-known names which might have been added to it. He need only mention one Member, the Hon'ble gentleman on his left (Lieutenant-General Sir M. Kennedy), who might be supposed to be able to give valuable advice. However, notwithstanding this short notice and imperfect Committee, he had come to the Council with the intention of accepting this Bill on trust, just as other Hon'ble Members had on occasion to accept on trust Bills which they had not had time to go through themselves. But what had taken place led him to doubt the expediency of doing so. A number of objections of various kinds had been raised, some of which were held by Hon'ble Members to be of considerable importance to the Native community, and some provisions of this Bill imposed serious and possibly undeserved penalties on individuals. Suggestions had been devised to meet some of those objections, but he had not been able to catch what it was proposed to do; and he very much doubted whether objections of this kind, which were fundamental objections, could be satisfactorily disposed of in a few minutes at the Council table. He would suggest whether it would not be better to refer the Bill back to the Select Committee, to republish it, and to allow Local Governments, and amongst others the Panjáb Government, time to consider the provisions of the Bill as they now stood. He was aware that he could not, according to the Rules, move for the re-committal of the Bill, unless indeed he claimed advantage on the ground of its not having been seven days

the Select Committee thought them beyond the scope of a legislative enactment. But by making it obligatory on the Railway Companies to make rules in consultation with the Consulting Engineer to Government, and providing that those rules should be subject to the sanction of Government, the Committee thought that it would be in the power of Government to secure all that was necessary for the comfort and convenience of passengers. He thought that, as a general rule, the desire of the Railway Companies and Administrations was to provide, as far as possible, for the various wants of passengers. A great deal in that respect had been done in recent years, but it was not an easy task to provide all that was necessary, and there were, no doubt, deficiencies in many of the railways.

With reference to the over-crowding of passengers, his experience was that the Natives themselves were to blame, for they would force themselves into carriages in which there was no available room, and he thought it was not the desire of the Railway-Administration to put more persons into a carriage than the carriage was intended to accommodate.

His Honour THE LIEUTENANT-GOVERNOR suggested the addition of a few words to clause (b) of section 8. He could not agree with Sir A. Clarke that Native passengers were alone to blame themselves for over-crowding. He believed that they were helpless in the matter and were ill-treated by railway-servants. He had himself very often seen passengers forced by guards into carriages where there was no room. He thought it necessary to pass rules to regulate the accommodation of passengers in such matters as water-supply, shelter from the sun, and other station-accommodation.

General the Hon'ble SIR E. B. JOHNSON said that he had constantly, when travelling as Quarter Master General, seen Native third class passengers locked up and utterly unable to leave their carriages when passengers of the first and second classes were allowed to parade the platform of a railway-station. If there was time to allow passengers to leave the train, he thought that the Natives should also be allowed to quit their carriages. He would require Station-masters to open the doors of all the carriages at each halting station.

The Hon'ble MR. STOKES agreed with His Honour the Lieutenant-Governor that the Bill as it stood did not make it compulsory on Railway Companies to make general rules to provide for the comfort and convenience of passengers. He would therefore suggest the addition to section 8, clause (b), of the words "and the provision to be made for the accommodation and convenience of passengers."

With respect to the other question, regarding the use of the English words "on" and "hundred-weight," it ought to be remembered that this Bill was a consolidating measure, and those words were in the existing law, Act XVIII 1854, section 14, and had never, so far as he knew, given rise to the slightest difficulty. As to the propriety of using the Hindústání term "ser" because it was the name of the standard weight recognised by the Indian legislature, he regretted to say that that was only nominally so; the ser was declared to be the standard weight of India by an Act (No. XXXI of 1871) which, though passed more than seven years ago, had unfortunately not been brought into force.

Colonel the Hon'ble SIR ANDREW CLARKE observed that, as a general rule in all Guaranteed Railways, the maximum carrying capacity of every wagon was marked on it both in tons and in maunds for the information both of the public and the servants of the Company.

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in his hands, but he threw out the suggestion for the consideration of the Hon'ble Member in charge.

His Excellency THE PRESIDENT remarked that, considering the immense importance of some of the suggestions which had been made by the Hon'ble Mr. Thornton, he thought it would be impossible on the spur of the moment to meet those suggestions. It appeared to HIS EXCELLENCY scarcely desirable that the Bill should be hurried through the Council, and as the Hon'ble ~~Mr. Hope had expressed a wish that the Committee should be enlarged,~~ HIS EXCELLENCY thought the opportunity should be taken to do so.

The Hon'ble MR. STOKES observed that if the Bill were now referred back to the Select Committee, with the addition of other Hon'ble Members, he doubted whether the further report could be presented in sufficient time to be taken into consideration before the departure of the Council from Calcutta. Besides, even if the report were presented before the next meeting, Hon'ble Members, such as the Hon'ble Mr. Hope, might again raise the objection that the Bill had not been in their hands for the full period of seven days prescribed by the Rules. The Bill was quite too important a measure to be passed at Simla. The result of referring the Bill back to the Committee would therefore probably be to postpone the passing of it till the Council had returned next November to Calcutta

Colonel the Hon'ble SIR ANDREW CLARKE thought that the objections which had been raised by his hon'ble friend Mr. Thornton had been sufficiently met by the explanations which had been offered in answer to them, and the suggestions for the amendment of the Bill which had been made. He admitted that, as regarded the trespassing of cattle on Railway-lines, there was a choice of evils. Either the risk of accidents from cattle-trespass in unfenced lines of Railway must be taken, or provision must be made for the punishment of the owners of cattle wilfully driven on embankments for pasturage, where the persons in charge of such cattle could not be identified. With regard to the necessity for making provision for the comfort and convenience of Native passengers, he thought it had been met by the amendment which had been suggested by his hon'ble friend Mr. Stokes. There was nobody more anxious to provide for the comfort and convenience of passengers than the officers of the Railway-Administration themselves, and for his own part, he had at once accepted the suggestion which had been made. With regard to the question of the weights to be recognised, the Bill followed the existing law in that respect; it had been found to work satisfactorily and he had heard no objection to it. This important Bill had nearly been completed and was ready to be brought up when

his hon'ble friend Sir Michael Kennedy joined the Council. If he had been here when the deliberations of the Committee were proceeding, SIR ANDREW CLARKE would have been glad to have had the benefit of his experience in settling the provisions of the Bill. The Bill had been a very long time under consideration, and the Committee had received a very large number of criticisms which had all been very carefully discussed and considered.

The Hon'ble MR. STOKES begged to remind His Excellency the President that the Bill was in one important respect most urgently needed. The absence from the present law of any provision legalizing the use of locomotives on railways, made it necessary that this Bill should be passed without further delay. For want of such a provision (the insertion of which had been expressly directed by the Secretary of State), every Railway Company in the country, and the Government as the proprietor of State Railways, were liable to protracted and expensive litigation. The suggested amendments of the section relating to cattle-trespass could not possibly be adopted; and the importance of the other two amendments had been exaggerated. There would be no difficulty in making them at once. The amendments which had been drawn up, he was of opinion, fully met the objections which had been taken to sections 8 and 29. He had often known amendments of infinitely more importance and difficulty made by the Council under circumstances precisely similar to the present.

His Honour THE LIEUTENANT-GOVERNOR suggested the substitution in section 29 of the words "five rupees for every maund of three thousand two hundred tolas" for the words which had been proposed by the Hon'ble Mr. Thornton. That would make the provision harmonise with the expression used in other Acts.

The Hon'ble MR. STOKES said that, on consideration, he thought it would be better to insert his amendment of section 8 as a new clause after clause (b) of that section. His motion would therefore be that the following clause be inserted after clause (b) of section 8:—

"(c) for regulating the provision to be made for the accommodation and convenience of passengers ;

and that the present clauses (c) and (d) be lettered respectively (d) and (e)."

The Motion was put and agreed to.

The Hon'ble MR. THORNTON then moved that, for clause 3 of section 29 of the Bill, the following shall be substituted :—

“shall be punished with fine which may extend to five rupees for every maund (of 3,200 tolas) of such property ; and such fine shall be in addition to any charge to which such property may be liable.”

The Motion was put and agreed to.

Colonel the Hon'ble SIR ANDREW CLARKE then moved that the Bill as amended be passed.

The Hon'ble MAHÁRÁJÁ JOTÍNDRA MOHAN TAGORE wished to take the liberty before this Bill was passed, to point out once again that it appeared to be somewhat unfair to visit the shortcomings of Railway Companies upon the owners of cattle which strayed upon the unfenced embankments of railway-lines. Although cases had been known where persons employed in tending cattle had been found wilfully to drive the cattle under their charge upon railway-embankments for the purpose of grazing upon the pasturage there, yet it was difficult to prove where the offence was wilful and where it was not, especially with regard to unfenced lines, and it was hard to punish the owner for a matter which might have been purely accidental or unavoidable. He thought it should be made incumbent on Railway Companies to fence their lines of railway before inflicting any penalty for the trespass of cattle thereon.

The Hon'ble MR. COCKERELL desired to submit that the grievance put forward by the Hon'ble Member who last spoke was wholly sentimental. No one was better aware than that Hon'ble Member that the whole country of Bengal might be said, broadly speaking, to be unfenced ; yet they had every day experience of cattle being taken from fields which were unfenced and carried to the pound, and there impounded until the owners paid the fine prescribed by law for their release ; and if the cattle were unclaimed, they were sold to pay the expenses of their keep. Now, although the Bill before the Council imposed an additional fine for the wilful driving of cattle on lines of railway and the land belonging thereto which were unfenced, the principle of the enactment was the same as that of the Cattle Trespass Act, against which no objection of this kind had ever been urged.

In both cases the law threw upon the owners of grazing cattle the burden of taking such care of their property as would prevent it from causing injury to others, whilst the punishments imposed by the law were less or greater, according as the absence of due care entailed risk of injury to property only, or to life as well as property.

The Hon'ble MR. HOPE thought the objection which had been taken by the Hon'ble Maharájá had been looked upon in an erroneous light; because, although the statement which had just been made that the whole of Bengal was an unfenced country might be true, it should be borne in mind that the penalty of impounding prescribed under the Cattle Trespass Act was an ordinary penalty; but the penalties under this Bill were extraordinary, and over and above the ordinary penalty imposed by law for the offence of cattle-trespass. Therefore, it seemed to Mr. HOPE that there was no parallel between the two cases.

The Hon'ble MR. STOKES considered that the distinction made by this Bill was a perfectly reasonable one. Under ordinary circumstances, cattle-trespass caused no injury to life, limb or valuable property; but the trespassing of cattle on railway-lines was attended with extreme risk to the lives and limbs of passengers, and to valuable engines and carriages of the Companies. The legislature was therefore perfectly right in imposing extraordinary penalties on persons who allowed cattle to stray on such lines, whether fenced or unfenced. To require that all Indian Railways should be properly fenced was, in the present state of our finances, to ask an impossibility.

The Hon'ble MAHÁRÁJÁ JOTÍNDRA MOHAN TAGORE thought that the reference which the Hon'ble Mr. Stokes had made to the important question of the risk to lives and limbs of passengers travelling by Railways ought to be an additional reason why it should be incumbent on Railway Companies to fence their lines.

His Honour THE LIEUTENANT-GOVERNOR remarked that very few of the State lines were yet fenced and that the speed of the lines was regulated with reference to that fact; it would be done in time, but the fencing of railway-lines could not be effected in a day, and in the meanwhile there would be danger of the traffic on Railways being entirely stopped if fencing was made a *sine qua non* to the running of trains.

Colonel the Hon'ble SIR ANDREW CLARKE observed that there was another reason why railway-embankments should be protected from the trespass of cattle. The grazing upon them of cattle caused injury to the embankments.

The Hon'ble MR. EVANS said that in this country, as a rule, there were no fences—arable and pasture land of various proprietors lay in one plain side-by-side. There was no fence between the land of each proprietor nor between the crops and the grazing grounds. It was the admitted duty of every owner of cattle to employ herdsmen to prevent their trespassing. If the cattle trespassed,

they were impounded and fines levied under the Cattle Trespass Act. There would be nothing contrary to the custom and habits of the country if the Railway were left unfenced. Efforts were being made to fence the Railways to diminish the risk of accidents, not because adjacent land-owners had any right to ask that they should be fenced. Meanwhile, heavy penalties must be imposed to protect the lives of passengers. The penalties sufficient for the protection of crops were not sufficient for the protection of the lives of the passengers by rail.

The Hon'ble SIR ALEXANDER ARBUTHNOT said the motion before the Council was that the Bill be passed. The Hon'ble Maharájá Jotindra Mohan Tagore had offered an objection, but had not moved an amendment. It seemed to SIR ALEXANDER ARBUTHNOT under all the circumstances to be undesirable that the passing of this Bill, which had been a long time under the consideration of a Select Committee, should be any longer postponed. The objections which had been raised in the course of that day's discussion had all, he thought, been thoroughly sifted, and as far as he was competent to judge, had been satisfactorily met. But with reference to this Bill, and also with reference to another Bill before the Council, objections had been raised to the effect that the Select Committees which had to report upon the Bills and to sift their provisions were unduly small. It appeared to him that there was considerable force in that objection, and that in the case of a Bill of such importance, and in the case of most of the Bills which came before the Council, it was very desirable that in future the Select Committees appointed should be somewhat larger. In the case of the present Bill, he agreed in the observation which had been made that it would have been very desirable to have had the benefit of the experience of Sir Michael Kennedy on the Select Committee, and he had no doubt that Sir Michael would have been added to the Committee if he had arrived at Calcutta at an earlier period in the progress of the Bill. It would have been better, also, if one or more of the Native Members of the Council had been sitting on a Bill which so materially affected the safety and comfort of every portion of the Native community. He would only add that he hoped no further objections would be made to the Bill being now passed.

The Hon'ble MR. STOKES had had nothing to do with the formation of the Committee on the Railway Bill. He regretted the absence from the Committee of the Hon'ble Sir M. Kennedy and Maharájá Jotindra Mohan Tagore ; but he was confident that the omission to secure their assistance was due to mere forgetfulness on the part of the overworked Member in charge of the Department of Public Works. As to the Bills in his (MR. STOKES') charge and actually passing through the Council, he begged to inform the Hon'ble Sir A.

Arbutnot that the Committee on each was abundantly full. Thus, the Committee on the Transfer of Property Bill consisted of seven Members, including the Hon'ble Mahárájá Jotíndra Mohan Tagore. On the Bill to amend the Code of Civil Procedure, six Members were sitting. On the Negotiable Instruments Bill, there were five Members. On the Alluvion Bill, there were seven. On each of the Bills dealing respectively with Legal practitioners and Coast-lights, there were three Members,—a number which, in his opinion, was amply sufficient for those Bills.

The Hon'ble MR. HOPE explained, with reference to the remarks he had made about the omission of Sir Michael Kennedy from the Committee, that his hon'ble friend had been nearly two months in Calcutta. He arrived before the assembling of the recent Railway Conference, from whose deliberations the Select Committee stated that they had derived great advantage. He therefore could not apprehend what there was to have prevented the Committee from obtaining the advice of his hon'ble friend. He merely mentioned these facts in support of the remarks which he had made regarding the smallness of the Select Committee on this Bill.

The Motion that the Bill be passed was then put and agreed to.

NORTH-WESTERN PROVINCES LAND-REVENUE ACT AMENDMENT BILL.

The Hon'ble MR. COLVIN asked leave to postpone the presentation of the Report of the Select Committee on the Bill to amend the North-Western Provinces Land-Revenue Act, 1873.

Leave was granted.

PRESIDENCY BANKS ACT AMENDMENT BILL.

The Hon'ble MR. STOKES, in the absence of the Hon'ble Sir John Strachey, moved that the order of the Council of the 5th instant directing the publication of the Bill to amend the Presidency Banks Act, 1876, in the *Gazette of India*, the *Calcutta Gazette*, the *Fort Saint George Gazette* and the *Bombay Government Gazette* be rescinded. The effect of allowing the order to remain unrescinded would be to postpone unnecessarily the passing of the Bill until the Council met at Simla or even until it returned to Calcutta. The present intention of Sir John Strachey was that the Bill, which merely effected a few trivial alterations in the Presidency Banks Act, should, if the Council consented, be passed at their meeting on Wednesday next.

The Motion was put and agreed to.

The Hon'ble MR. STOKES then presented the Report of the Select Committee on the Bill.

BURMA ELEPHANTS BILL.

The Hon'ble MR. THORNTON presented the final Report of the Select Committee on the Bill to prevent the indiscriminate destruction of wild Elephants in British Burma.

The Council adjourned to Wednesday, the 19th March, 1879.

CALCUTTA ;
The 13th March, 1879. }

D. FITZPATRICK,
*Secretary to the Government of India,
 Legislative Department.*

NOTE.—The meeting which was originally fixed for Wednesday, the 12th March, 1879, was adjourned to Thursday, the 13th March, 1879.