Railways and Cattle Trespass —— an Evolution of Legislation Management in Colonial India (1854-71)

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Abstract:

The issues related to the incidents of cattle trespass led to the enactment of legislations in colonial India. In this article, there would be attempts to comprehend whether the provisions and sections of the Cattle Trespass Act evolved from the established practices of legislation and its implementation under British rule. The evolution of legislation was itself a complex process. However, there were various rules and regulations of the railways related to the carriage of goods and passengers. In fact, there was an element of divergence between the Railway Acts and the Cattle Trespass Acts. Probably, a lot of crucial issues of Cattle Trespass Acts were neglected, precisely those associated with the Railway Acts, which forms the central argument of this article. The Acts contained various provisions under which the issue of cattle trespass was dealt by the railway authorities, eliciting either fines or punishments prescribed by law. The role of the Magistrate was given a great deal of importance.

Key Words: Railway Act, Cattle Trespass Act, Provisions and Sections of Acts, Fines, Punishment, Magistrate Role, Legislation Management

The article deals with the discussions relating to the framing of proposals of Railway Cattle Trespass Acts under the rubric of the Acts of 1854, 1857 and 1871. This article would also examine the legal and social issues which influenced the railway and cattle trespass legislations. In fact, the Cattle Trespass Act was significant in the context of the railways and the evolution of legal apparatus in British India. The cattle trespass acts and the implementation of its provisions in Bengal need to be studied in details. U. Singh has pointed out that the administration of these acts by the courts in India provided relief to the public suffering from the trespass of a third person’s cattle in their lands. It was also stated that the cattle trespass acts gave statutory expression to the need for effectively dealing with the owners of trespassing cattle and it was not therefore, surprising that these acts were frequently invoked for the protection of the public against unscrupulous or negligent owners of cattle. Moreover, the administration of these acts raised many important questions about the right of seizure, rescue of seized cattle and their judicial confinement.¹ Nagendra Kumar Bhattacharya has pointed out that “it was expedient to authorize the seizure and detention of cattle doing damage aforesaid and made provision for the disposal of cattle found straying in any public place and greater inconvenience and mischief were caused by cattle found straying on the high road about the station and in the bazaar”. He also highlighted the provision for the punishment of persons causing nuisance to the public and hindering the flow of traffic by allowing cattle to stray in public roads and bazaars.² Though much has been written about the Cattle Trespass Acts, there has hardly been any attempt to closely connect them with the functioning of the railways.
It needs to be pointed out that the Act 18 of 1854 was amended by the Act 25 of 1871. The word “cattle” was attached to the Cattle Trespass Act, 1871, and the expression “public road” in sections eleven and twenty-six of the said Acts were deemed to include railways. Whenever cattle were wilfully driven or were knowingly or unknowingly permitted to stray on any railway property guarded by fences, there was ground for legal action. The public were permitted to cross the railway lines through a gate or a bar, but if a person who was not the legitimate owner of the cattle was found to be crossing with cattle, the Magistrate could legitimately impose a fine of Rs. 50 per cattle. The amount could be recovered under the said Act (The Cattle Trespass Act, 1871) could be recovered in accordance to the rules provided by section twenty-five of the Act.3

There could be debates as to whether the fines levied under section 21 of Act xviii of 1854 for cattle trespass upon railways were incorporated in Act iii of 1857. It had been argued that the diversity of practices prevailing in this respect as well as the treatment of the cases of cattle trespass in the railway properties were of a recent phenomenon. In fact, those which were concerned with the provisions of section 21 of Act xviii of 1854 and were not viewed as ordinary cases of cattle trespass under the Act iii of 1857. The fines levied under these sections were credited to the government and not to the pound fund. Jai Vijay N Jaiswal has pointed out that section 125 stated that the owner or person in charge of any cattle straying on a railway property provided with fences was liable to be punished, the fine could extend from five rupees for each head of cattle, to any amount which could be recovered, as deemed to be necessary under the Cattle Trespass Act, 1871”.4 Therefore the provisions of the Railway Acts seemed sufficient though doubts could be raised about the validity of imposing them.5

It has been argued that certain perplexities were confronted by the railway authorities in dealing with the trespass of cattle upon the railway lines. The Deputy Agent of E.I.R had doubts whether the owners of cattle found trespassing the railway lines, because of insufficient fencing were liable for punishment. However, there were doubts over the new wire fencing and though the E.I.R’s stance was not always supported by the district officials, there was a consensus in regard to the implementation of certain punitive measures. Jai Vijay N Jaiswal has pointed out that “if any cattle wilfully driven, or knowingly permitted to be, on any railway otherwise than for the purpose of lawfully crossing the railway or for any other lawful purpose, the person in charge of the cattle or, at the option of the railway administration, the owner of the cattle shall be punished with fine which may extend to ten rupees for each head of cattle, in addition to any amount which may have been recovered or may be recoverable under the Cattle Trespass Act, 1871.”6

The commissioners7 were given instructions through the Magistrate of their respective divisions regarding the treatment of cases of cattle trespass cases in the railway and the dispensation of fines levied under section xxi, Act xviii of 1854. The Magistrates8 conducted enquiries with reference to section 21, Act xviii of 1854, to ascertain whether ‘fines which were levied for cattle trespass upon the East Indian Railway should be credited
to the pound fund or to Government under Act ii of 1857. This article also reveals that in the
districts of Burdwan and Hooghly, fines were levied under Act iii of 1857 and necessarily
credited to the pound fund. It has been argued that the procedure arose from the decision on
the part of the Railway Authorities to simply hand over the cattle to the pound without
special prosecution under section 21, Act xviii of 1854. However, in the district of Howrah,
fines were levied under Act xviii of 1854 and credited to the pound fund, while in Bheerbhoom
they were credited to the Government. There was a need to enforce a
uniformity of practice, whenever a fine was levied under the provisions of Act xviii of 1854.
The fine levied under Act iii of 1857 had to be credited to the pound fund. However, it has
also been argued that the Magistrate was placed in the best position to decide on matters
related to the cases of trespass of cattle on the railway lines. Furthermore, they could advise
the Railway Officials to carry out prosecutions under Act xviii of 1854, since the offence was
of far more dangerous nature than that of an ordinary field trespass and warranted a stricter
punishment.

It is needless to say that these men did not attempt to seize cattle straying on the
railway lines under section 14, Act III of 1857. The fine was paid to plaintiff under section 14;
Act III of 1857. Indeed, the cattle belonging to one man was at liberty to devour the crops of
another. In fact, it has been also pointed out that, this was not the law in the mofussil,
according to section 2 of Act iii of 1857 and Company stood as much entitled to benefit from
the law, which made the owner responsible for the damage done by his cattle. Such a legal
intervention kept the interests of the rest of the community alive, particularly when the
provision of fencing was provided under the Act. Jai Vijay N Jaiswal has pointed out that
“any fine imposed under this section might, if the court so directs, be recovered in manner
provided by section 25 of the Cattle Trespass Act, 1871. The expression “public road” in
sections 11 and 26 of the Cattle Trespass Act, 1871, should be deemed to include a railway,
and any railway servant might be exercised the power conferred on officers of police by the
former of those sections.”

This article also intends to reveal that the E.I.R Company had, however, a perfect
right in all cases of cattle straying or trespassing on the lines with or without the cognizance
of the owner. In fact, there was ample reason for them to be seized and transported to the
nearest pound in accordance with section 2 and 15 of the Act III of 1857. It has been argued
that this procedure was almost identical to the one which was adopted in cases of cattle
straying or trespassing on cultivation (except that in such cases no remedy under section 21
of the Railway Act could be obtained). However, the same protection was not extended to
the railway tracks adjacent to the cultivable fields. In fact, the trespass of cattle by deliberate
act or intention of the owner was punished under section 426 of the Penal Code. “The
Railway company’s servants could be instead of proceeding against the owners of cattle
trespassing upon the line under section 21, Act XVIII, 1854 (an Act relating of Railways in
India) elect to proceed under Act III, 1857 (the cattle trespass Act)?”
The article also intends to clarify that the Act XVIII of 1854 seemed apt for all purposes in respect to the responsibility and punishment of cattle owners. Indeed, the section 18 clearly stated that it would be punishable if there was evidence of wilful driving of an animal on the railway lines which had been brought under fencing. Section 21 imposed a fine on the owner of cattle straying within these limits. For example, fines could be imposed if cattle were found within the fencing and close to an opening near the tracks. However, a few questions remained to be answered. Was the owner to be punished under section 21? Was the Company to be held answerable for the opening? Was the onus probandi on the owner of the cattle? It has been also argued that the presence of cattle on the railway lines brought out the story of an imperfect fencing. There was no Railway Act which clearly laid down two principles, one that the Company was bound to keep their fences in repair, the other that owners of cattle were bound to prevent their cattle from trespassing into or straying on the railway lines.

It has been pointed out that the law was very clear on the subject of cattle trespass on the railway tracks. The section 20 of act XVIII of 1854, prescribed that the Railway Company should erect and maintain ‘good and sufficient’ fencing along the line. The article also reveals that the section 21 declared that the owner of any animal which trespassed on a railway line, except for want of the erection or maintenance of any fence or gate which the Company was bound to maintain and was liable to fine. However, there were complaints from the railway companies that they were hardly entitled to the benefits of Act III of 1857 of the Cattle Trespass Act. But, there was hardly any attempt to override section 21 of Act XVIII of 1854 by Act III of 1857. It was not very clear to the Commissioners whether the legal provisions applied solely to the savage and dangerous animals and in a lesser way to the cattle. There were opinions that the laws could not be applied to cattle trespass on railway lines, as there was a special law on that subject and section 5 of the Penal code specified that no provision of that code could be affected by any special law. Nagendra Kumar Bhattacharya pointed out that “thus it was appeared that Cattle Trespass Act 1871, section 125, Clause (1) of the Indian Railways Act, made punishable the negligence of the owner or persons in charge of any cattle which strayed upon the line. The section recognized the obligation of the owner to prevent the cattle from straying, while at the same time it provided that the negligence of the person in charge might also be punished. There was nothing in the clause to restrict the discretion of the Court in ascertaining upon whom the fault really lies and awarding the punishment, accordingly”.11

Certain difficulties were encountered by the railway authorities in dealing with the trespass of cattle upon the rail tracks. In some cases, the Railway Company’s servants instead of proceeding against the owners of cattle trespassing upon the line under section 21, Act XVIII, 1854 (an Act related to Railways in India) preferred to proceed under Act III, 1857. By section 20, every railway company was bound to erect and maintain ‘good and sufficient’ fences on each side of their railway. Under section 21, the owners of animals which had trespassed on the railway lines except for want of the erection or maintenance of any fence...
were liable to be fined. There were hardly much evidence for the companies to show that the
fences which they had erected had met with approval from the side of the Government of
India. Thus, it was amply clear that their neglect could prove to be an accidental breach,
leaving little space for allegations of trespass. Nagendra Kumar Bhattacharya has opined “In
the Cattle Trespass Act, 1871, section 125 clause (2), made punishable acts of knowingly
permitted cattle to be upon a railway line, and provided that at the option of the railway
administration, the owner, instead of the person in charge, should be punishable. The
proviso was of a very penal character, and it removed the discretion as to the person to be
held liable to punishment from the Court to the railway authorities. No such discretion was
given to the railway administration when the straying of the cattle had been due to
negligence. There was nothing to restrict the power and duty of the Magistrate to ascertain
in such cases whether the person charged had himself been guilty.”

In most cases, the railway companies proceeded under the belief that the cattle
trespass act could not be enforced in ordinary cases of trespass, unless the straying cattle
were found to have caused ‘damage to land or the crop or produce of land’. The acts in
question provided statutory remedies which differed from the ordinary legal remedies in
cases of trespass. There was not much of conclusive proof before the railway companies to
show that the government officials had been satisfied during their inspections that regular
repair of fences had been carried out by them. But it was a prima-facie.

The Secretary of Govt. of India was directed to forward his opinions to the Govt. of
India in connection with the bill for the amendment of the Railway Act xviii of 1854, and for
making laws and regulations on the subject of cattle trespass on the railway lines. It has been
argued that it was quite fair for the railway companies and the owners of the trespassing
cattle that the enforcement of the provisions of section 21 of the Railway Act could only be
made on the basis of furnishing proof of proper fencing arrangements. However, Secretary,
Government of Bengal observed that section 289 of the Indian Penal Code was not
applicable to cases of trespass by cattle on the railway tracks. It was stated that the bill for
the amendment of the Railway Act should have the objective of remedying the defects in the
law with regard to the punishment for cattle trespass and for the enforcement of
provisions of special penalty for the offence of wilfully destroying railway fencing.

There was a complaint that sometimes cattle were not seized or were let off too
easily and the police remained doubtful whether their duties and responsibilities under the
Railway Act were similar to those of the ordinary Cattle Trespass and Pound Act. However,
it had been brought to notice that some cattle were seized on the railway lines and police
Station favoured to be in a mood of inaction, an irregularity which later resulted the
summary dismissal of the officer at fault. The provisions of section 21 Act xviii of 1854
authorized the railway subordinate staff to take away the cattle which had strayed on the
lines to the nearest police Station. Indeed, the officers were bound to receive and detained
them until, a fine of rupees 10 for each cattle was paid and the orders of a Magistrate was
received. Significantly, peremptory orders were issued on this subject to every police station along the tracks and they were warned of serious consequences of any future disobedience.

A significant question arose from the workings of section 21, Act XVIII Of 1854. In fact, it was utterly impractical to ensure the safety of the lines, because of the habitual dereliction of duties by the European Foremen and Native Mistries. There were accusations that the railway staff remained absent from their day to day duties to the extent that they themselves were liable for prosecutions. It appeared that under Act No XVIII of 1854, there could be prosecutions only in cases where cattle were not or could not be detained under Clause 21 and it was lawful for the company or any of their servants to take or drive any animal which was found trespassing to the nearest police Station. By Act III of 1857, all cattle which had been impounded for ordinary trespass were liable for the fines were prescribed by the said Act and if the owners refused to pay the fines the cattle (or as many of them as might be necessary) were sold.

It could be argued that the Magistrates of Patna and Shahabad comprehended that without prosecution and proof in each instance they were not competent to impose any fine under section 21, Act XVIII of 1854. However, other expenses were liable under section 21, Act XVIII of 1854 to receive back the cattle within fifteen days, for which an application had to be made to the Magistrate within the stipulated period. Nagendra Nath Bhattacharya has pointed out that, “the cattle Trespass Act, section 125(2) of the Indian Railways Act applied if cattle were wilfully driven on any Railway otherwise than for the purpose of lawfully crossing the Railway. In order that the accused person should be convicted under that section it must be proved that their purpose was not lawful. There was no provision in the Indian Railways Act by which the public was forbidden to cross Railway lines or drive animals across them at places other than level crossing, and if the Railway erects no fence the public would continue to cross the line and drive their animals across it until they were stopped. The Railway companies had their remedy where the cattle were found to commit damage or to stray without owners on the Railway ground but the mere crossing of the Railway was not unlawful and did not make any one liable for conviction under that section.”

Therefore each obligation had to be imperative and absolute, making it mandatory on the part of the railway companies to fulfil their obligations of erecting and maintaining the fences. The owners of cattle which were found trespassing on the lines were punished under the provisions of section 21, whether the fence was properly maintained or not. It has been pointed out that some law could be passed which protected the travelling portion of the public from the danger to which they were exposed and the railway companies from the injuries which were inflicted on them with impunity. The Chief Engineer pointed out at that time the punishment was inflicted in those cases which had been inadequate to deter persons from breaking the laws. “The owner of the animal which shall trespass or stray upon any such Railway, or upon any lands belonging to such Railway Company, except for want of the erection or maintenance of any fence or gate which the Company is bound to
erect and maintain shall be liable to a fine not exceeding ten rupees for each animal; and it shall be lawful for the Company, or any of their servants, to take or drive every animal which shall be found trespassing to the nearest police station, where they were to be detained until the highest amount of the fine incurred by such trespass and the expense of feeding and keeping the animal to be paid, or until a Magistrate shall otherwise order. A Magistrate may, upon proof of the trespass, cause such animal to be sold by public auction, and the proceeds of the sale, after deducting there from such fine or such a sum not exceeding ten rupees for each animal, as the Magistrate shall award to be paid in lieu of the fine to which the owner is, hereby, made liable, and such further sum as the Magistrate shall order to be paid for the expense of detain, feeding, and selling such animal, shall be returned to the owner of the animal on demand.”

In fact, it was indispensable to relieve the railway companies of the responsibility of impounded cattle trespassing on the line and there were suggestions that provisions should be made in the new Railway Act for the involvement of the Government Police. However, Advocate General’s opinion was forwarded for the information and guidance of the Commissioners and Magistrates, whose jurisdiction extended to matters which were linked to railway laws. “The Governor General in Council, or the Local Government with the sanction of the Governor General in Council, shall make rules, and may in like manner, from time to time, vary of same, for the provision of boundary-marks or fences for any Railway or any part thereof, and for roads constructed in connection therewith, and of gates or bars at places where any Railway crosses a road on the level, and for the employment of persons to open and shut such gates or bars, and may be such rules determine what kind of fences shall, for the purpose of section nineteen and twenty, be deemed to be suitable for the exclusion of cattle.”

Some evidence of the proper state of repair was there but, on the other hand, there was no legal presumption of the fact that trespass took place, because of the poor state of the fences. The railway companies took strict legal course of proof to establish that the trespass was committed by the cattle of the defendants and some general evidence was marshalled by them to prove that the fences had been in good order. It was found, if the defendant could be brought to forward clear evidence of this kind, he was excused from the penal consequences under the Railway Act but were liable to the ordinary remedies under law for trespass. Walter Gordon Macpherson has pointed that “when such animals were wilfully and unlawfully driven or knowingly and unlawfully permitted to be, on any railway was provided with fences suitable for the exclusion of such animals.” In the matters of prosecutions, the Acting District Engineer gave instructions for prosecutions in cases of cattle trespass. But, it was utterly impractical due to the safety of the lines to prosecute in every case, since there was delinquency on the part of the railway subordinate staff.

The Magistrates proposed to go to the High Court in matters under section 434 of the procedure code. But in a subsequent letter, the Magistrates believed that there was nothing illegal in the order and Commissioners were within their limits for not enforcing section
434. However, Commissioner regretted that when the local Railway Officials found themselves aggrieved, they went up to the Agent and through him to the Government instead of taking recourse to the Appellate Courts or in seeking the advise counsel of the Commissioner.26 The Magistrates 27were convinced that the seizure of cattle was illegal. They proposed to proceed under the provisions of section 434 of the Civil Procedure Code and send the papers of the cases to the High Court. Ordinary expenses on account of feeding the cattle impounded, which could not be realized and accounts were settled on the fines imposed on the public. In this context, there was an observation:

“The High Court, in revision, quashed the convictions of the four accused for both of the offences, because it found the seizure illegal, being not covered by the provisions of section 11 of the Cattle Trespass Act, as no damage was alleged or proved to have been caused by these cattle nor still cattle which had been driven across the railway line by their owner could be said to have strayed on. The conviction under section 125 (2), Railways Act, was quashed on two grounds, firstly, driving of cattle across the railway line at place, where there was a regular track, and there being no fence, could not be said to have been wilfully driven, or knowingly permitted to be, on any railway otherwise than for the purpose of lawfully crossing the railway or for any other unlawful purpose within the meaning of section 125 (2), Railway Act, secondly, because there was no finding in this case as to the number of the cattle owned by each of the accused.”28

In view of the above discussions, we can conclude that there was a strong conflict over the railway cattle trespass act and its provisions and sections. The mismanagement or miscalculations on the part of government and provisions of the laws in the beginning are to be blamed for the problems. The divergences resulted in a dichotomy between provisions and sections of the laws and government’s zeal in properly implementing them. It may be argued, that there was an impact on the railway administrative management, because of the trespass law’s provisions and sections. In fact, the laws with their provisions and sections were not uniform in character and there were differences in the policies adopted by the railway companies in colonial Bengal. However, more importantly difficulties arose over the working of the Acts. Regarding the value and importance of the Acts, it would be interesting to speculate as to how far the railways took advantage from these Acts to extend their system. Since 1871, when the Acts related to Cattle Trespass on the railway lines were passed, the subject of cattle trespass generated va

References

1 U. Sing - “The Cattle Trespass Act 1871” pp. 1-5, 1978
3 Calcutta Gazette, 25th October, 1871
“Onus Probandhi” is a Latin phrase meaning “burden of proof”. The burden of proof is a legal term that refers to the obligation in a Court case for one party to use evidence the persons. Onus Probandhi rests with the plaintiff in the civil trials and with the prosecution in criminal trials. 1865 October Judicial Branch (A Proceeding) West Bengal Archives proceeding no. 160-62

Ibid.

Patna, Bhagalpur, Burdwan and Nuddea

Patna


The Agent East Indian Railway Company having represented to Government certain difficulties encountered by the Railway Authorities in dealing with the trespass of cattle upon the line of rail. By section 20 of the former Act every Railway Company is bound to erect and maintain good and sufficient fences on each side of their Railway and by section 21 owners of animals trespassing on the railway except for want of the erection or maintenance of any fence which the company is bound to erect and maintain. 1865 October Judicial Branch (A Proceeding) West Bengal Archives, proceeding no.160-62,

Nagendra Kumar Bhattacharya, “The Cattle Trespass Act, 1871” pp.46-50

ibid

J. Geoghegan 1864

Railway employees and police, the former of whom are authorized to make over cattle found trespassing on the line to the nearest police station, while the latter are bound to receive and detain them until, first, the fine of Rupees 10 – plus cost be paid; or second ordered otherwise by a Magistrate. Therefore if the owner of cattle wishes immediate release he can affect it by paying the fine and cost which the police are bound to receive and then release the cattle. 1864, November, Judicial Branch, West Bengal Archives Proceeding no.219-221

The letter referred to from Messrs. Thomson and Fox states as follows :- “we need not assure you how greatly the Commissioner is mistaken in supposing that the men in charge of the road might attend Court to prosecute each case without serious inconvenience if not danger. They are usually, as you know, the European Foreman, Native Mistree, or his Assistants who are in charge of the road, fences and other essentials of a safe line of Railway, and if they be withdrawn from their work so frequently, and for so long as would be necessary to institute and follow up a regular prosecution in each case of trespass, they would be away from their work probably more than on it. 1864, November, Judicial Branch, West Bengal Archives Proceeding no.219-221

But to enable a Magistrate to impose a fine a prosecution is of course necessary in case of cattle straying on the line as in every other kind of criminal offence, and no Magistrate is authorized to impose a fine except on proof of the offence, nor would the mere written statement of an European Foreman amount to any legal proof at all. Why the parties who seize and send the cattle to the Police Station cannot appear before the Magistrate? They are not usually “European Foremen or Native Mistryes” whose absence would be a cause of inconvenience, but rather subordinates who could be easily spared for a day”. In most instances it is the European Inspector or Native Mistries in charge of the road who seizes trespassing cattle and sends them to the Tannah, and that their absence from their work for such a length of time, as a prosecution in every case of trespass must necessarily entail, would be wholly incompatible with the safety of the line. 1864, November, Judicial Branch, West Bengal Archives Proceeding no.219-221

By Act III of 1857 all cattle impounded for ordinary trespass are at once liable for the fines prescribed by the said Act, and if the owner appear and refuse or omit to pay the fines and expenses the cattle (or as many of them as may be necessary) shall be sold. The Commissioner, therefore and some of the Magistrates who have been dealing with these cases lately must surely be mistaken in supposing that to enable a Magistrate to impose a fine a prosecution is of course necessary. Other case of cattle trespass, imposed by the Act itself, and if any man be wronged by the improper impounding of his cattle for Railway trespass, he has the same remedy as in cases of ordinary trespass as
prescribed by section 14 of the Cattle Trespass Act III of 1857. 1864, November, Judicial Branch, West Bengal Archives Proceeding no.219-221

18 Nagendra Kumar Bhattacharya, “The Cattle Trespass Act, 1871” PP.46-50

19 S. Power 1867

20 The Calcutta Gazette, July –December, 1854

21 Junior Secretary Government of Bengal, directed to request that joint Secretary will inform the Board of Agency EIR that the police stations have instructions to receive cattle brought by Railway employees and police officers will doubtless afford protection to Railway servants conveying cattle to those station, but as the law stands, Government police have no right to enter upon the line of Railway to remove cattle, and would be illegal impounders if they did. This power might be given by law, but the difficulty would remain of there being no Government police to watch the line, and prevent trespass and other offences. The only remedy will be found in the adoption of the scheme of Railway Police, which has been suggested to the Board. 1866 September judicial, West Bengal Archive. Proceeding no. 46-49

22 Calcutta Gazette, 25th October 1871

23 Walter Gordon Macpherson – “Law of Indian Railways and Common Carriers” (p-381)

24 Mr. Shervington 1864 Patna and Soane Districts

25 A. Money 1866 Bhagalpur Division

26 Mr. Brett’s order was clearly an incorrect one, passed without sufficient proof and hastily. Forwarding copies of correspondence from the Railway Agent and the Government of Bengal, regarding the fine of Rupees 240 imposed by Mr. Brett, the late Assistant Magistrate, on the certain railway servants, and requiring a report on the subject and in replying that the depositions and Mr. Brett’s decision in that case. It appears that the Railway People sent in some cattle to the pound as having been found trespassing on the line. On this proof of the alleged trespass was required. Three men appeared as witnesses, one of whom said that the cattle entered the line through an existing break in the fence while the others stated that the cattle forced on the line by breaking through the fence. Brett in his decision remarked that “the Railway people contradict each other directly as to the state of the fence. I am convinced that the seizure was illegal”, and ordered the three khalassess, the witnesses, who it appeared had themselves made the seizure, to pay all the fines and expenses leviable from the owners, viz, Rupees 240 (being for 24 heads of cattle at 10 per head) under the provisions of section 434 of the Civil Procedure Code and send up the papers of the case to the High Court, with a view to the concelment of Mr. Brett’s order. 1866 September judicial, West Bengal Archive. Proceeding no. 46-49

27 Monghyr, E. C. Craster 1866

28 Monghyr, E. C. Craster 1866