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The Law

RELATING TO

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RAILWAYS IN BRITISH INDIA

INCLUDING THE

INDIAN RAILWAYS ACT, 1890,

AND THE

*RELEVANT PORTIONS OF THE CONTRACTS BETWEEN
GOVERNMENT AND THE COMPANIES.*

BY

HENRY EDWARD TREVOR,

OF LINCOLN'S INN, BARRISTER-AT-LAW,

Sometime Judge of the Suburban Court, Hyderabad, Deccan.

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PREFACE.

DURING the last ten years, so far as I am aware, no book has been published on the law of Indian Railways. In the interval there have been many changes. Besides the enormous expansion of the railway system itself, new railway companies on new principles have been established; decisions, affecting in very important respects the Law of Carriers, have been pronounced by the High Courts; and the statute law on the subject has been considerably amplified, and to some extent altered, by the new Railway Act, which came into force on the 1st of last May.

My desire in this Work is to exhibit the law relating to Railways in British India as it stands at the present date, collected in its different branches within the compass of one volume.

I have endeavoured, in the First Part, to show the nature of the various tenures on which the different undertakings are held, and, in the case of lines worked by companies, to state the contractual obligations which, apart from statute, the companies have incurred for the performance of their duty to the public. My subject, however, being limited to Railway Law, questions of pure Company Law have not, except incidentally, been touched upon.

The Second Part treats of the general Law of Carriers prevailing in India in respect of railways; an investigation which, so far as it involves the application of English common law and cases, pursues a path more than usually beset with thorns.

The Third Part consists of the text of the Indian Railways Act, 1890, with such notes and comments as it is hoped will throw light upon some of its provisions.

The rest of the statute law directly bearing on the subject, whether contained in special or general Acts of Parliament, or in Indian enactments, is printed in the Appendix; to which are added the Indian Acts dealing with closely-connected matters, that is to say, the Acquisition of Land, Telegraphs, and Tramways, together with a selection of the Bye-laws or General Rules sanctioned by the Government of India, and having the force of law.

I am indebted to Mr. CHARLES HENSLEY, of Lincoln's Inn, for assistance in the revision of the proof sheets and verification of the references.

HENRY EDWARD TREVOR.

5, NEW SQUARE, LINCOLN'S INN,
12th December, 1890.

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ADDENDA.

Page 11, note (a).

The new contract of the South Indian Railway Company, Limited (incorporated under the Companies Acts, 1862 to 1890), dated 24th November, 1890, is on the same lines as those of the Southern Mahratta, Indian Midland, and Bengal-Nagpur Railway Companies: pp. 28, 29; but it is terminable by the Secretary of State either on December 31st, 1910, or on December 31st of any succeeding fifth year by twelve months' notice. It contains a provision that the Secretary of State may, on six months' notice, require the company to re-transfer to him any part or parts of the railways comprised in the undertaking. The surplus of the net receipts is to be divided between the Secretary of State and the company, in the proportion of 140 lakhs (the equivalent of the share capital of the company) to the rest of the capital outlay; and it is provided that the Secretary of State may require the company to construct or acquire and work as part of the undertaking any branch or extension railway of the same gauge; and to construct on behalf of any local authority, or any allied tributary or foreign state, any such branch or extension railway of the same gauge in connection with the undertaking, or with any railway connected therewith, as such authority or state may desire to have worked through the agency of the company; and the company is to accept and work, upon terms to be specially agreed upon in each case between the company and the said authority or state with the sanction of the Secretary of State, any and every such railway, whether existing or constructed through the agency of the company, or otherwise, but no such railway is to form part of the undertaking. (See the East Indian Railway Company's Contract, p. 25.)

Pages 40 and 42.

The provisions, also, as to opening for public traffic, and as to working the undertaking, fares, &c., are somewhat different

from those given at p. 40 and p. 42. They are in the following terms :—

As to opening for Public Traffic.

The company shall from time to time, when and as often as any part of the undertaking not previously opened for the public carriage of passengers is in a fit state and properly equipped with rolling-stock, plant, and machinery for such carriage, give the notice prescribed by law of its intention to open such part, and on the opening thereof being sanctioned, shall forthwith open the same part for the public carriage of passengers, and, if the Secretary of State shall so sanction, of animals and goods. Nothing in this section shall operate to prevent the public carriage of animals or goods on any part of the undertaking, the opening of which for the public carriage of passengers shall not have been sanctioned, provided that the Secretary of State shall have sanctioned the public carriage of animals or goods over such part.

As to working the Undertaking, Fares, &c.

The company shall, until this contract shall be terminated under any provision herein contained, keep the open system opened for public traffic, and work the same and carry on thereon, in accordance with the provisions of the law of India for the time being, the business of carriers of passengers, animals and goods, or passengers, animals, or goods, according as the carriage of the same respectively shall have been sanctioned by the Secretary of State.

Page 406.

The Gazette of India, 8th November, 1890, contains a code of General Rules for working *Railways under construction and not open for traffic, on which locomotives have been authorized to run.* These apply to Railway Servants only.

The Law relating to RAILWAYS IN BRITISH INDIA.

INTRODUCTION.

THE dominant characteristic of Indian as compared with English railways is the interest which the Government of India holds, whether as guarantor, or partner, or proprietor, in the entire railway system of the country.

This contrast was marked from the very beginning of railways in India. Though the earliest lines were constructed by private enterprise, by companies which raised their capital from their own shareholders, yet in every case the interest on the capital was guaranteed, and the land required was provided by the Government.

Hence, from their inception the companies depended upon Government assistance, and in return for its concessions the Government, besides reserving to itself the right of purchasing the undertakings after certain terms of years, stipulated for powers of general interference with

INTRODUCTION. the working and management thereof, from which English railways started free. Not only were the direction of the line and the situation of the stations prescribed for the company, but the nature of the business that it was to carry on was also determined by Government control; and the business differed in an important respect from that of early English railways. In England the notion of the railway being a highway for the common use of the public, in the same sense that an ordinary highway is so, was the starting point of railway legislation. There the company might be merely the owners of a highway and toll-takers for the use of it by other people with their own carriages and locomotives, or they might provide the line and provide the engines and trucks, but not be carriers (*a*). In India this was never so, but the company was from the first bound by agreement with Government to provide the requisite rolling stock, and to carry on the business of a carrier.

The influence which the Government thus early obtained over the railways of India has steadily increased with years. Not a mile of line has been opened by a company without assistance from Government, though several thousands have been constructed and are worked direct by Government without the intervention of a company. In

(*a*) *Hall & Co. v. London B. & S. C. Rail. Co.*, 15 Q. B. D. pp. 536, 537.

some cases the Government has employed companies to construct railways for it; in some it has, by exercising its right of purchase, absorbed railways which were previously the property of companies. In the result, the Government will, at the expiration of the current year, be complete owner of more than three-quarters of the lines open, with a limited property in the remainder, and will possess the widest powers of supervision, where it has not absolute control, over all.

Sir Andrew Scoble, the law member of the Council of the Governor-General, in moving for leave to introduce a Bill to consolidate, amend, and add to the law relating to railways in India (25th October, 1888), gave the following interesting figures illustrative of railway progress in India :—"When the first Indian Railway Act was passed, in 1854, only twenty miles of railway had been opened in this country. Twenty-five years later, when the Consolidating Act of 1879 was passed, there were 8,216 miles of open line and 48 junctions. There are now 14,191 miles of open line and 118 junction stations. A traveller can now book through north to south from Kila Abdulla, in Baluchistan, to Tuticorin, a distance of 3,033 miles; or west to east, from Karáchi to Darjeeling, a distance of 2,397 miles; while the passengers landing from Europe at Bombay will next year have the choice of four alternative lines

INTRODUCTION.

Railway
progress.

INTRODUCTION. to Agra, two to Madras, and two to Calcutta.
The number of separate lines has increased from 26 in 1879 to 50 in 1888. The capital expended on Indian railways has grown from 131 millions in 1879 to over 183 millions sterling in 1887. The number of passengers carried has swelled from 44,261,227 in 1879 to 96,082,121 in 1887. The aggregate tonnage moved amounted last year to 20,195,677 tons, as compared with 8,773,739 tons in 1879; and the gross receipts have risen from £11,952,590 in 1879 to £18,450,622 in 1887."

Part I.

THE COMPANIES AND THEIR CONTRACTS WITH GOVERNMENT.

DISTINGUISHED according to their relation to the State, there are four classes of railways in British India : Four classes
of railways.

- (1.) *Proprietary lines worked by guaranteed companies : mileage open in 1890, 3,243 miles.*
- (2.) *Proprietary lines worked by assisted companies : mileage open in 1890 (including the Bengal Central Railway), 720 miles.*
- (3.) *State lines worked by guaranteed, assisted, and other companies : mileage open in 1890, 6,007 miles.*
- (4.) *State lines worked by Government : mileage open in 1890, 4,924 miles.*

With respect to three of the assisted companies' lines, it should be mentioned that the Bengal Central is being worked by Government; and that the Tarkessur is, and the Delhi-Umballa-Kalka when open will be, worked by State agency, *i. e.*, by the East Indian Railway Company.

The present chapter deals with the three descriptions of railways worked by companies. Lines worked
by companies.

PART I.

The
guaranteed
railways.

The earliest lines were those of the guaranteed railway companies, viz. :—

1. The Great Indian Peninsula—Incorporated 12 & 13 Vict. c. lxxxiii.
2. The East Indian—Incorporated 12 & 13 Vict. c. xciii.
Purchased as from 31st December, 1879.
3. The Madras—Incorporated 16 Vict. c. xlvi.
4. The Bombay Baroda and Central India—Incorporated 18 & 19 Vict. c. cxiii.
5. The Eastern Bengal—Incorporated 20 & 21 Vict. c. cliv.
Purchased as from 30th June, 1884.
6. The Oude and Rohilkund, Limited, registered under the Companies Acts, 1862—1867. *Purchased as from 31st December, 1888.*
7. The Scinde, Punjab and Delhi—Incorporated 32 & 33 Vict. c. lxxx. *Purchased as from 31st December, 1885.*
8. The South Indian—Incorporated 37 & 38 Vict. c. cxii.
(by which Act the Great Southern of India Railway Company and the Carnatic Railway Company, Limited, were amalgamated under the title of the South Indian Railway Company). *Purchased as from 31st December, 1890.*

Of these companies each, except the Oude and Rohilkund, Limited, was incorporated by special Act of Parliament, for the purpose of making and constructing, working and maintaining such railway or railways in the East Indies as might be agreed upon by the railway company and the East India Company; and also of doing and performing all such matters and things necessary or convenient for carrying into effect the objects and purposes aforesaid, as might also be agreed

upon by the railway company and the East India Company.

PART I.

The special Act in each case incorporated certain provisions of the Companies Clauses Consolidation Act, 1845, and it also empowered the railway company to enter into and conclude with the East India Company, on account of the Government of India, such contracts, agreements, and arrangements as the respective parties might think fit and agree upon for making any railway or railways in India, and any telegraphs connected therewith, and for maintaining and working the same, and for the other objects and purposes aforesaid, including certain specified provisions, and from time to time to vary and alter such contracts, agreements, and arrangements, and to enter into others in relation to the premises; all of which contracts, agreements, and arrangements (whether the same should or not be within the objects originally contemplated by the company, or in accordance with the provisions and clauses by which the company would otherwise be governed), were, by the Act, to be valid and effectual and binding to all intents and purposes whatsoever, and full effect was to be given to the same accordingly.

In pursuance of the statutory power so given, contracts were made between the East India Company and the several Guaranteed Railway Companies, which contracts are now, by virtue of

Their
contracts.

PART I.

21 & 22 Vict. c. 106, binding on the Secretary of State. Under their provisions, the Government is to provide the land required, and to grant a lease thereof on completion of the works, for a term of 99 years (999 in the case of the South Indian), determinable as hereafter mentioned. The company is to construct, equip, maintain, and work the line, raising the necessary capital, and paying the same to the account of Government, and the Government paying interest on such capital at the rate of 5 per centum per annum during the term (*a*). The surplus profits,

(*a*) The theory of the so-called Government guarantee is thus stated in Burdett's Official Intelligence for 1884 :—

"The East Indian Government make a free grant of the land required for the railway and works for the term of years agreed upon, over and above which they guarantee to the company a certain rate of interest on their capital pending the said lease. After the line is in operation, the sum to be paid by the East Indian Government may or may not be *equal* to the amount guaranteed, but in no case—and this is the point to be insisted upon—in no *possible* case can it exceed it: in other words, the East Indian Government can never be called upon to pay more than a sum equal to the agreed rate per cent. on a given capital. Assuming the rate guaranteed to be 5 per cent., it is clear that so long as the railway be worked *at any profit*, however small, the shareholder, by

claiming of the East Indian Government the difference between such profit and the 5 per cent., would receive their guaranteed dividend undiluted: in the contrary case, however, *i. e.*, supposing a loss in working, the 5 per cent. would still be received from the East Indian Government, chargeable, however, with such loss before distribution amongst the proprietors, and in this way their dividend might fluctuate considerably, for in the event of the loss in working the line reaching 5 per cent. on the guaranteed capital, the 5 per cent. payable by the East Indian Government would exactly meet such loss, and the proprietors be left without any dividend whatever."

The power therefore given by the Trust Investment Act, 1889 (52 & 53 Vict. c. 32, s. 3, sub-s. (k)), to invest "in the stock of any railway company in India upon which a fixed or minimum *divi-*

PART I.

after providing for working expenses and other charges, are to be applied, first, in discharge of the interest payable by Government for the half-year, and then to be divided equally between the Government and the companies. When the net receipts in any year shall have exceeded 10 per cent. upon the outlay, the fares or tolls are to be reduced on a requisition by Government in that behalf, but only with a view of limiting such fares and tolls, so that the net receipts shall not exceed 10 per cent. upon the outlay. The Government is to exercise extensive rights of supervision (which will be referred to in greater detail hereafter).

The interest of the companies in their respective undertakings is terminable in the following ways:—(1.) By surrender to Government after six months' notice given by the company, who receive back the amount of the capital they have expended with the sanction of Government. (2.) On re-entry by Government after three months, on default or breach of covenant by the company; Government in that event repaying the company their capital expended. (3.) By purchase on the part of Government, at the mean market value in London of the shares during the three preceding years, on notice given within six months

<i>dend</i> in sterling is paid or guaranteed by the Secretary of State	in Council of India," would seem at present to be somewhat illusory.
---	--

PART I. after a date, which, in the events which have happened, is, in the case of—

The Great Indian Peninsula Rail. Co. Aug. 17, 1899.
 The Madras Rail. Co. April 1, 1907.
 The Bombay Baroda and C. I. Rail. Co. May 1, 1905.
 The South Indian Rail. Co. March 1, 1890.

Such notice is to take effect on the half-yearly day next but one after it has been given. (4.) By expiration, by effluxion of time, of the term granted, *i. e.*,

To the G. I. P. Rail. Co. 99 years from Aug. 17, 1849.
 To the Madras Rail. Co. 99 years from April 1, 1857.
 To the B. B. & C. I. Rail. Co. ... 99 years from May 1, 1855.

Government purchasing the railway stock and plant at a valuation. Owing, however, to the companies' power of surrender, no lease is, in practice, likely to terminate by effluxion of time.

Remaining
guaranteed
companies.

The G. I. P., the Madras, the Bombay Baroda and C. I., and the South Indian, are at this date (*November, 1890*), the only remaining guaranteed railway companies, the undertakings of the others having been already purchased by Government. The purchase-money in every case, except that of the Oude and Rohilkund Railway, for which a gross sum was paid, was an annuity to continue during the residue of the original term of 99 years. Subsequently to the purchase of the East Indian Railway, the Secretary of State

PART I.

entered into a new agreement with the East Indian Railway Company for the working and management of their line under the control of Government (see *post*), but no fresh contract with either the Eastern Bengal, the Scinde, Punjab and Delhi, or the Oude and Rohilkund Railway Company was concluded, and the undertakings of these companies were taken over and are worked by the Government as State lines.

With regard to the South Indian Railway, in pursuance of notice already given, that line will be purchased by the Secretary of State as from the 31st December, 1890, in consideration of a lump sum. Negotiations having been opened with the view of arranging that the company should, after the purchase by the State, continue to work the existing railway and the lines under construction by the company, as the agent of the State, the company was advised that, under its existing statutory powers, it was not able, after the sale of the whole of its undertaking, to act as agents for working other railway systems. To overcome this difficulty, the proprietors resolved to form a limited liability company under the Companies Acts, and then to enter into a new contract with the Secretary of State for the purpose of working the lines in question (*a*).

The South Indian Railway Company.

A second species of railways, owned and

Assisted railways.

(a) See Addenda, p. xix.

PART I.

worked by companies, is the Assisted Railways, which comprise the following:—

Registered in England.

- *Bengal Central Rail. Co., Limited. Registered 14th July, 1881. (125 miles.)
- Assam Railways and Trading Co., Limited. Registered 30th July, 1881. (78 miles.)
- Rohilkund and Kumaon Rail. Co., Limited. Registered 6th October, 1882. (55 miles.)
- Bengal and North-Western Rail. Co., Limited. Registered 23rd October, 1882. (383 miles.)

Registered in India.

- Darjeeling Steam Tramway Co., Limited. Registered 1879. (51 miles.)
- Deoghur Rail. Co., Limited. Registered 1883. (4½ miles.)
- Thaton-Duyinzaik Rail. Co., Limited. Registered 1884. (8 miles.)
- †Tarkessur Rail. Co., Limited. Registered 18th February, 1884. (22½ miles.)

Registered in England.

- †Delhi-Umballa-Kalka Rail. Co., Limited. Registered 1889. (162 miles.)

* Worked by Government.

† Worked by State Agency.

These companies are not incorporated by special Act, but registered under the English or Indian Companies Acts. Each is under contract with the Secretary of State, in virtue of which contract, while the company is the proprietor of its own undertaking, the Secretary of State, in consideration of assistance in providing land or money, or both, has the right of purchasing the

undertaking at specified periods, and, in some cases, a right of participation in the profits.

PART I.

Thus, the contracts with the Assam Railways and Trading Company, dated respectively the 26th May, 1880, and the 25th July, 1881, provide:—

Assam Railways and Trading Company.

1. That the company is to construct, equip, maintain, and work the railway and rolling-stock as its own property; the Secretary of State having the option of purchasing the same at the expiration of the first five years from the date of opening of the main line, and at subsequent intervals of five years, by paying the company 20 per cent. in excess of the value of their property as a dividend-paying investment.

2. That the Government is (1) to confer upon the company the right, for five years, of felling and using, without payment of royalty, the timber required for the purposes of the railway; (2) to give the company the use of certain roads and lands required for the railway; (3) to give the company an annual subsidy for twenty years, sufficient to make up, with the net earnings, 5 per cent. on the paid-up capital, but not exceeding a stated maximum in each year.

Under the contract with the Rohilkund and Kumaon Railway Company (12th October, 1882), the Secretary of State engages to provide all requisite land, and to guarantee the company

Rohilkund and Kumaon Railway Company.

PART I.

possession thereof, such land remaining the property of the Secretary of State, subject to the user and possession of the company; and the company is to construct, equip, maintain, and work the undertaking, which is to become the property of the Secretary of State by purchase, either at the expiration of the contract at the end of the year 1881, or, at his option, at the end of 1912 or 1932. The company is to raise a stated capital, and the Secretary of State to pay interest thereon at 4 per cent. until the 1st January, 1885, or the opening of the line, if sooner. He further agrees to pay a subsidy of 20,000 rupees, half-yearly, for ten years from the opening of the line, if the company satisfactorily performs its part of the contract.

The net earnings, during the time that interest is being paid by the Secretary of State, are to be applied in or towards repayment of such interest. Afterwards, one-half of the net earnings over 5 per cent. are to be applied in or towards repayment of the interest paid by the Secretary of State; all other net earnings belong to the company until the end of 1897, when the Secretary of State will become entitled to share equally with the company in such earnings over 6 per cent. In case the contract terminates either by efflux of time, or by notice of purchase, the Secretary of State is to pay twenty-five years' purchase

of the company's average net earnings, excluding the Government share for the preceding five years. PART I.

The contract with the Bengal and North Western Railway Company, dated 20th October, 1882, as modified by the contract of the 22nd February, 1886, is to the same effect, except that the Secretary of State pays neither interest nor subsidy, and does not participate in profits. Bengal and
North
Western
Railway
Company.

The case of the Bengal Central Railway Company, Limited, is somewhat different. The original contract, dated 26th July, 1881, was for the construction and working of two lines, as the property of the company, which were completed by the company, and opened for traffic by the end of April, 1884; but from the 30th June, 1884, the whole undertaking was worked by the Eastern Bengal State Railway under a special agreement, the company maintaining the way and works. On the 5th January, 1887, a new contract between the Secretary of State and the company was entered into, in substitution for the original contract, as from the 1st July, 1885. By the new contract the Secretary of State agrees to grant a lease of the lands on which the existing lines have been constructed for a term determining the 31st December, 1980, or on the previous determination of the contract; to provide all lands required for additions or for Bengal
Central
Railway
Company.

PART I.

future lines, and to guarantee to the company possession thereof during the said term; and to pay interest on all capital sums raised by the company for the purposes of the contract, and paid to his account, which sums, when so paid, become his absolute property. The company agrees to equip, maintain, manage and work the undertaking, all moneys required being supplied by the Secretary of State. Of the surplus receipts, after providing for working expenses and other charges, the Secretary of State is to take three-fourths, and the company one-fourth. The contract is to expire by effluxion of time, on the 31st December, 1980, with power to the Secretary of State to determine it by twelve months' notice on the 30th June, 1905, or on the 30th June of any succeeding tenth year; or by six months' notice in case of default by the company, or in case of any part of the line being grossly mismanaged by the company, or being worked at a loss for three successive half-years next preceding such notice. On expiry or determination of the contract, the company is to deliver to the Secretary of State the whole of the undertaking, and he is to pay them the amount of their share capital, and to take over their debentures. This contract, however, has not yet come into full operation, as the line is still (1890) being worked by the State.

Darjeeling
Steam

With regard to the Darjeeling Steam Tram-

way Company, Limited, an agreement, dated April 8th, 1879, was entered into between a trustee for the company, and the Secretary of State, by which it was provided, among other things, that the company should complete, equip, maintain, and work the line, and should, after the line had been open for five years, hand over to the Government a moiety of any surplus annual profits in excess of 5 per cent.; and that the Government should grant to the company free of cost the use of the road and land required; and should have the right of purchasing the undertaking after it should have been open for twenty-five years, and after that date at intervals of ten years; and should also during the duration of the contract pay as a subsidy to the company any sum that might be required to complete the gross earnings of the company during the preceding year to the sum of two lakhs of rupees.

PART I.
Tramway
Company.

An Act (Bengal VI., 1879) was further passed to give the company legal power to construct the line on the cart road, the road being already open to the public, and it being necessary to obstruct it temporarily, in order to lay the line.

By the agreement, dated 12th July, 1883, between the Secretary of State and the Deoghur Railway Company, Limited (registered under the Indian Companies Act, 1882), it was provided that the Government should make a free grant to

Deoghur
Railway
Company.

PART I.

the company of a lease for 100 years of the land required for the railway; that the company should lay, equip, and work the line at their own cost; and that the Government should have the right of purchasing the undertaking, on twelve months' notice, after the line should have been open for thirty years, and thereafter at intervals of ten years.

Thaton-
Duyinzaik
Railway.

By an agreement, dated the 10th January, 1884, between the Secretary of State and Mr. George Dawson, in respect of the Thaton and Duyinzaik Railway, the former agreed to grant a lease for ninety-nine years of the land required for the purposes of the railway; to pay a subsidy of 1,000 rupees per mile per annum during three years; and to assist in constructing the road for the railway; Mr. Dawson undertaking to lay, equip, and work the line. The Secretary of State reserved to himself the right of purchasing the railway when it should have been opened for traffic for thirty years, and thereafter at intervals of ten years.

The Tarkessur Railway and the Delhi-Umballa-Kalka Railway are on a different footing; being lines constructed by companies at their own cost for the purpose of being worked by another company or by State agency.

Tarkessur
Railway
Company.

The agreement between the Secretary of State and the syndicate for constructing the Tarkessur

Railway was dated the 8th September, 1883. Its chief provisions were that the syndicate should lay and equip the line, that the Government should make a free grant of a lease for ninety-nine years of the land required for the railway; and should have the right of purchasing the undertaking after the line should have been open for thirty years; and should support the conclusion of an agreement between the syndicate and the East Indian Railway Company for the working and maintenance of the line by the latter.

The benefit of this agreement between the Secretary of State and the syndicate was acquired by a company registered under the Indian Companies Act, on the 18th February, 1884, under the name of the Tarkessur Railway Company, Limited. No agreement for the working of the line was entered into between this company and the East Indian Railway Company, owing to objections entertained by the latter, but in lieu of such agreement, the Secretary of State, in the exercise of the power reserved to him under sect. 45 of his contract with the East Indian Railway Company, dated 22nd December, 1879, called upon that company to work the Tarkessur branch as part of their undertaking, on terms which were embodied in a contract between the parties, dated 15th September, 1887. Under this contract, the East Indian Railway Company work the line

PART I.

and supply the rolling stock, receiving 5 per cent. of the net receipts, plus an allowance in respect of the supply of rolling stock. The balance will be handed by the Secretary of State to the Tarkessur Railway Company during the subsistence of their lease.

Delhi-
Umballa-
Kalka
Railway
Company.

By the contract between the Secretary of State in Council of India and the Delhi-Umballa-Kalka Railway Company, Limited, dated 12th February, 1889, it is provided that the company shall by the 31st December, 1891, on the Secretary of State providing all necessary land free of cost, construct and complete the railway, which, as completed, is to be handed over to the Secretary of State to be worked until the 31st December, 1916 (or the previous determination of the contract for default) by him through the agency of some railway company or through State agency, in consideration of which working he is to retain 50 per cent. of the *gross* receipts, paying the remainder to the D. U. K. Company. The contract is to expire by effluxion of time on December 31st, 1916, unless an agreement shall have been previously concluded between the parties for the working of the line subsequent to that date by the Secretary of State or his agents. The contract may also be determined, if then subsisting on the 31st December, in the year 1926, or in any subsequent tenth year, by the Secretary of State

PART I.

giving the company twelve months' previous notice of purchase. On the determination of the contract, either by effluxion of time or by notice of purchase, the Secretary of State is to pay to the company a sum equal to twenty-five times the average yearly profits derived for the company for the last preceding five years. If the contract is determined for default, the Secretary of State is to pay the company the fair value of the railway and works so far as constructed.

The third kind of railways worked by companies comprises those lines which, being the property of Government, are worked by companies under a working agreement by which they receive a share of the net profits, together with interest on capital, when raised for the purposes of the contract, during the continuance of the contract. Such agreements have been concluded in some cases with an existing guaranteed or assisted railway company, for the working of an adjacent State line: in others, with what was once a guaranteed railway company, whose undertaking has been purchased by the State: in others, again, with companies of the type that seems most likely to prevail in India, which construct, maintain and work railways, but throughout as agents merely, not proprietors. The following is a list of State lines worked by companies:—

Agent companies.

PART I.(A.) *By existing Guaranteed Railway Companies :*

Rajputana-Malwa Railway, worked by B. B. & C. I. Rail. Co.

Patri Branch Railway (22 miles), worked by B. B. & C. I. Rail. Co.

Dhond-Manmar Railway (145½ miles), worked by G. I. P. Rail. Co.

Bhopal-Itarsi Railway, British section (13 miles), worked by G. I. P. Rail. Co.

Villupuram-Guntakal Railway (83 miles), worked by S. I. Rail. Co.

(B.) *By Assisted Railway Companies :*

Bareilly-Pilibheet Railway (36 miles), worked by Rohilkund and Kumaon Rail. Co.

(C.) *By a formerly Guaranteed Railway Company :*

Patna-Gya Railway (57½ miles), worked by East Indian Railway Co.

Dildarnugger-Ghazipur Railway (12 miles), worked by East Indian Railway Co.

East Indian Railway (1525 miles), worked by East Indian Railway Co.

(D.) *By purely Agent Companies :*

Southern Mahratta Railway (979 miles), worked by Southern Mahratta Rail. Co.

Mysore section (296 miles), worked by Southern Mahratta Rail. Co.

Indian Midland Railway (677½ miles), worked by Indian Midland Rail. Co.

Bengal-Nagpur Railway (501 miles), worked by Bengal-Nagpur Rail. Co.

(E.) *By a Native State Railway Company :*

The Bezwada Extension Railway (21½ miles), worked by H. H. the Nizam's Guaranteed State Rail. Co.

Rajputana
Malwa
Railway.

The most important State line worked by a guaranteed railway company is the Rajputana

PART I.

Malwa undertaking, which, including the Cawnpore-Achnera branch, comprises 1,667 miles of railway, and is worked by the Bombay Baroda and Central India Railway Company. The principal terms of the contracts affecting the combined undertaking, and dated respectively the 24th September, 1884, and the 16th March, 1888, are, that until the 30th June, 1900, when the contracts expire by effluxion of time, or until such previous determination as is therein mentioned, the company is to maintain, manage, and work the undertaking under the supervision of the Secretary of State; the receipts, after providing for working expenses and other charges, and for payment of interest to the Secretary of State on capital, to be divided between the Secretary of State and the company, four-fifths to the former and one-fifth to the latter.

The B. B. and C. I. Railway Company also work the Gaekwar's Native State Railway and the Patri Branch Railway. The Great Indian Peninsula Railway Company work the Dhond and Manmar Railway, also the Khandgaon, the Oomrawuttee, and the Bhopal (44 miles) Native State Railways, and the British section of the latter (13 miles). The South Indian Railway Company work, beside the small French line to Pondicherry, the open section (83 miles), from Villupuram to Guntakal, of the Cuddapah-Nellore

Other state lines worked by guaranteed and assisted companies.

PART I.

State Railway, of which, as agents of the Secretary of State, they are to construct and work when completed, the remaining 364 miles.

The Rohilkund-Kumaon, an assisted railway company, work the Bareilly - Pilibheet State line.

The East
Indian
Railway
Company.

The East Indian Railway Company, previous to the purchase of its undertaking by the State in 1879, was a guaranteed company; as an agent company it now works not only its former undertaking, in mileage exceeding 1,500 miles, but also several adjacent lines, which include the Tarkessur, the Patna-Gya, and the Dildarnugger-Ghazipur Railways, and will include the Delhi-Kalka Railway of 162 miles when constructed.

The principal contract with the East Indian Railway Company provides that the contract shall be for fifty years from the 1st January, 1880, subject to determination on the 1st January, 1900, or at the end of any subsequent five years by two years' notice on either side; that the company is to maintain, manage, and work the undertaking under the supervision of the Secretary of State; that the surplus receipts, after providing for working expenses and other charges, payment of interest on the company's debenture stock, payment of the annuities mentioned in the Act of 1879, and of interest to the Secretary of State on capital, are to be divided between the

Secretary of State and the company, four-fifths to the former, one-fifth to the latter; and that the Secretary of State may require the company to construct and work, or work only, any branch railway in connection with the undertaking, either as his agents, or as part of the undertaking, on terms to be agreed upon in each case.

The contract with the East Indian Railway Company for the working of the Tarkessur line dated the 15th September, 1887, is to run concurrently with the principal contract, the company undertaking to work and maintain the line, as the Secretary of State's agents, for one-fifth of the net receipts, plus an allowance of five per cent. on the gross receipts for supply of rolling stock.

Under the contract with the East Indian Railway Company for the working of the Delhi-Umballa-Kalka Railway, dated the 24th January, 1889, the company undertakes, as the Secretary of State's agents, to equip, maintain, and work the line in consideration of forty-eight per cent. of the gross receipts. The contract is to terminate on the 31st December, 1916, or on the previous determination of the principal contract.

The Bezwada Extension Railway from the Hyderabad frontier to Bezwada, $21\frac{1}{2}$ miles, is worked by the Nizam's Guaranteed State Railway Company, as agents of the Government of

Bezwada
Extension
Railway.

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India to whom the line belongs, under an arrangement concluded in India in 1888—89.

The Nizam's
State Railway
Company.

This company does not come within the scope of the present work, except so far as it has, or is capable of having, relations with railways in British India. Its position and powers in this respect may be briefly indicated.

His Highness the Nizam's Guaranteed State Railway Company, Limited (incorporated under the Companies Acts, 1862 to 1883), was established, as stated in its memorandum of association, for the following, among other objects :—

“(A) Making and carrying into effect an agreement with the Government of His Highness the Nizam for the acquisition and working by the company of the existing railway from Wadi to Hyderabad and Secunderbad, and constructing and working by the company of new lines of railway from Hyderabad to Warungul, and thence to the southern frontier of the State of Hyderabad, near Bezwada, and from Warungul to the northern frontier of the said State, near Chanda, and any other agreement, or agreements, between the same parties, or between the company and other parties in relation to these relations, or any of them, or to any matter connected therewith incidental thereto.

“(B) Acquiring, constructing, and working any

other railways in the Hyderabad State, or elsewhere

PART I.

“(F) Making and carrying into effect agreements or arrangements for the working, management, maintenance, or use by the company of the railways, works, or property of other parties”

The company's contract with His Highness the Nizam's Government was dated 27th December, 1883. This contract was entered into with the consent of the Secretary of State for India, but the Secretary of State accepted no liability or responsibility of any kind in connection with any of the engagements entered into by either of the contracting parties, or with any of the operations of the company, and there was no contract between the Secretary of State and the company.

The above is taken from the prospectus of the company, dated 28th December, 1883.

The remaining group of agent companies consists of the Southern Mahratta, the Indian Midland, and the Bengal-Nagpur Railway Companies. “These railways are absolutely the property of the State, which is liable to the companies only for a stipulated rate of interest on the capital raised. The only difference between these and ordinary State lines is that, in their case, the Government, instead of raising the money itself,

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raises it through the agency of a company, to whom the construction and working of the line are also entrusted on certain terms." Administration Report on the Railways in India for 1889-90, pp. 1, 2.

**Southern
Maharatta
Railway
Company.**

The original contract with the Southern Maharatta Railway Company, Limited, is dated the 1st June, 1882. It is extended by subsequent contracts, dated respectively 20th October, 1885, 31st August, 1887, and 27th February, 1889, so as to include new lines in the same undertaking; and another contract, on like terms, was entered into on the 31st August, 1887, in respect of the Mysore State Railway as a separate undertaking.

**Mysore
contract.**

The main provisions are, that the company is to raise, and place to the credit of the Secretary of State, a prescribed capital on which, during the currency of the contract, he is to pay interest; that the company is to construct, equip, work, and maintain the line out of moneys supplied by the Secretary of State, whose property, the line, with all its rolling stock and plant, is declared to be; that the receipts, after providing for working expenses and other charges, are to be divided as follows: three-quarters to the Secretary of State, one quarter to the company; and that the contract is to continue till 1932, subject to determination by twelve months' notice in 1907, 1917, or

PART I.

1927, if given by the Secretary of State; if given by the company, in 1888, and any subsequent year. The Secretary of State may also determine the contract by six months' previous notice in case of default by the company, or if any part of the line be grossly mismanaged by the company, or be worked at a loss for three half-years continuously next before such notice.

On any such determination, or at the expiration of the contract, the Secretary of State is to repay to the company the amount of its paid-up capital, the company making over the undertaking to the Secretary of State.

The effect of the contracts with the Indian Midland Railway Company, Limited, and with the Bengal-Nagpur Railway Company, Limited, dated respectively 2nd October, 1885, and 9th March, 1887 (which contracts are, *mutatis mutandis*, in identical terms), is the same, except that in each case the contract is to continue until determined by the Secretary of State on twelve months' notice; such determination may take effect in the case of the Indian Midland in 1910, or any succeeding tenth year; in the case of the Bengal-Nagpur, in 1913, or any succeeding tenth year.

Indian
Midland and
Bengal-Nag-
pur Railway
Companies.

The nature of the interest which the Government and the company respectively have in any undertaking worked by a company has been suffi-

Provisions in
the contracts
protecting
public
interests.

PART I.

ciently shown by the foregoing survey of the contracts.

The contracts, however, serve not only to determine the property in the undertaking; they also regulate the conditions under which the railway is to be worked, and secure the general public from any undue monopoly on the part of the company. Various public interests, which in England are protected by statute, were in India, until the recent Act, mainly or wholly guarded by the contracts. By them provision is made for the construction and opening for traffic of the railways; for the maintenance, management, and working of the same; for the services to be rendered to the public by the company in the capacity of carriers; for the rates and fares which the company are to be entitled to charge; for giving running powers and other facilities and accommodation to other railways; and for the general supervision and control by the Government of the company's business.

The obligations in respect of these matters incurred by the companies to the Secretary of State, as guardian of the public welfare, will appear from the subjoined clauses, of which the first set are those inserted in the contracts with the old guaranteed companies; the second those introduced, either wholly or in part (the extent being noted in the margin), into the contracts with the

other companies. The provisions of the contract with the Assam Railways and Trading Company are distinct enough to be stated separately.

Performance of their obligations by the companies is secured by power being reserved to the Secretary of State of terminating the interest of each company (except the East Indian Railway Company) under its contract, in the event of breach of the provisions thereof, and of assuming or resuming, as the case may be, possession of the undertaking. In the case of the East Indian Railway Company's contract, while no penalty is expressly provided therein for breach of its provisions, the rights of either party against the other are reserved in respect of any covenant which may be broken. In all the contracts, however, but those relating to the G. I. P., Madras, and B. B. & C. I. Railways, provision is made for referring differences between the parties to arbitration.

Provision is also made in the contracts for the construction and use of the telegraph on the railway; as also for the conveyance of mails and troops on special terms, and in preference to and priority over the general public's use of the line.

It is not thought necessary, however, to give the text of the clauses which deal with these subjects, as being rather questions between the Government and the companies than matters

PART I. directly affecting the interests of the community in general.

Guaranteed Railway Company's Contract.

The contract, after providing for the construction of the railway and works by the company, and for the opening of the same for the conveyance of passengers and goods, contains the following among other clauses :—

Plant, fares
and tolls.

That when and so soon as the said experimental line of railway, or any part thereof, which shall have been required by the East India Company to be completed before the construction of the other parts shall be completed, and ready to be opened for the use of the public, and so from time to time as any such part thereof shall be so completed and ready to be opened, the said railway company shall and will, subject to the supervision and control hereinafter mentioned, provide, to the satisfaction of the East India Company, a good and sufficient working stock of engines, carriages, and other plant and machinery for working the said railway, or so much thereof as shall have been completed as aforesaid, and carrying on the business and traffic of the same; and the said railway company shall and will forthwith commence and carry on the business of common carriers of goods and passengers upon the said railway, and for that purpose shall cause

PART I.

to be run on the said railway so many trains, at such times and at such rates of speed, and between such places and with such conveniences and accommodations as the East India Company shall from time to time require; and the said railway company shall and will allow the use of the said railway to the public, on such terms as shall be approved by the East India Company; and the said railway company shall be authorized and empowered to charge such fares for the carriage of passengers and goods, and such tolls for the use of the said railway, as shall have been approved by the East India Company, and shall not in any case charge any higher or different fares or tolls whatsoever, without such approval being first obtained; but such fares or tolls shall, when such net receipts as are hereinafter mentioned shall in any year have exceeded ten per cent. upon the outlay, be reduced in accordance with any requisition of the East India Company in that behalf, but only with a view of limiting the said fares and tolls so far that the net receipts shall not exceed ten per cent. as aforesaid.

That upon the completion of the whole of Title to land. the said experimental line of railway, the East India Company shall and will grant to the said railway company a lease of, or otherwise secure to them a right and title to the land which shall have been provided under the provision herein-

PART I.

before contained, or of so much thereof as shall be required for the completed line, and for the works and conveniences thereto belonging, for a term of ninety-nine years, commencing from the day of the date of these presents, unless the same shall be sooner determined under the provisions herein contained; and the East India Company shall guarantee to the said railway company the quiet and undisturbed possession of such land, but shall not be called upon to show any title thereto.

Supervision. That the said railway company and their officers, servants, and agents, as also their accounts and affairs shall, in all things, be subject to the superintendence and control of the East India Company, as well in England as elsewhere, and in particular that no bye-laws, contracts, orders, directions, proceedings, works, or undertakings, acts, matters, or things whatsoever, shall be made, done, entered into, commenced, or prosecuted, by or on the part of the said railway company, unless previously sanctioned in writing by the East India Company, or in some other manner to be prescribed by them; and that no moneys shall be raised by the said railway company by any other means than by calls upon the shares in the same company, without the sanction of the East India Company in writing, and no extension of the number of shares in the said railway company,

PART I.

or in the amount of its capital, shall be made unless sanctioned in like manner; and that it shall be lawful for the East India Company, from time to time, to give to the said railway company, their officers, servants, and agents, all such orders and directions as the East India Company shall, from time to time, think fit, with reference to the railway and works to which this present contract relates, and with reference to the manner and times of executing the same, and with reference to any contracts, orders, and directions to be entered into, made or given, with regard thereto, and otherwise with reference to the same, all which contracts, orders, and directions shall be executed and followed by the said railway company, to the satisfaction of the East India Company, the costs and expenses of the same, which shall have been allowed and sanctioned by the East India Company, being paid out of the said sum of (*the company's capital*) sterling; and that for better enabling the East India Company to exercise the control and direction intended to be hereby secured, the said railway company shall record, and keep in proper books for that purpose, full and particular accounts of all their transactions and proceedings, including full and true minutes of all their meetings, meetings of directors, communications with India, and correspondence, so as at all times to exhibit thereby

PART I.

fully and truly the state of their affairs and proceedings; and that the East India Company, and any person or persons appointed by them in that behalf, shall, at all reasonable times, have free access to all the books, accounts, papers, and documents of the said railway company, except communications between the said railway company and their legal advisers, and power to make copies of, or extracts from the same, whether such books, accounts, papers, and documents relate to the experimental railway and works aforesaid, or to any other matters or things whatsoever, in which the said railway company shall or may be interested; and for the purposes aforesaid, it shall also be lawful for the East India Company, from time to time, to appoint any one person, not being a shareholder in the said railway company, to be an *ex-officio* director of the said railway company, which director, if and when appointed, shall rank as, and be one of the board of directors of the said company, and be entitled in all things to act as such, and to exercise at his discretion a right of veto in all proceedings whatsoever, at boards of the said directors, except proceedings for the purpose of communication with the legal advisers of the company, and shall not be removable unless by order of the East India Company, and shall, in case the whole number of directors shall at the time of his appointment be filled up,

come and be in the place of the director who shall retire from the direction, according to the decision of the board, such decision being taken by ballot, but such official director shall not be entitled to any salary from the said railway company : provided always that nothing hereinbefore contained shall authorize the East India Company to appoint any officers or servants of the said railway company, except such official director as aforesaid.

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That at all times during the said term of ninety-
 nine years, the said railway company shall keep
 the said railway, or so much thereof as shall be
 completed, and the works and conveniences be-
 longing thereto, and the telegraphs on the said
 railway (if any), in a state of good repair, and in
 good working condition, to the satisfaction of the
 East India Company, and shall keep the same
 fully provided with rolling stock and plant ade-
 quate to the service thereof, to the satisfaction of
 the East India Company. Repairs.

Assam Railways &c. Company's Contract.

By the Assam Railways and Trading Com-
 pany's contracts, it is provided that the com-
 pany shall construct and equip the railway to the
 satisfaction of the Secretary of State, and that—

The company shall at all times keep up and
 provide all rolling stock necessary for the pur-
 poses of the railway, and shall maintain the rail-

PART I.

way and also the portion of the roads on which the rails are laid, and all rolling stock and other equipment thereof respectively, in good order, to the satisfaction of the Secretary of State, and shall carry on the work of common carriers thereupon, at rates and fares to be from time to time approved by the said Secretary of State.

The company shall accept the position of common carriers, and shall be subject to all acts, regulations and rules for the time being in force in India with regard to railways, and shall, if deemed necessary by the Secretary of State, become the subject of a special Act of the Legislative Council for India, for the purpose of giving effect to the stipulations of this agreement between the Secretary of State and the company, and otherwise providing for its constitution, liabilities and powers.

The company shall carry goods, parcels, luggage, passengers, live stock, minerals, stores and all other articles for which conveyance may be required at rates and fares to be from time to time approved by the Secretary of State. . . .

The company shall from time to time run such trains between such places and at such times, periods, and speed as may from time to time be sufficient to carry the mails, goods and passengers, and other traffic of the railway, and they shall run at least one train each way daily over the whole length of railway.

PART I.

It shall be lawful for the Secretary of State, during the period of twenty years from the opening of the main line, to appoint two directors, who shall have the right to regulate rates, fares, and tolls, to examine all accounts, letters and papers connected with the administration and working of the railway and the revenue, earnings and expenditure thereof. . . .

If after the expiration of five years from the date of opening the main line, the net profits of the company shall amount to a sum exceeding 12 per cent. of their paid-up capital, the Secretary of State shall be at liberty to require the company to make, and the company shall thereupon make, such reduction in the tariff and rates as he may think necessary, provided that such reduction shall not lead to a diminution of net profits below 12 per cent.

*Other Railway Company's Contract.**

The Tarkessur, and the Delhi-Umballa-Kalka railways, are respectively to be worked by the E. I. Rail. Co., generally, on the like terms, conditions, and restrictions, as are by the principal contract between the Secretary of State and the latter company prescribed in respect of the management, use, and working of the undertaking by

The contract, after providing that the company shall construct the railway with all proper convenience and works, in accordance with the directions of the Secretary of State, the latter having power to determine the situation and dimensions of all stations, and other works to be constructed; and that the

* Not applicable to the small undertakings of the Darjeeling, the Deoghur, and the Thaton-Duyinzaik Companies.

the company, and the conveyance of traffic thereon by them, and in respect of the supervision and control of the company by the Secretary of State.

The provision as to the rates and fares chargeable is rather different.

So, in the five Southern Mahratta contracts, in the Indian Midland contract, the Bengal Central (of Jan. 5, 1887), and the Bengal Nagpur [*see* Addenda, p. xix].

In the Rohilkund and Kumaon, and the Bengal and North Western contracts, the clause is permissive with respect to the opening of parts of the railway, as completed, but imperative as to the opening of the whole when completed throughout.

East Indian Railway (principal) contract.

Rohilkund and Kumaon contract.

Bengal and North Western contract.

Bombay Baroda and Central India (Rajputana-Malwa) contract.

Five Southern Mahratta contracts.

Indian Midland contract.

Bengal Central contract.

Bengal-Nagpur contract.

South Indian Rail. Co., Limited, contract.

company shall also equip the railway with rolling stock, plant, and machinery, to the satisfaction of the Secretary of State, contains the following, among other provisions:—

Opening for Public Traffic.

The company shall from time to time, when and as often as an inspecting officer, acting on behalf of the Secretary of State, shall have certified that any part of the projected railway is fit for the conveyance of passengers and goods, and properly equipped with rolling stock, plant, and machinery, forthwith open the same part for public traffic.

As to the Maintenance and Management of the Railway.

The company shall keep the railway, and the stations and works belonging thereto, in good repair, in good working condition, and fully supplied with rolling stock, plant, machinery, and stores, to the satisfaction of the Secretary of State, and whenever the Secretary of State shall be of opinion that the company is in any default as to any of the matters before mentioned in this section, he may in writing notify the fact to the company, specifying in such writing the general nature of the defect, and, unless the defect be remedied

by the company within one calendar month after the notification thereof by him to the company, may himself remedy it.

The same.

The company shall keep the rolling stock, machinery, and plant for the time being belonging to the railway, and to every part thereof, in good repair and in good working condition, to the satisfaction of the Secretary of State.

The company shall maintain a sufficient staff, to the satisfaction of the Secretary of State, for the purposes of so much of the railway as shall for the time being have been opened for public traffic.

The same.

The Secretary of State may from time to time, by notice in writing, require the company to carry out any alteration, improvement, or addition, that may in his opinion be necessary for the safety of passengers or of the public, or for the effectual working of the railway, to be made in or to any part of the railway, or any of the stations or works belonging thereto. Such notice shall specify the alteration, improvement, or addition required, and shall also in general terms describe the works to be executed for the purpose of effecting the same. On receiving any such notice, the company shall with all reasonable speed execute the

works described therein; the Secretary of State allowing the company possession of any land that may be requisite for the purposes of such works. If in any case the company shall neglect to proceed with the works prescribed in any such notice as specified in this section, or fail to complete the same to the satisfaction of the Secretary of State, the Secretary of State may execute the works in respect of which the company is in default.

The same [except the East Indian Railway, the Bombay Baroda and Central India (Rajputana Malwa) and the South Indian, Limited, contracts.]

The Rohilkund and Kumaon, and Bengal and North Western contracts, contain an additional clause, empowering the Government of India to require that any railway, or any part thereof, which a duly authorized inspecting officer may report to be dangerous, shall be closed, so far as regards the conveyance of passengers, until it is certified by such an inspecting officer to be fit and safe again for that purpose.

The Secretary of State may from time to time prohibit the company from using any engine, carriage, waggon, vehicle, machine, or appliance of any description whatever, of which the use shall be declared by a duly authorized inspecting officer, acting on behalf of the Secretary of State, to be attended with danger to passengers or the public, and the Secretary of State may, by taking possession of such engine, carriage, waggon, vehicle, machine or appliance, or by such other means as he shall think fit to employ, prevent the company from using the same.

As to Working the Railway, Fares, &c.

Indian Midland.
Southern Mahratta (Mysore contract).

Bengal Central.

Bengal Nagpur [*see* Add. p. xix].

In the Rohilkund and Kumaon, and in the Bengal and North

The company shall, until this contract shall be terminated under any provision herein contained, keep so much of the railway as for the time being shall have been opened for public

Western, the clause is as follows :
 "From and after the time when the railway shall have been opened throughout for public traffic, until this contract shall terminate by efflux of time, or otherwise, the company shall keep the same railway so opened, and work the same, and carry on thereon the business of common carriers of passengers and goods."

East Indian Railway.

Bombay Baroda and Central India (Rajputana Malwa).

Southern Mahratta (five contracts).

Indian Midland.

Bengal Central.

Bengal Nagpur.

South Indian, Limited.

The Rohilkund and Kumaon and Bengal and North Western Companies contract to run at least one passenger train daily from the end of each line of railway to the opposite extremity.

East Indian Railway.

Rohilkund and Kumaon.

Bengal and North Western.

Bombay Baroda and Central India (Rajputana Malwa).

Indian Midland.

Southern Mahratta (five contracts).

Bengal Central.

Bengal Nagpur.

South Indian, Limited.

So in Indian Midland.

Bengal Central.

Bengal Nagpur.

South Indian, Limited.

traffic so opened and work the same, and carry on thereon the business of carriers of passengers and goods in accordance with the provisions of the law of India for the time being.

The company shall, from and after the opening for public traffic of any part of the railway, cause to be run on such part of the railway as for the time being shall have been so opened, so many trains, at such times, at such rates of speed, between such places, and with such conveniences and accommodations as the Secretary of State shall from time to time require.

The company shall from time to time, upon the requisition of the Secretary of State, effect any alteration or improvement in the working of the railway, or any part thereof, that may, in the opinion of the Secretary of State, be necessary for the safety of passengers, or of the public, or for the effectual working of the railway, or any part thereof.

The company shall be entitled to charge the public for services rendered by way of conveyance on the railway

The Bengal and North Western and the five Southern Mahratta contracts have the following clause:—

“The company shall charge such rates and fares for the carriage of goods and passengers on the railway, or so much thereof as shall for the time being have been opened for public traffic, as may from time to time be fixed by the company, subject to the approval of the Secretary of State: Provided that the Secretary of State may require the charges for the conveyance of salt and coal and food grains to be reduced to any rate not below one-fifth of a pie per maund per mile for full waggon loads, carried not less than 100 miles, and may also require passengers to be conveyed at any rate not below two pies per mile in closed carriages provided with seats.”

The East Indian Railway's clause is as follows:—

“The company shall charge such rates and fares for the carriage of goods and passengers as may from time to time be fixed by the company with the approval of the Secretary of State. Provided that the Secretary of State may require the charges for the conveyance of any mineral or mineral substance, or any article of agricultural produce over distances not less than 300 miles to be reduced to any rate not below one-sixth of a pie per maund per mile for full waggon loads, and may also require the fare of passengers, conveyed in closed carriages with seats, to be reduced to any rate not below two pies per mile.”

of passengers and goods of different classes and descriptions at such rates only as shall for the time being be approved by the Secretary of State. The company may from time to time, and, at the request of the Secretary of State, shall, submit for the approval of the Secretary of State maximum and minimum rates within which the company is to be at liberty to charge for such services, and the Secretary of State may approve such rates with such modifications as he shall think fit, and may also from time to time require the company to make such modifications in the maximum and minimum rates for the time being in force as he shall think fit. [*Provision for six months' notice to be given by the Secretary of State, except in case of public emergency, before requiring the company to make any such modification.*] The company shall not, in making charges to the public for services mentioned in this section, calculate any such charge at a rate which shall be either above the maximum or below the minimum rate for the time being applicable under this section to the particular service in respect of which the same charge is made, or make any reduction by way of rebate or otherwise which shall have the effect of bringing any rate actually paid below such minimum. The term “goods” shall, as regards this section,

The clause in the Rajputana Malwa contract of the Bombay Baroda and Central India is in the following terms :—

“The Secretary of State shall have power from time to time to fix and vary both maximum and minimum rates with a reasonable difference between them for the carriage of passengers and goods over the railways comprised in the undertaking, and the rates and fares to be charged by the company for the carriage of such passengers and goods shall not exceed the maximum and shall not be less than the minimum rates so fixed. And the company in respect of all passengers and goods derived from or delivered to any railway comprised in the undertaking, and which may be carried over the Bombay and Baroda Railway, or any part thereof, shall book through between all stations comprised in the undertaking and all stations on the Bombay and Baroda Railway, and shall charge not more than the same mileage rates for the distance which such passengers and goods shall be carried over the Bombay and Baroda Railway or any part thereof as shall be charged on the railways comprised in the undertaking.”

In the Rohilkund and Kumaon contract the clause takes the following shape :—

“The maximum fares and rates to be charged by the company for the carriage of passengers and goods respectively on the railway, or so much thereof as shall for the time being have been opened for public

include everything conveyed on the railway, passengers only excepted.

traffic, shall be as follows, that is to say :—

Passenger Fares.

First class, 3 annas per mile.

Lower class, $4\frac{1}{2}$ pies per mile.

Passengers' luggage, 2 pies per maund per mile.

Goods Rates.

Edible grains, $\frac{1}{3}$ pie per maund per mile.

Parcels and live stock at rates not exceeding 50 per cent. over the rates for the time being in force over the East Indian Railway.

All other goods, 2 pies per maund per mile.

East Indian Railway (Delhi, Umballa and Kalka Railway contract only).

Rohilkund and Kumaon.

Bengal and North Western.

Southern Mahratta (Mysore contract only).

Indian Midland.

Bengal Central.

Bengal Nagpur.

South Indian, Limited.

The Southern Mahratta (Mysore), Indian Midland, Bengal Central, Bengal Nagpur, and South Indian, Limited, have the following additional provision :—

"The Secretary of State shall have absolute power for the purposes of this section to decide whether any preference, advantage, prejudice, or disadvantage is undue or unreasonable."

East Indian Railway.

Rohilkund and Kumaon.

Bengal and North Western.

The company shall not, as between members of the general public, make or give any undue or unreasonable preference or advantage to or in favour of any particular person or company, or any description of traffic, in any respect whatsoever, or subject any particular person or company, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

As to Running Powers and other facilities and accommodation for other Railways.

The Secretary of State may from time to time require the company to

Bombay Baroda and Central India (Rajputana Malwa).

Southern Mahratta (five contracts).

Indian Midland.

Bengal Central.

Bengal Nagpur.

South Indian, Limited.

The same [except Rohilkund and Kumaon, Bengal and North Western].

The same [except Rohilkund and Kumaon, and Bengal and North Western].

The same [but the East Indian Railway, and the five Southern Mahratta contracts do not contain the words "and for through booking": and the Indian Midland, the Bengal Central, Bengal Nagpur, and South Indian, Li-

allow the use of the railway, or any part or parts thereof, for the passage of engines and trains belonging to other railway companies or to State railways upon the payment of reasonable tolls, and under reasonable conditions and restrictions.

The Secretary of State may from time to time require the company to supply other railway companies or State railways upon reasonable terms and conditions with any of the rolling stock appropriated or belonging to the railway, or any part or parts thereof, provided such rolling stock shall not for the time being be required for the purposes of any part of the railway.

The Secretary of State may from time to time require the company to execute work in its workshops in respect of rolling stock and machinery belonging to State railways at such reasonable prices and upon such terms as shall be agreed upon between the Secretary of State and the company, but so nevertheless as not to impede or unduly interfere with the ordinary operations of the company, as carried on therein.

The Secretary of State may from time to time require the company to make reasonable arrangements for the interchange of traffic and rolling stock with railways belonging to other com-

mitted, contracts have the following additional words: "and the Secretary of State shall, to the extent of his powers, require the managers of such other railways to co-operate in making similar arrangements on the requisition of the company"].

The same [except that the Rohilkund and Kumaon, and Bengal and North Western contracts omit the provision as to making alterations and additions].

Bombay Baroda and Central India (Rajputana Malwa).

Indian Midland.

Bengal Central.

Bengal Nagpur.

South Indian, Limited.

The Rohilkund and Kumaon, and Bengal and North Western contracts have the following:—

"The Secretary of State will, so far as he may from time to time consider it desirable for the public convenience, endeavour to obtain for the company, on reasonable terms and conditions, powers to form such junctions as the Secretary of State may approve with railways

panies or to the State, and for through booking.

The Secretary of State may from time to time require the company to allow the use of any of the stations belonging to the railway for the accommodation of the traffic of any other railway company or State railway, upon the payment of reasonable tolls, and under reasonable conditions and restrictions, and may also require the company to make such alterations and additions as may in the opinion of the Secretary of State be necessary or convenient for the purposes of such accommodation, upon such terms as may be agreed upon between the Secretary of State and the company.

The company shall from time to time, upon the requisition of the Secretary of State, allow any junction to be formed between the railway and any other railway on reasonable terms and conditions.

belonging to other railway companies or to the State, and to run the trains of the company on such other railways.

Rohilkund and Kumaon.
Bengal and North Western.
Indian Midland.
Bengal Central.
Bengal-Nagpur.
South Indian, Limited.

Bengal and North Western.
Indian Midland.
Bengal Central.
Bengal-Nagpur.
South Indian, Limited.

Ferries.

The Bengal and North Western contract provides for the establishment by the company, with the approval of the Secretary of State, of ferries for the accommodation of the railway traffic, which, with the approval of the Secretary of State, may be worked for other purposes also. The previous provisions of the contract are to apply *mutatis mutandis* to every such ferry.

East Indian Railway.
Bombay Baroda and Central India (Rajputana-Malwa).
Southern Mahratta (five contracts).
Indian Midland.
Bengal Central.
Bengal-Nagpur.
South Indian, Limited.

The company shall comply with all regulations from time to time prescribed by the Secretary of State for clearing through traffic with other railways.

As to Tolls for use of Bridges.

If the company shall, with the approval of the Secretary of State, provide on any of the bridges on the railway ways or roads for public use by persons on foot or on horseback, or in carriages, or for any other purposes of traffic for which ordinary highways are commonly used, the company shall, during the continuance of this contract, have the right to charge according to tariffs to be arranged between the Secretary of State and the company tolls for the user of such way or roads by the public.

As to the Supervision and Control of the Secretary of State and the Appointment of a Government Director, &c.

In all matters not herein specially provided for relating to the fulfilment and performance by the company of this contract, so far as to be fulfilled or performed by the company, the company and its affairs shall be subject to the supervision, audit, and control of the Secretary of State. . . .

T.

E

The same.

For the purpose of inspecting the railway and the works thereof, either whilst under construction or subsequently, and the stations, rolling stock, plant, machinery, and stores belonging thereto, and the electric telegraphs and telegraphic appliances for the time being provided under this contract for the use of the company, and for the purpose of auditing the accounts of the company, or otherwise exercising such supervision and control as are intended to be reserved to the Secretary of State by this contract, the Secretary of State may from time to time appoint such person or persons as he may think proper, with such powers as he may consider necessary or expedient, and the company shall afford every person so appointed all reasonable facilities for the purpose of enabling him to perform the duties entrusted to him by the Secretary of State.

The same.

The company shall record and keep in proper books full and particular accounts of all its transactions and proceedings, including full and true minutes of all its meetings, meetings of directors, communications with India, and correspondence, so as at all times to exhibit fully and truly the state of its affairs, and the Secretary of State or any person or persons appointed by him in that behalf shall at all reasonable times have free access to all the

books, accounts, papers, and documents of the company relating to the railway, with power to call for and make copies of or extracts from the same. . . .

The same.

The Secretary of State may from time to time appoint any one person to be a director of the company. The Government director shall be *ex-officio* a member of all committees appointed by the board of directors of the company or by the company in relation to the railway or any matter connected therewith, and shall have power to exercise at his discretion an absolute veto in all proceedings whatever at the board of directors. The Government director shall not be removable except by the Secretary of State, and may act by a deputy appointed by the Secretary of State.

Miscellaneous Provisions.

East Indian Railway.
Rohilkund and Kumaon.
Bengal and North Western.
Southern Mahratta.
Indian Midland.
Bengal Central.
Bengal-Nagpur.
South Indian, Limited.

The company shall not during the continuance of this contract, without the sanction of the Secretary of State in writing first obtained, engage in or carry on any business other than the business prescribed by this contract to be carried on by the company.

Southern Mahratta.
Indian Midland.
Bengal Central.
Bengal-Nagpur.
South Indian, Limited.

The company shall not alter, vary, or add to its articles of association during the continuance of this contract in such a way as to affect or prejudice the operation thereof without the sanction of the Secretary of State.

Bombay Baroda and Central
India (Rajputana-Malwa).

Indian Midland.

Bengal-Nagpur.

South Indian, Limited.

The East Indian Railway, the
Southern Mahratta, and the Bengal
Central contracts have the fol-
lowing clause :—

“The company shall not, during
the continuance of this contract,
without the sanction of the
Secretary of State in writing
first obtained, acquire any property
in India. If the company shall,
in contravention of this section,
acquire any property, such property
shall not be disposed of by the
company without the sanction, in
writing, of the Secretary of State,
and the Secretary of State may at
any time during the continuance
of this contract or within one
calendar month after the determina-
tion thereof, purchase such pro-
perty from the company at the
price actually paid by the company
for the same. . . .”

Bombay Baroda and Central
India (Rajputana-Malwa).

Indian Midland.

Southern Mahratta (Mysore con-
tract).

Bengal-Nagpur.

South Indian, Limited.

East Indian Railway.

Rohilkund and Kumaon.

Bengal and North Western.

Southern Mahratta (Original and
Supplementary).

Southern Mahratta (Mysore).

Bombay Baroda and Central
India (Rajputana-Malwa).

The company shall not acquire, either
absolutely or for any limited estate or
interest, any land situate in territory not
directly governed by her Majesty or
her Majesty's Indian Government, or
any rights or easements in, over, or in
respect of any land so situate. The ex-
pression “land,” as regards the opera-
tion of this section, includes mines,
minerals, buildings, easements in or
over lands, and generally all heredita-
ments of every description and of what-
ever nature or tenure, whether cor-
poreal or incorporeal. This section
shall not apply to any such interest in
land as shall be acquired by the com-
pany under the provisions or powers of
this contract.

No communication or negotiation of
any description or in respect to any
matter shall, unless with the sanction
and under the supervision of the Secre-
tary of State, be made or conducted by
or on behalf of the company to or with
the government of any tributary or
foreign State or with any officials of
any such government.

No claim shall be made upon the
Secretary of State by the company for
compensation in respect of the prejudi-
cial effect upon the railway or the pro-

Indian Midland.
Bengal Central.
Bengal-Nagpur.
Delhi, Umballa, Kalka.
South Indian, Limited.

East Indian Railway and South-
ern Mahratta (O. and S.) omit this
sentence.

Bombay Baroda and Central
India (Rajputana-Malwa).
Indian Midland.
Southern Mahratta (Mysore).
Bengal-Nagpur.
South Indian, Limited.

[The last-named contract omits
the words regarding "general ap-
plicability" throughout the clause.]

fits thereof of any Act of her Majesty's
Indian legislature of general applica-
bility for the time being in force, and
the company and the railway and its
equipment shall be subject to the provi-
sions of every such Act as last aforesaid :
And no claim shall be made upon the
Secretary of State by the company for
compensation in respect of the prejudi-
cial effect upon the railway or the pro-
fits thereof of any treaty, convention,
or agreement for the time being in
force between the Secretary of State
and the government of any tributary
or foreign State, although such treaty,
or convention, or agreement may not
be of general applicability ; and the
company and the railway and its equip-
ment shall be subject to the provisions
of every such treaty, convention, or
agreement, as mentioned in this section.

East Indian Railway.
Bombay Baroda and Central
India (Rajputana-Malwa).
Southern Mahratta (five con-
tracts).
Indian Midland.
Bengal Central.
Bengal-Nagpur.
South Indian, Limited.

The company shall from time to time
prepare and furnish to the Secretary of
State such returns and statistics as to
traffic and otherwise as the Secretary of
State may from time to time require,
and such returns and statistics shall be
prepared in such form and under such
heads and divisions and with such
details as the Secretary of State shall
from time to time prescribe.

Part II.

THE LAW OF CARRIERS APPLICABLE TO INDIAN RAILWAYS.

THE English common law, so far as it is not modified by any Indian enactment, regulates the duties and responsibilities of a common carrier in India (*a*).

English common law as modified by Indian enactments applies to common carriers in India.

The question of the liability of railway companies as common carriers for loss or damage to goods, in the absence of special contract, where such loss or damage was not occasioned by the negligence or misconduct of the companies or their servants was, previously at any rate to the Indian Contract Act, left untouched by legislation; and if it had arisen before that Act, would necessarily have been decided by the common law, which would have treated the common carrier as an insurer against all risks, except the act of God or the king's enemies (*b*).

Are common carriers in India insurers?

(*a*) Per Mitter, J., in *Moothora Kant Shaw v. Indian General Steam Navigation Co.*, I. L. R. 10 Calc. 166, at p. 188.

(*b*) *Kuverji Tulsidass v. G. I. P. Rail. Co.*, I. L. R. 3 Bomb. at p. 116. See I. L. R. 10 Calc. p. 210.

In the case, however, of "a railroad or tramroad constructed under the provisions of Act XXII. of 1863," it was enacted, by sect. 7 of the Carriers Act III. of 1865, that "the owner of such railroad or tramroad shall be liable for the

PART II.

Effect of
Indian Con-
tract Act.

So far, the High Courts of Calcutta and Bombay are in accord. But whether or not the rule of the common law was altered by the Indian Contract Act, is a point on which the two Courts differ. The first section of that Act provides that nothing in the Act shall affect the provisions of any Statute, Act, or regulation not thereby expressly repealed, nor any usage or custom of trade, nor any incident of any contract not inconsistent with the provisions of the Act.

The 151st section is as follows:—"In all cases of bailment, the bailee is bound to take as much care of the goods bailed to him as a man of ordinary prudence would, under similar circumstances, take of his own goods of the same bulk, quality, and value as the goods bailed."

The 152nd section enacts that the bailee, in the absence of any special contract, is not responsible for the loss, destruction, or deterioration of the thing bailed, if he has taken the amount of

loss of, or damage to, property delivered to him to be carried *only*, when such loss or damage shall have been caused by negligence or a criminal act on his part, or on that of his agents or servants."

This seems to indicate, as pointed out by Turner, C. J., in *Venka-tachala v. S. I. Rail. Co.* (I. L. R. 5 Mad. 208), a difference between the liability of such railway companies and that of other railway companies, the reason of which is not

clear. The distinction, however, has become unimportant since the Railway Act of 1879, which enacted, that nothing in the Carriers Act should apply to carriers by railway. Act XXII. of 1863 was repealed and replaced by Act X. of 1870 (The Land Acquisition Act).

And now, though the Railway Act of 1890 repeals the Act of 1879, it also repeals sect. 7 of the Carriers Act of 1865, so far as it relates to railways.

care of it described in sect. 151. These latter sections were held by the High Court of Bombay(c) to apply to common carriers, in substitution for the old common law rule, as stated above, which was taken to be inconsistent with sect. 152.

PART II.
View taken
by Bombay
Court.

The result of this decision was to reduce the liability of common carriers in India, in cases not met by the special provisions of the Acts relating to carriers and railways, from the liability of insurers to that of bailees under the Indian Contract Act, which makes no distinction in this respect between bailees for hire and gratuitous bailees.

A full bench of the Calcutta High Court, in a later case(d), dissenting from the view taken by the Bombay High Court, held that common carriers were not relieved from their common law liability by the Indian Contract Act, on the ground, *inter alia*, that the rule of the common law was not inconsistent with sect. 152 of that Act, and was therefore within the saving clause of sect. 1.

View taken
by Calcutta
Court.

Garth, C. J., thus expressed himself:—"If the Bombay Court is right, any contract or usage of trade which is inconsistent with the general law laid down by the Contract Act is invalid. Now,

(c) In *Kuwerji Tulaidass v. G. I. Indian General Steam Navigation Co.,*
P. Rail. Co., I. L. R. 3 Bom. 109. I. L. R. 10 Calc. 166, decided in
(d) *Moothora Kant Shaw v. The* 1883.

PART II. it seems to me impossible that this was intended. The Act only lays down certain general rules, which, in the absence of any special contract or usage to the contrary, are binding on contracting parties. But it could never have been intended to restrain free liberty of contract as between man and man, or to invalidate usages or customs which may prevail in any particular trade or business. These customs and usages have only *the effect of introducing special terms into all contracts or dealings in any particular trade*: their very object is generally to modify or control the general law; and the Contract Act, in my opinion, could never have intended to invalidate all customs or usages which are not in accordance with the general rules which it enacts, or to prevent private persons from entering into contracts which are inconsistent with those rules."

And Mitter, J., after quoting sects. 151 and 152 of the Indian Contract Act, and the words of Cotton, L. J., in *Bergheim v. G. E. Rail. Co.*(e), "The liability of a common carrier, as compared with that of other bailees, is exceptional. He is answerable for the loss of goods entrusted to him as such, though the loss be in no way caused by any default on his part. He is considered as having *contracted* to insure the safe delivery of—that is to say, as having *contracted* to carry and

(e) L. R. 3 C. P. Div. 221.

deliver safely and securely (the act of God and of the enemies of the Queen alone excepted)—the goods of which he, as common carrier, is bailee,” thus proceeded:—“Now this responsibility of a common carrier is an incident of his contract which the law implies as having been agreed to by him when he accepts goods delivered to him for carriage. Is such an incident of the contract inconsistent with the provisions of the 152nd section of the Indian Contract Act? It seems to me that it is not, because *any carrier* (whether he is a common carrier or not) under the provisions of the 152nd section would incur the same responsibility if he binds himself by a special contract to that effect. In the case of a common carrier, the law implies that he contracts to undertake the insurance liability, the act of God and of the Queen’s enemies alone being excepted. The rule of English law regulating the responsibility of a common carrier is therefore not inconsistent with the provisions of the 152nd section, or any other section of the Indian Contract Act. That rule consequently remains unaffected by the Contract Act as provided in its first section.”

Having decided that the common law rule was not abrogated by the Contract Act, *per se*, the Calcutta Court had next to consider how the question was affected by the language of the 10th section of the Railway Act of 1879, referring to

Effect of
Act IV.
1879, s. 10.

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“the obligation or responsibility imposed on a carrier by railway by the Indian Contract Act, 1872, ss. 151, 161, in the case of loss, destruction, or deterioration of or damage to property.” Sect. 151 has been already quoted. Sect. 161 is in the following terms: “If, by the fault of the bailee, the goods are not returned, delivered, or tendered at the proper time, he is responsible to the bailor for any loss, destruction or deterioration of the goods from that time.” On this part of the question the opinion of Garth, C. J., was as follows: “From this section we are asked to infer that the legislature has put a construction upon sects. 152 and 161 of the Contract Act which relieves all carriers in India from any common law liability. But if in our opinion the Contract Act was not intended to have that effect, but, on the contrary, was intended to leave the liability of common carriers as it was before the Act passed, the fact that the Railways Act several years afterwards alludes to sects. 152 and 161 as applying to carriers by railway, is not, I think, sufficient to justify us in giving to the Contract Act a construction which we disapprove, and which we believe to be contrary to its meaning. Besides, it is really difficult to say what the legislature did intend by sect. 10 of the Railways Act. Very possibly it may have taken for granted that the view of the Bombay Court was right, or it may

have supposed that carriers by railway were not common carriers."

The carrier in this case not being a carrier by railway, it was unnecessary for the Calcutta Court to construe sect. 10 of the Railways Act of 1879, except so far as it affected the Contract Act; and for the decision of the case the ground taken by Garth, C. J., was sufficient, that sections 151 and 161 of the Contract Act not being of their own virtue applicable to common carriers could acquire no greater applicability by a side wind, through a mere reference on the part of the legislature without words of enactment. When the existing law is shown to be different from what the legislature supposes it to be, the implication arising from the statute cannot operate as a negation of its existence; and any legislation founded on such a mistake has not the effect of making that law which the legislature erroneously assumed to be so (*f*).

The terms of the section in question, however, were considered at length by Mitter, J., in the course of his judgment, and received from him an interpretation which would bring them into harmony with the law as laid down by the Court.

He said "This section does not say that the provisions of sect. 151 of the Indian Contract Act,

(*f*) *Mollico, March & Co. v. Court* well, Interpretation of Statutes, of *Wards*, 4 P. C. p. 437; *Max-* ch. xi. s. 2.

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1872, shall be the *measure* of the responsibility of a carrier by railway. It simply provides that if he intends to reduce it below that provided in sect. 151 of the Indian Contract Act, he must comply with the provisions of clauses (a) and (b) of sect. 10 of the Indian Railways Act, 1879. The section (10) does not declare what shall be the measure of his liability, but lays down the particular mode in *which alone* he can reduce it below a certain degree. The section in question does not say that in the absence of the special contract referred to therein, that liability shall not be regulated by the rule of the English common law on the subject. Sect. 10 of the Indian Railways Act, 1879, is analogous to sect. 6 of the Indian Carriers Act, 1863, which by sect. 2 of the Act does not apply to carriers by railway. The object of both sections is not to declare what shall be the carrier's liability, but to provide for the mode in which alone he can limit that liability, whatever it may be, according to the law in force."

The result is that the extent of the liability of a common carrier for goods, under the Contract Act, is not uniform over the whole of India, and may be measured by different standards, according as the question is raised in the Courts of Bengal, or in the Courts of Bombay. But, apart from the question of this liability, it seems clear

that a common carrier is a bailee within the meaning of the Contract Act, and that dealings by and with the common carriers are not exempt from the operation of that Act, except in the cases provided for by the saving clause in sect. 1.

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And now, by the new Act, sect. 72, the legislature has given its sanction, so far as railway administrations are concerned, to the view taken by the High Court of Bombay, and has ordained that from the 1st May, 1890, the responsibility of a railway administration for the loss, destruction, or deterioration of animals, or goods delivered to the administration to be carried by railway, shall, subject to the other provisions of the Act, be that of a bailee under sects 151, 152, and 161 of the Indian Contract Act of 1872; and nothing in the common law of England, or in the Carriers Act, 1865, regarding the responsibility of common carriers with respect to the carriage of animals or goods, is to affect the responsibility, as in this section defined, of a railway administration.

Liability of a railway administration as carrier under Act IX. 190.

The effect of this section is to cancel, so far as regards railway administrations in India (except in the case contemplated in sect. 82, see *post*, p. 65), the English common law rule, under which common carriers are held liable as insurers of goods against all risks except the act of God and the king's enemies, and to make their liability for loss of, or damage to, goods entrusted to them

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Liability of
railway ad-
ministration
for loss by
sea.

only that prescribed by sects. 151, 152, and 161 of the Contract Act—that is, the liability of a bailee for hire. But a carrier, if he is otherwise a common carrier, does not cease to be so because his responsibility is reduced (*g*); and there are other rules of the common law respecting common carriers which are not affected by sect. 72.

It is to be observed that the foregoing limitations of the liability of an Indian railway carrier apply only to carriage by railway; and a railway administration in India may contract to carry passengers or other traffic partly by railway and partly by sea. In such a case, as the only privity of contract is between the railway administration and the passenger or bailor, who would have none with the shipowner, the railway administration would be responsible to the passenger or bailor for loss both on the railway and on the sea (*h*). Before the present Act the

(*g*) "Common carriers would not cease to be common carriers, although their common law liabilities should be abrogated by Act of Parliament," says Mr. Justice Maule, after referring to Story's definition of a common carrier, as "one who undertakes for hire or reward to transport the goods of such as choose to employ him from place to place." *Benett v. Peninsular Steamboat Co.*, 6 C. B. 775, at p. 789. This was an action against the company, as

common carriers of passengers from Southampton to Gibraltar, for refusing to receive the plaintiff as a passenger. The question left to the jury was, whether they were satisfied that defendants carried on the business of common carriers for passengers from Southampton to Gibraltar. The jury having found in the affirmative, it was held, that the question was rightly left to them as above.

(*h*) *Doolan v. Midland Rail. Co.*, 2 App. Cas. 792.

responsibility of the railway administration for the sea loss would probably have been held unlimited in the absence of a special agreement restricting it. But by sect. 82 of the present Act the liability of a railway administration under such circumstances for the loss by sea is declared, subject to the condition hereafter referred to, to be that of a shipowner under the Merchant Shipping Amendment Act, 1862 (*i*)—that is, the ordinary common law liability of a common carrier, as qualified by sect. 54 of that Act, which (omitting the provision for determining the tonnage of foreign ships) is in the following terms:—

“The owners of any ship, whether British or foreign, shall not, in cases where all or any of the following events occur without their actual fault or privity; that is to say—

- “(1) Where any loss of life or personal injury is caused to any person being carried in such ship;
- “(2) Where any damage or loss is caused to any goods, merchandise, or other things whatsoever, on board any such ship;
- “(3) Where any loss of life or personal injury is, by reason of the improper navigation of such ship as aforesaid, caused to any person carried in any other ship or boat;

(i) 25 & 26 Vict. c. 63.

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“(4) Where any loss or damage is, by reason of the improper navigation of such ship as aforesaid, caused to any other ship or boat, or to any goods, merchandise, or other things whatsoever on board any other ship or boat—

be answerable in damages in respect of loss of life or personal injury, either alone or together, with loss or damage to ships, boats, goods, merchandise, or other things, to an aggregate amount exceeding fifteen pounds for each ton of their ship's tonnage; nor in respect of loss or danger to ships, goods, merchandise, or other things, whether there be, in addition, loss of life or personal injury or not, to an aggregate amount exceeding eight pounds for each ton of the ship's tonnage; such tonnage to be the registered tonnage in the case of sailing ships, and in the case of steamships, the gross tonnage without deduction on account of engine-room.”

And sect. 82 imposes a further qualification. A condition exempting the railway administration from responsibility for any loss of life, personal injury, or loss of or damage to animals or goods, which may happen during the carriage by sea from the act of God, the king's enemies, fire, accidents from machinery, boilers, and steam, and all and every other dangers and accidents of the seas, rivers, and navigation of whatever nature

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and kind soever, is, without being expressed, to be deemed to be part of the contract with the passenger or bailor. In the case of a railway company in England, a similar condition, in order to form part of the contract, must be duly published (*k*).

Of questions, then, which may arise in connection with the law of carriers applicable to railways in India, some have been provided for by express enactment; others can be brought within the general rules of the Contract Act; while others must be determined by the principles of the common law, and by the customs and usages which form part of it. It will be appropriate, therefore, to supplement the provisions of the Railway and Contract Acts by stating the leading principles of the common law, and considering how far they are modified by the enactments referred to.

Carriage of Goods.

A common carrier is a person who undertakes to transport from place to place, for hire, the goods of such persons as think fit to employ him (*l*).

Definition of
common
carrier.

A railway company are not as such bound to be common carriers (*m*).

Railway
companies
when common
carriers.

But railway companies engaged in carrying

(*k*) 31 & 32 Vict. c. 119, s. 14.

(*m*) *Johnson v. Midland Rail. Co.*,

(*l*) *Smith's L. C.*, 7th ed. 223.

4 Ex. 387.

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goods on a railway are common carriers (n), and are therefore subject in that capacity to the same liabilities as other common carriers.

“The Act,” said Baron Parke, in the case of *Palmer v. Grand Junction Rail. Co. (n)*, “does not compel them (the railway company) to be common carriers, it only enables them to be so, so far as they shall think fit; and when they have elected to become so they are liable in that character in the same way that other common carriers are.”

Indian
railway
companies
common
carriers.

That railway companies in India are common carriers seems clear, notwithstanding that by sect. 2 of the Indian Railway Act, 1879, nothing in the Carriers Act, 1865, was to apply to carriers by railway. This apparently meant only that their liability for loss or damage was neither to be limited nor declared under the special provisions of the Carriers Act, but was to be placed in some respects on a different footing from that of other carriers.

But previously to 1879 railway companies were recognised by the legislature as common carriers under the Carriers Act, 1865; by the interpretation clause of which “common carrier,” for the purposes of that Act, meant “a person (including any association or body of persons, whether incorporated or not) other than Government,

(n) *Palmer v. Grand Junction Rail. Co.*, 4 M. & W. 749 (decided 1839). See *Carpue v. London and Brighton Rail. Co.*, 5 Q. B. 747.

engaged in the business of transporting for hire property from place to place, by land or inland navigation, for all persons indiscriminately" (o). And the business so defined they continued to carry on, when the clause containing the definition, in consequence of sect. 2 of the Act of 1879, no longer applied to them.

And now the effect of sect. 72, sub-sect. (3) of the present Act, combined with the repeal of the Act of 1879, is to render the Carriers Act, 1865 (exclusive of sects. 7 and 10, which are repealed by the present Act, the former so far as relates to railways, the latter absolutely), again applicable to carriers by railway, except that nothing therein regarding the responsibility of common carriers with respect to the carriage of animals or goods is to affect the responsibility of a railway administration for the loss of animals or goods as in sect. 72 of the present Act defined. Sects. 5 and 9 of the Carriers Act appear to be incapable of affecting the responsibility of a railway administration for the loss of animals or goods. Thus there is still some portion of that Act applicable to railways, and for the purposes of that Act the definition of common carrier therein given again applies to railway companies.

Moreover, in the case of the Guaranteed and

(o) *Ishwardas Gulabchand v. G. I. P. Rail. Co.*, I. L. R. 3 Bom. at p. 129.

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the principal Assisted Railway Companies there is a clause in their contracts with Government binding them in so many words to carry on the business of a common carrier; or, as in the case of the Indian Midland, "of a carrier according to the law of India;" while the effect of the contracts with the other companies is to oblige them to carry all persons, so far as the public is concerned, indiscriminately.

Are adminis-
trations of
State lines
common
carriers?

Whether the railway administrations of State lines in the hands of Government are common carriers is another and more difficult question. In the case of *The Deputy Postmaster of Bareilly v. Earle* (*p*) (which, however, related to carrying by road, not by railway), the view of the High Court of the North-West Provinces was thus expressed:

"The legislature expressly exempted the Government from the class of persons to whom as common carriers the Act, *i.e.*, the Carriers Act, 1865, was to apply; and in our judgment in so doing it intended to declare not only that the Government, as a carrier, should not be subject to the provisions of the Act, but that it should not be regarded as a common carrier, for the Act applies to all other persons in India who fall within the definition.

"In this view the Government must be re-

(*p*) 3 N. W. P. 195.

garded in relation to its carrying business as an ordinary bailee for hire."

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On the other hand, in *Moothora Kant Shaw v. Indian General Steam Navigation Co. (q)*, Garth, C.J., expressed himself in a different sense. "It is certainly a very remarkable thing," he said, "that in the definition of common carriers in the Carriers Act of 1865 the Government, for some reason or other, are excluded from that category. It is difficult to conceive why, if carriers by railway are ordinarily common carriers, the Government, if they engage in that business, are not to be subject to the same laws and liabilities as other carriers. If the Government engage in any trade for purposes of profit there would seem no good reason why they should be exempt from duties and liabilities as against the public, by which private persons engaged in that trade are bound; and yet the exclusion of the Government from the definition of common carriers in the Carriers Act would seem to mean one of two things—either that they were not to be subject to the duties or liabilities of common carriers, or that, being common carriers, they were not to share in the benefit conferred by that Act. Considering the large share which the Government have now appropriated to themselves in the carrying trade and business of this country, it is certainly very

(q) I. L. R. 10 Cal. 166.

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Intention of
the legis-
lature.

desirable that their position, as against the public, should be satisfactorily defined."

It is certain that the intention of the Legislature, so far as it can be discovered from the tendency of the Acts subsequent to Act III. of 1865, has been to place railways belonging to or worked by Government on the same footing with other railways. Act XIII. of 1870 enacts that the Railway Act of 1854 shall apply to all railways now or hereafter belonging to Government, but worked by a railway company in the same manner as if such railways belonged to and had been opened by the company, and that, subject to certain verbal modifications, the said Act shall apply to all railways now or hereafter worked by Government, in the same manner as if such railways had been opened by a railway company.

The Railway Act of 1879, intituled "An Act to consolidate and amend the Law relating to Railways in India," defines "railway" as a railway for the public conveyance of passengers or goods, and makes no distinction between railways worked or owned by Government and other railways.

The present Railway Act (IX. of 1890), intituled "An Act to consolidate, amend, and add to the Law relating to Railways in India," includes, under the head of railway administration, the

Government as well as companies, and applies to all railway administrations alike, subjecting them all to the same statutory obligation to give reasonable facilities for traffic without undue preference, and to the same statutory liability in respect of goods and animals entrusted to them for carriage. In the case of injuries to officers and soldiers on duty upon a railway where the liability of Government is intended to be different from that of other administrations, a special clause (sect. 79) is inserted for the purpose of carrying out that intention.

Similarly, when the legislature wished to place a State railway on a separate footing it thought fit to pass a special Act for the purpose. Thus, Act XI. of 1887—an Act to provide for the regulation of traffic on the Sindh-Pishin section of the North-Western Railway—after enacting that no portion of the Railway Act, 1879, shall apply to any part of the railway unless extended thereto by the Governor-General in Council, proceeds to provide as follows:—“Sect. 4 (1) No person shall be entitled, as of right, to be carried on the railway, or to have property carried thereon. (2) But the carriage of passengers and property on the railway shall be permitted, subject to such conditions and restrictions as the Governor-General in Council may prescribe. Sect. 5. Where any person or property is per-

PART II.

mitted to be carried on the railway, the Government shall not be responsible for any injury which may happen to the person, or for any loss or damage which may occur in respect of the property, unless the injury happens, or the loss or damage occurs, on a part of the railway with respect to which the Governor-General in Council has, by notification in the Gazette of India, announced that the Government accepts responsibility, to such extent as may be described in the notification, for injury happening or loss or damage occurring thereon."

The reasonable inference seems to be that the duties and liabilities of Government as a carrier by rail are, except where limited by special legislation, the same as those of other carriers by rail, being companies. In this view, so far as Government holds itself out to carry for the public, it is a common carrier, and subject to the rules of the common law affecting carriers in India.

The question is still of importance, because the statutory obligation to carry contained in the traffic facilities clauses of the new Act is only enforceable before the Railway Commissioners; whereas a common law obligation is within the jurisdiction of the ordinary Courts.

Duty of
carriers to
carry accord-

The common law obligation of a carrier is not to carry every sort of goods for everyone, but to carry

according to his public profession. In the case of *Johnson v. Midland Rail. Co.* (*f*) Lord Wensleydale said "A carrier may profess to carry light goods only, and then he cannot be compelled to carry heavy goods; or he may say that he will carry from Manchester to London and not from the intermediate stations, and then he cannot be made to carry goods from those places; but as soon as he has publicly professed to carry in any particular manner, and so long as he does so, he is bound to carry the goods of anyone, if he has room in his conveyance and the price of the carriage be tendered when the goods are offered." PART II.
ing to their
profession.

Carriers are not obliged to supply a larger number of waggons than they are in the habit of using (*g*). The carrier's duty to receive is always limited to his convenience to carry (*h*). But so far as a company hold themselves out as carriers they are bound to carry. And common carriers are under a common law liability to carry (including the incidental obligations of accepting and safely delivering) goods to all places to which they profess to carry, even if one of those places should be beyond the confines of the realm (*i*).

At common law a person holding himself out as a common carrier of goods was not under any No obligation to treat customers equally.

(*f*) 4 Ex. 367.

§ *Y. Rail. Co.*, 4 H. & N. 327.

(*g*) *Lovett v. Hobbs*, 2 Show. 127.

(*i*) *Crouch v. L. & N. W. Rail.*

(*h*) Per Erle, J., *M. Manus v. L.*

Co., 14 C. B. 253.

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obligation to treat all customers equally. The obligation which the common law imposed upon him was to accept and carry all goods delivered to him for carriage according to his profession (unless he had some reasonable excuse for not doing so) on being paid a reasonable compensation for so doing ; and if the carrier refused to accept such goods, an action lay against him for so refusing, and if the customer, in order to induce the carrier to perform his duty, paid, under protest, a larger sum than was reasonable, he might recover back the surplus beyond what the carrier was entitled to receive, in an action for money had and received as being money extorted from him (*k*).

But the fact that the carrier charged others less, though it was evidence to show that the charge was unreasonable, was no more than evidence tending that way. There was nothing in the common law to hinder a carrier from carrying for favoured individuals at an unreasonably low rate, or even gratis. All that the law required was that he should not charge any more than was reasonable (*l*).

Position of
Indian
carriers by
railway in
this respect.

Hence all carriers by railway in India engaged in the business of common carriers are under a common law obligation to accept and

(*k*) Per Blackburn, J., *G. W. 226*, at p. 237.
Rail. Co. v. Sutton, L. R. 4 H. L. (*l*) *S. C.*, p. 237.

carry according to their profession and to charge reasonable rates only. PART II.

But prior to 1890 no such carrier was under any statutory obligation, as an English railway company is, to treat all customers equally; though some of them had, in this respect, subjected themselves to restrictions by contract in a greater or less degree.

The Government, indeed, if it acted as a carrier by railway was subject to no other obligation in respect of its charges than that laid by the common law on all carriers. Of the Government.

The position of the railway companies differed.

The special Acts of the Guaranteed Companies contain a statutory power to the company to contract with the East India Company, and such contracts may include, *inter alia*, provisions for securing to the East India Company any facilities, rights and advantages in relation to the railway, and provision as to the tolls, receipts, and profits thereof. Of guaranteed railway companies.

The contracts of the Great Indian Peninsula, Madras, and Bombay Baroda and Central India Companies, made in pursuance of this power, each contain the following provision :—

“ And the said railway company shall and will forthwith commence and carry on the business of common carriers of goods and passengers upon the said railway. . . . shall be authorized and

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empowered to charge such fares for the carriage of passengers and goods, and such tolls for the use of the said railway, as shall have been approved by the East India Company, and shall not, in any case, charge any higher or different fares or tolls whatsoever, without such approval being first obtained;" and such tolls and fares are to be liable to reduction on the requisition of the East India Company, but only with a view of so limiting them that the net receipts of the year shall not exceed 10 per cent. upon the outlay.

In the contract with the South Indian Railway Company, this provision is slightly modified as follows :—

"But the company shall be empowered to charge such fares for the carriage of passengers and goods, and such tolls for the use of the railway as they shall think fit, provided such fares and tolls respectively shall never exceed a maximum rate, to be from time to time fixed for the same respectively, and altered if need be by the Secretary of State in Council." Such maximum rates to be liable to reduction, but only with a view to keep them within the 10 per cent. limit, as in the case of the other railways.

The Guaranteed Companies, therefore, were under no restriction either by legislative enactment, or by contract with Government, to prevent their favouring individuals, so long as the fares

and tolls charged did not exceed the maximum prescribed by Government. The East Indian, the Assam, and the Southern Mahratta Railway Companies were in the same position, being by their contracts free to charge such rates and fares as they might from time to time fix with the approval of Government.

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An Undue Preference Clause first appears in the contract between the Secretary of State and the Rohilkund and Kumaon Railway Company, 12th October, 1882, and is to be found in all contracts with later companies. It is taken from the Railway and Canal Traffic Act, 1854, s. 2, with the exception of the words in brackets which are new, and is as follows:—"The company shall not [as between members of the public] make or give any undue or unreasonable preference or advantage to or in favour of any particular person or company or any particular description of traffic, or subject any particular person or company to any undue or unreasonable prejudice or disadvantage. [The Secretary of State shall have absolute power for the purposes of this section to decide whether any preference, advantage, prejudice or disadvantage is undue or unreasonable.]" The contracts with the Rohilkund and Kumaon and the Bengal and North Western Companies do not contain the last sentence.

Of later companies.

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Of adminis-
trations under
Act IX. 1890,
s. 42;
no undue
preference.

But now by virtue of sect. 42 of the new Act, all railway administrations alike are under a direct statutory obligation to afford all reasonable facilities, according to their respective powers, for the receiving, forwarding, and delivering of traffic; to give no undue or unreasonable preference or advantage to any particular person or railway administration or description of traffic, nor to subject any particular person, railway administration or description of traffic to any undue or unreasonable prejudice or disadvantage; and to do whatever may be necessary to enable the administration's own line and any other line connected with or having a terminus near it to be used by the public as continuous lines of communication.

Liability of
receiving
company for
carriage
beyond its
own line.

When a company receives goods to be carried to a station beyond their own line, *prima facie*, they contract to carry them to that place, even though part of the carriage should be by water (*o*), and *they only*, according to the earlier authorities, can be sued by the owners if the goods are lost on the line of a second company (see, however, *post*, p. 82), unless by the special terms of the contract the first company are expressly exonerated from liability beyond the limits of their railway (*p*).

(*o*) *Wilby v. West Cornwall Rail. Co.*, 2 H. & N. 703.

(*p*) *Muschamp v. Lancashire and*

Preston Rail. Co., 8 M. & W. 421;
Bristol and Exeter Railway v. Col-

lins, 7 H. L. C. 194.

[In England a railway company, if they contract to carry beyond their own line, may restrict such contract by a stipulation that they will not be answerable for loss, detention, or injury on the further line, whether in respect of goods or of passenger's luggage (*q*): the burden of proving where the loss occurred being on the company (*r*). In India, under sect. 80 of the new Act, the rule is different.]

But if by agreement the traffic upon two lines is carried on for the joint benefit of the two companies, so that they are joint principals, if not partners, either may be sued (*s*).

Liability of second company where goods are carried over two lines.

Later decisions, however, have gone beyond the earlier cases referred to (*t*). In *Hooper v.*

(*q*) *Aldridge v. G. W. Rail. Co.*, 33 L. J. C. P. 161; *Zunz v. S. E. Rail. Co.*, L. R. 4 Q. B. 539.

(*r*) *Kent v. Midland Rail. Co.*, L. R. 10 Q. B. 1.

(*s*) *Gill v. Manchester Rail. Co.*, L. R. 8 Q. B. 186.

In *G. I. P. Rail. Co. v. Radhakisan Khushaldas*, I. L. R. 5 Bo. 371, it was decided that the facts of the case were within the authority of *Gill v. Manchester Rail. Co.*, though it may well be doubted whether the agreement between the two companies in the one case constituted a connection nearly so close as in the other: and it was held, that the agreement, if it did not constitute a partnership between the two companies, still showed that each was the agent for the

other to contract for carriage.

In *Kalu Ram Maigraj v. Madras Rail. Co.*, I. L. R. 3 M. 240, decided about the same time, a contrary conclusion was come to, and *Gill v. Manchester Rail. Co.* was distinguished. Kindersley, J., said, that "each case must be decided on the evidence given as to the contract made. The M. Rail. Co. might have entered into an agreement with the O. & R. Rail. Co., which would, in effect, have constituted the latter their agents for receiving goods. But it has not been shown that they did so, nor has it been shown that the O. & R. Rail. Co., in this case, received the plaintiff's goods as agents for the M. Rail. Co."

(*t*) *Muschamp v. Lancashire and*

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L. & N. W. Rail. Co. (*u*), it was held by Denman and Lindley, JJ., that in the case of a through ticket the second company, which had not issued the ticket, having received a passenger's luggage into their van, and there being evidence of negligence, were responsible for the loss of it: on the authority of *Foulkes v. Metropolitan District Rail. Co.* (*x*).

And in *White v. S. E. Rail. Co.* (*y*), A. L. Smith, J., said that the law in such cases (*z*) had then (March 2nd, 1885), at last, been pretty well settled. If a party booked goods through by one company for a journey going over more than one line of railway, he might, in case of damage to the goods at any part of the journey, sue that company, and he might also sue the other, *if the damage occurred upon their line, and by their negligence, but not otherwise.*

Under Act
IX. 1890,
s. 80.

And the same rule is extended by the legislature in sect. 80 of Act IX. of 1890, which enacts that, notwithstanding anything in any agreement purporting to limit the liability of a railway administration with respect to traffic while on the railway of another administration, a suit for compensation

Preston Rail. Co., 4 M. & W. 421;
Bristol and Exeter Rail. Co. v. Collins, 7 H. L. C. 194.

(*u*) 50 L. J. Q. B. 103; 2 Dec. 1880.

(*v*) 5 C. P. Div. 157.

(*y*) 1 Times L. R. 319.

(*z*) *I. e.*, where goods were carried over more than one line, in the absence of partnership or quasi-partnership between such lines, and of special agreement.

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for loss of the life of, or personal injury to, a passenger, or for loss, destruction, or deterioration of animals or goods, where the passenger was, or the animals or goods were, booked through over the railways of two or more railway administrations, may be brought *either* against the railway administration from which the passenger obtained his pass or purchased his ticket, or to which the animals or goods were delivered by the consignor thereof, as the case may be, *or* against the railway administration *on whose railway the loss, injury, destruction, or deterioration occurred.*

When goods are in the carrier's custody, he is at common law responsible for every injury sustained by them occasioned by any means whatever, except only the act of God or the King's enemies (*a*), subject, however, to the further qualification that he is not responsible for damage arising from the natural deterioration or inherent vice of the thing carried; for example, from the ordinary decay or deterioration of oranges or other fruits, or from the ordinary diminution or evaporation of liquids, or the ordinary leakage from casks, or from the spontaneous combustion of goods, or from their tendency to effervescence or acidity, or from their not being properly put up and packed by the owners (*b*).

Carrier not liable for natural deterioration or inherent vice.

(*a*) *Oakley v. Portsmouth and Ryde Steam Packet Co.*, 11 Ex. 618.

(*b*) Story on Bailments, § 492a, cited by Willes, J., in *Blower v. Gr. W. Rail. Co.*, L. R. 7 C. P. 655.

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Dangerous
goods.

On the other hand, a person who sends an article of a dangerous nature by a carrier is bound to take reasonable care that its dangerous nature is communicated to the carrier and his servants, and is responsible, in damages, for the probable consequences of omitting to do so.

In *Farrant v. Barnes* (c), Willes, J., said: "As a matter of legal duty, a person who gives another dangerous goods to carry—goods which require more care and caution than ordinary merchandize, and which are likely, in the absence of such caution, to injure persons handling them—is bound to give notice of their dangerous character to the party employed to carry them, and is liable for the consequences which are likely to ensue from the omission to give such notice. *It is clear that such a person would be liable to an action at the suit of anyone who might be injured by his wrongful omission.* The only remaining question is whether the injury of which the plaintiff complains was *the probable result* of the want of notice;" and the plaintiff, the carrier's servant, who was injured by the bursting of a carboy of nitric acid, sent by defendant without notice that the acid was dangerous, while in course of carriage, was held entitled to recover.

Farrant v. Barnes was followed by the High Court of Allahabad in *Lyell v. Ganga Dai* (d),

(c) 11 C. B. N. S. 553.

(d) 1 L. R. 1 All. 60.

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where a chemist, having sent a box containing detonating powder to a railway station to be carried by rail, without notifying the contents as required by sect. 15 of Act XVIII. of 1854, and the box having exploded at the station and fatally injured a railway servant, the latter's widow was held entitled to recover damages from the chemist.

Sect. 15 of Act XVIII. of 1854 was replaced by sects. 16 and 30 of the Railway Act of 1879, for which are now substituted sects. 59 and 107 of the present Act.

A common carrier does not insure against the act of God or of the King's enemies. The meaning of the rule as to the act of God is, that a common carrier does not insure against the irresistible acts of nature, nor against defects in the thing carried itself; and if he can show that either the act of nature or the defect of the thing itself, or both taken together, formed the sole and irresistible cause of the loss, he is discharged. In order to show that the cause of the loss was irresistible, it is not necessary to prove that it was absolutely impossible for the carrier to prevent it, but it is sufficient to prove that by no reasonable precaution under the circumstances could it have been prevented. Subject to this, at common law a common carrier insures goods

Carriers'
liability at,
common law.

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bailed to him for carriage, though the loss occurs without negligence on his part (*e*).

In order that a phenomenon, as, for instance, an extraordinary high tide, should be an act of God in the legal sense of the words, it is not necessary that it should be unique or happen for the first time, if its previous occurrence did not import probability of recurrence: it is enough that it is extraordinary, and such as could not reasonably be anticipated.

In judging the question of fact whether proper and sufficient precautions have been taken, all the surrounding circumstances must be considered, and among them any previous occurrence of phenomenon (*f*).

Liability of
carrier of
animals.

The liability of the carrier of live animals is the ordinary liability of the carrier (*g*). If the animal hurts itself from no cause other than its inherent propensities, "its proper vice," that is to say from fright, or temper, or struggling to keep its legs, the railway company is not liable. But if it so hurts itself from the railway company's negligence, or any misfortune happening to the train, though not through any negligence

(*e*) *Nugent v. Smith*, 1 C. P. D. 423.

(*f*) *Nitrophosphate, &c. Co. v. London and St. Katharine's Dock Co.*, 9 Ch. D. 503.

(*g*) *Palmer v. Grand Junction Rail. Co.*, 4 M. & W. 749; *M'Manus v. Lancashire and Yorkshire Rail. Co.*, 4 H. & N. at p. 332.

of the defendants, as, for instance, from the horse box leaving the line owing to some obstruction maliciously put on it, then the railway company would, as insurers, be liable (*h*).

In India, however, under the present Act, absence of negligence will, if proved, discharge a railway administration from liability in respect of animals as well as of other traffic; and the responsibility of a railway administration as a carrier of animals is still further limited by the provisions of sect. 73.

A railway company is subject to the liabilities of a common carrier for passengers' luggage, even when it is carried (nominally) free of charge (*i*); but only in respect of what property falls under the denomination of personal luggage (*k*). If a passenger's luggage is lost, the railway company are liable to that passenger, though they have made the contract with a third party and not with the passenger. A servant, whose fare has been paid by his master, can sue for loss of luggage (*l*); the principle being that the duty thrown upon the carrier by receiving the passenger and his luggage to be carried for reward, though arising

Liability for
passengers'
luggage.

(*h*) Per Bramwell, B., *Kendall v. L. & S. W. Rail. Co.*, L. R. 7 Ex. at p. 377; *Blower v. G. W. Rail. Co.*, L. R. 7 C. P. 655.

(*i*) *A fortiori*, when it is separately paid for.

(*k*) *Macrow v. G. W. Rail. Co.*, L. R. 6 Q. B. 612; *Cohen v. S. E. Rail. Co.*, 2 Ex. Div. 253, at p. 259.

(*l*) *Marshall v. York. N. & B. Rail. Co.*, 11 C. B. 655.

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out of a contract, is independent of the question by whom the reward is paid.

In *Marshall v. York N. & B. Rail. Co.*, Jervis, C.J., said: "If the liability of the defendants arises, not from the contract, but from a duty, it is perfectly unimportant by whom the reward was paid, for the duty would equally arise though the payment was by a stranger." And Williams, J., said that the question turned upon the inquiry whether it was necessary to show a contract between the plaintiff and the railway company; and that the whole current of authorities, from *Govett v. Radnidge* (k) to *Pozzi v. Shipton* (l), established that an action of this sort is in substance not an action of contract, but an action of tort against the company as carriers, and therefore that the allegation of a contract was altogether unnecessary. So an officer, carried under contract with Government in India, may sue for an injury done to his property through the railway company's negligence whilst the goods were in their custody, though he could not sue the railway company for the non-performance of their duty as carriers (m).

But if A. takes with him as his own the luggage of B., who is not a passenger by the same train, and the railway company receives the luggage as A.'s, then if it is lost, B. cannot sue for it (n).

(k) 3 East, 62.

L. R. 3 Ex. 9. See *post*, p. 145.

(l) 8 A. & E. 963.

(n) *Becher v. G. E. Rail. Co.*,

(m) *Martin v. G. I. P. Rail. Co.*, L. R. 5 Q. B. 241.

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Where the contract is to carry a particular species of goods, such as passenger's luggage, the carrier is not responsible, as a common carrier, irrespectively of negligence, for injury to a perfectly different species, such as merchandize, which the plaintiff may happen to be carrying with him, and which he, even without fraud, procures to be carried without notice to the carrier of its nature (*o*).

But if the company had notice that a passenger brought with him goods that were not luggage, and they chose to carry them, they would be responsible. As to the amount of notice, it will be sufficient if the passenger carry the articles exposed or pack them in the shape of merchandize (*p*).

Whatever the passenger takes with him for his personal use or convenience according to the habits or wants of the particular class to which he belongs, either with reference to the immediate necessities, or to the ultimate purpose, of the journey, must be considered as personal luggage. This would include not only all articles of apparel, whether for use or ornament (saving herein to the carrier the protection of the Carriers' Act), but also the gun-case or fishing apparatus of the

What is
passenger's
luggage.

(*o*) *Belfast and Ballymena Rail. Co. v. Keys*, 9 H. L. C. 556.

(*p*) *G. N. Rail. Co. v. Shepherd*, 8 Ex. 30; *Macrow v. G. W. Rail. Co.*, L. R. 6 Q. B. at p. 619.

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sportsman, the easel of the artist on a sketching tour, or the books of the student, and other articles of an analogous character, the use of which is personal to the traveller, and the taking of which has arisen from the fact of his journeying. A quantity of sheets, blankets, and quilts, intended not for the use of the traveller on the journey, but for the use of his household when permanently settled, are not personal luggage (*q*).

The contract of carriage, in reference to passenger's luggage, in England.

In England, the porter who receives a passenger's luggage at the entrance of the station, for the purpose of conveying it to the train, does so as the servant of the company, and within the scope of his authority, and they are liable as well for the luggage which the passenger intends to take with him in the carriage, as for that destined for the van, in case it is lost during its transit to either carriage or van owing to the porter's negligence. So also with regard to the delivery of luggage at the end of the journey by the porters into the passengers' carriages or other means of conveyance from the station (*r*). The following extract from Lord Macnaghten's observations in a recent case gives a luminous exposition of the law on the subject:—

“Everybody who travels by railway knows that, as a general rule, persons arriving at a

(*q*) *Macrow v. G. W. Rail. Co.*,
L. R. 6 Q. B. at p. 619.

(*r*) *G. W. Rail. Co. v. Bunch*, 13
App. Cas. 31, at pp. 55, 56.

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station with luggage are met at the entrance of the station by railway porters, ready to receive their luggage, to take it to the platform, and to put it into the train. Everybody, too, knows that while, in ordinary course, the heavier articles of luggage are labelled and placed in a van under the sole control and custody of the railway company, it is the common practice for passengers to take the lighter articles of luggage—or “hand-luggage,” as it is called—in the carriage with them. This practice is recognised by railway companies, who provide suitable receptacles for hand-luggage in passenger carriages. And it is a practice as much for the convenience of railway companies as it is for the convenience of passengers. It was contended by the appellants that in receiving a passenger’s luggage, railway porters, though in the service of the company, and forbidden to accept any payment from the public, must be taken to be acting on behalf of the passenger and as his agents, and that this relation continues, as regards van-luggage, until it is labelled for the journey, and, as regards hand-luggage, until it is placed in the carriage in which the passenger intends to travel. Further, it was contended that the contract, as regards van-luggage, is altogether distinct and different from the contract as regards hand-luggage; that, in fact, there are two separate contracts, and that,

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whatever may be the case as regards van-luggage, railway companies come under no liability of any sort as regards hand-luggage until it is placed in the passenger's carriage. I cannot think this view correct. The services rendered by railway porters in receiving passengers' luggage, in taking it to the platform and putting it into the train, are part of the ordinary facilities for passenger traffic, which the public nowadays expect from railway companies, and which railway companies for the most part hold themselves out as ready and willing to afford. These services are covered by the fare which the passenger pays for his journey. They are offered in view of the contract, which a person who presents himself with luggage at a railway station presumably either has made or is about to make. The contract, as the case may be, runs from, or relates back to, the commencement of the journey, and the journey must, I think, be taken to commence, as regards passengers' luggage, at the time when the luggage is received by the company's servants for the purpose of the journey. Thenceforward, the work done in taking the luggage to the platform, in putting it into the train, in conveying it to its destination, and there delivering it, must, I think, be regarded, under ordinary circumstances, as one continuous operation to be performed under the contract. The contract is

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the ordinary contract of common carriers—a contract to carry securely. The contract, no doubt, becomes modified as regards that part of the luggage which is put into the passenger's carriage. At the passenger's request, or at his instance, the company dispense with precautions which they think necessary for the safety of the goods they have undertaken to carry, and so the passenger relieves the company from some of the risks which otherwise would fall upon them. But for all that the contract is one contract, and, in ordinary course, except so far as it may be modified by the acts or conduct of the passenger, it remains in force during the continuance of the journey from its commencement to its end."

The principles so laid down are, however, only partially applicable to India, where the legislature has thought fit to interfere in the contract between railway administration and passenger for the conveyance of the latter's luggage. By the first Railway Act (XVIII. of 1854, s. 9), it was provided that no railway company should in any case be answerable for loss or injury to any passenger's luggage, unless it should have been booked and separately paid for.

The contract
in India.

The stipulation as to separate payment was withdrawn by the Railway Act of 1879; s. 12 of which provided that a carrier by railway should in no case be answerable for loss, destruction, or

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deterioration of, or damage to, any passenger's luggage, unless a railway servant had booked and given a receipt for the same.

And now by sect. 74 of the Railway Act of 1890, it is enacted that a railway administration shall not be responsible for the loss, destruction, or deterioration of any luggage belonging to or in charge of a passenger, unless a railway servant has booked and given a receipt therefor. This section has two effects. One is to modify the contract so far that railway administrations come under no liability of any sort as regards the loss, destruction, or deterioration of hand-luggage, when not occasioned, at all events, by the wilful default or felonious act of their servants, before, during, or after the journey. As regards hand-luggage, the section makes it a term of the contract that it shall be carried at the passenger's risk.

Another consequence of the section is, that, with regard to van-luggage, the contract is affected as to the commencement of its operation. By the terms of the section the responsibility of the administration is made conditional on the luggage having been booked and a receipt given for it by a railway servant. From this it seems to result that the custody as well as the liability of the company begins to run from and relates back to the moment when the booking is completed and

the receipt is given; and if this is so, until then the servants of the administration are not their agents to receive luggage for the purpose of the journey so as to bind the company, and can have no implied authority to do so. It may be that the section does not relieve an administration from liability for the wilfully tortious or felonious acts of their servants, when acting within the scope of their authority (see p. 108); but for all loss, destruction, or deterioration otherwise arising to passengers' luggage which has not been booked, they are wholly exonerated.

Apart from sect. 74, the position of an administration with respect to the treatment of passengers' luggage before booking depends upon their course of business. Where the circumstances are such that it can be said that the administration undertakes the duty of conveying passengers' luggage from the entrance of the station to the booking office or train, they undertake a duty which, but for sect. 74, they would be bound to perform without negligence (*q*), and in the performance of that duty they are entitled to no further relief than the terms of the section afford them. They are responsible accordingly for any default which may not come under the head of loss, destruction, or deterioration (see p. 108). But where the cir-

(*q*) See Lord Bramwell's remarks, *G. W. Rail. Co. v. Bunch*, 13 App. Cas. at p. 48.

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cumstances are such that it must be taken that the porters in conveying passengers' luggage from the entrance to the booking office or train, are acting on behalf of the passengers, then the administration incur no liability of any sort or description for the conduct of the porters while so engaged.

The responsibility of an administration at the end of a journey for duly booked passengers' luggage is not touched by sect. 74. Their liability, having once attached, remains until full and unequivocal delivery; and it is part of their contract that the delivery of passengers' luggage shall be in the usual mode in which such delivery is made by them on the arrival of the train at their station. What is the usual mode is a question of fact. If it is their practice to deliver it by their own porters into the carriages or hired vehicles of the passengers, their liability as carriers continues until the porters have discharged their duty, unless the passengers accept delivery otherwise (*r*). If it is their custom to deliver on the platform, they must have it ready for delivery at the usual place of delivery, until the owner, in the exercise of due diligence, can call and receive it (*s*).

The regulation of the carriage of passengers'

(*r*) *Richards v. L. B. & S. C. Rail. Co.*, 18 L. J. (N. S.) C. P. 251; L. J. C. P. 137.

(*s*) *Patscheider v. G. W. Rail. Co.*, 3 Ex. D. 153.
Butcher v. L. & S. W. Rail. Co., 24

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luggage is one of the purposes for which railway administrations are required to make general rules consistent with the present Act (see sect. 47 (b)); but as yet none such appear to have been published.

A carrier by railway may limit his liability as a carrier of goods by special contract with his employer, subject, in India, to the condition that he must comply with the provision of clauses (a) and (b) of sect. 10 of the Railway Act of 1879, or sect. 72 (2) of the present Act. (See *post*, sects. 81, 82.)

Limitation
of carriers'
liability by
special con-
tract.

Subject to this condition, he may, at common law, by a special contract, protect himself from all liability, even if arising from the negligence of himself or his servants.

Apart from all questions connected with the Railway and Canal Traffic Acts, a carrier company may, if they use apt words for the purpose, make a contract protecting themselves from liability for damages, even for the negligence of themselves or their servants (*t*).

In case of
loss through
negligence.

In *Haigh v. Royal Mail Steam Packet Co.* (*u*) there was this condition on the ticket: "The company will not be responsible for any loss, damage, or detention of luggage under any circumstances nor for the maintenance of

(*t*) *Peek v. N. Staffordshire Rail. Co.*, 10 H. L. C. 473.

(*u*) 52 L. J. C. P. 640.

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passengers, or for their loss of time, or any consequence arising therefrom: nor for any delay arising out of accidents: nor for any loss or damage arising from the perils of the sea," &c. The Court of Appeal (Brett, M. R., Fry, L. J.) said, with regard to the loss of luggage, that it had been decided that a stipulation that the company would not be responsible for any loss or detention of goods did not include loss by negligence(*x*). But after that decision, the words "under any circumstances" were put into the contract, and were intended to carry the case further. And the Court, following an unreported case of *Thompson v. Royal Mail Steam Packet Co.*, held that those words included loss or damage to luggage by negligence. Also, that injury to the person was covered by the words of the stipulation.

And in *Manchester, Sheffield & Lincolnshire Rail. Co. v. Brown* (*y*), where the words were "all liability for loss or damage by delay in transit, or from whatever other cause arising," and it was argued that such a contract ought to be construed not to include protection to the company from the negligence of themselves or their servants; Lord Blackburn said that *Hinton v. Dibdin* (*z*),

(*x*) See *Martin v. G. I. P. Rail. Co.*, L. R. 3 Ex. 9; and Lord Blackburn in *Peck v. N. Staffordshire Rail. Co.*, 10 H. L. 473.
 (*y*) 8 App. Cas. 703 (A.D. 1883).
 (*z*) 2 Q. B. 646.

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forty years before, had decided quite the contrary; and there had been a great many cases since, proceeding upon the same principle, the result of which was, as he had pointed out in *Peek v. N. Staffordshire Rail. Co.*, that such a contract was meant to protect, and did, in effect, protect the company from the negligence of their servants.

The rule was recognized by the High Court of Bombay, in *Surutram Bhaya v. G. I. P. Rail. Co.* (a), where Westropp, C.J., said that "at common law, an ordinary carrier for hire might, by special contract, protect himself even against loss or injury occasioned by the gross negligence of himself or his agents."

In a case before the High Court at Calcutta (b), where twelve tins containing ghee were consigned to the East Indian Railway Company for carriage, and it was found by the plaintiff before accepting delivery that one of the tins had been cut open, and that there was a deficiency in the quantity of ghee contained in them; the plaintiff having signed a special contract, in the form approved by the Governor-General under Act IV. of 1879, s. 10, holding the company "harmless, and free from all responsibility in regard to any loss, destruction, or deterioration of

In case of loss through wilful default.

(a) I. L. R. 3 Bom. 96, at p. 105.

(b) *Moheswar Das v. Carter*, I. L. R. 10 Calc. 210.

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or damage to the said consignment from any cause whatever before, during, and after transit over the said railway, or other railway lines working in connection therewith," it was held by Garth, C. J., Wilson and Prinsep, JJ., that this agreement left no alternative but to hold that in no case would the railway company be liable to account to the consignee for any loss from any cause whatever during the whole time that the goods were in their charge; by O'Kinealy, J., that, assuming railway carriers to be subject to sects. 151 and 161 of the Contract Act (which he doubted), the conditions required by sect. 10 of the Railway Act had been properly complied with; but if these sections did not apply, then that railway companies were in the position of carriers before the passing of the Carriers Act; and that in either case the question for decision was narrowed to whether a railway company not subject to the Carriers Act can protect itself by contract from liability for the negligence or misconduct of its agents and servants.

"This very question," said the learned judge, "was elaborately discussed in the case of *Peek v. North Staffordshire Rail. Co. (b)*. There Mr. Justice Blackburn gave as his opinion, 'that the cases decided in our Courts between 1832 and 1854 established that a carrier might, by a special notice, make a contract limiting his responsibility,

(b) 10 H. L. C. 473.

even in the cases here mentioned of gross negligence, misconduct, or fraud on the part of his servants.' This view of the law has been adopted in several later cases. And it may now be taken as settled in England that a carrying company, when not subject to limitation by Act of Parliament, may contract itself from all responsibility arising from the acts of its agents or servants. Looking, then, at the cases already referred to, I think that under the 'risk note' in this case the owner undertook all risks of conveyance and loss, however caused, by the servants and agents of the company during the journey."

Again, in one case, *Jervis, C. J.*, is reported to have said that, "Under the carrier's notice negligence is the sole question; felony is immaterial" (c). And in *Taubman v. Pacific Steam Navigation Co.* (d), it was held that, in a special contract between shipowner and passenger that the former would not be answerable for loss of or damage to the latter's luggage under any circumstances whatsoever, the stipulation covered the case of wilful default and misfeasance by the shipowner's servants.

The question, however, whether a carrier can protect himself by contract from liability for the

(c) *G. W. Rail. Co. v. Rimell*, 18 C. B. at p. 585.

(d) 26 L. T. N. S. 704, decided in 1872 by Kelly, C. B., Martin and Bramwell, BB.

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wilful misconduct of his servants can hardly be considered—in England, at all events—as settled.

“Responsible for loss of or injury to,” were the words in the condition in *Peek v. North Staffordshire Rail. Co.* (e), and the intention of those who used them was, says Blackburn, J. (f), “that the company should not be liable for any loss or injury accruing in the course of the carriage, so that there might be no question for the jury at all. And with this view they have chosen the very words used by the legislature in the first Carriers Act. Those very words were determined in *Hinton v. Dibdin* (g) to exempt the carrier from liability for loss or injury occasioned by gross negligence of the carrier’s servants.” And Lord Westbury, C., in moving the judgment of the House, says (h) “that these words would exempt the company from responsibility for injury, however caused, including, therefore, gross negligence, and even fraud or dishonesty, on the part of the servants of the company, for the condition is expressed without any limitation or exception.” Of these opinions, Murphy, J., says, in *Ronan v. Midland Rail. Co.* (i), that Lord Blackburn and Lord Westbury “considered that a railway company entering into a contract claiming exemption

(e) 10 H. L. 473.

(f) Page 511.

(g) 2 Q. B. Rep. 646.

(h) Page 567.

(i) L. R. Ir. 14 C. P. 157.

from any loss or injury during the journey or voyage had claimed exemption even in the case of wilful misconduct, because the condition is expressed without any qualification." But in *Manchester, Sheffield, and Lincolnshire Rail. Co. v. Brown* (*k*), where the words of the contract were, "from all liability for loss or damage by delay in transit, or from whatever other cause arising," Lord Fitzgerald said (*l*) that the House would not "be justified in importing or implying a limitation not expressed. Read in that light, the language is large enough to protect the defendants from the negligent conduct of their servants, but I am not inclined to go further. If your lordships were to interpret it as protecting the defendants from wilful misconduct, then a large and important question would arise for determination—namely, whether a contract, which wholly relieved the company from liability for loss or damage, and exonerated them from all the obligations of duty, was not in itself unjust and unreasonable, and contrary to the policy of the law." In this case it was admitted by counsel for the company (Sir F. Herschell, S.-G.) that the words in the risk note, "or from whatever other cause arising," would probably not cover a wilfully tortious act. Except in *Taubman v. Pacific Steam Navigation*

(*k*) 8 App. Cas. 703.

(*l*) Page 720.

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Co. (m), it does not seem to have been ever—in England—*decided* that such words include wilful misconduct. The strongest authorities in that direction are the passage cited above by O’Kinealy, J., from Blackburn, J.’s, opinion in *Peek v. North Staffordshire Rail. Co.*, and Lord Westbury’s language already referred to in the same case. In the Irish case of *Ronan v. Midland Rail. Co. (n)*, Murphy, J., held that the words of the contract (which were special) included wilful misconduct, while the two other judges were of the contrary opinion; and Morris, C. J., said that even if the condition were that the company were to be free from all loss or liability whatever, he would hold that that would not include exemption from wilful misconduct.

Liability for
scheduled
articles.

In the case of certain goods of special value, the legislature has laid down conditions on which alone the carrier by railway is to be liable. Sect. 75 of the Act, following sect. 11 of the Railway Act, 1879, enacts that with respect to the articles mentioned in the schedule, which may be conveniently referred to as the scheduled articles, a carrier by railway shall not be liable for loss, destruction, or deterioration of, or damage to, such articles, if exceeding in value Rs.100, unless their value and nature has been declared, and, if so required by the railway administration,

(m) 26 L. T. N. S. 704.

(n) L. R. Ir. 14 C. P. 157.

an increased charge has been paid or an engagement to pay such charge has been entered into by way of compensation for increased risk.

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Under sect. 5 of the Carriers Act, 1865, any money actually paid to the carrier in consideration of such risk may also be recovered by the person entitled to recover in respect of loss or damage to the scheduled articles.

In order to fix the carrier with liability, the sender must make a declaration in such a manner that it may be understood that he invites an engagement on the part of the railway company to undertake the special risk, and is willing to pay the increased charge. If the company, after such a declaration so made, does not demand an extra charge, they will be taken to have waived their right, and be held liable (*o*). Declaration of value, how to be made.

The words of the Act being that the railway administration shall not be liable in the cases therein mentioned "for the loss, destruction, or deterioration of the parcel or package," unless the value be declared and an increased charge paid, if required: this does not protect the carrier from liability for loss or damage occasioned to the owner of the goods by the *delay* of the former in forwarding them to their destination (*p*). Delay of undeclared articles.

On the corresponding section of a former Railway Act (XVIII. of 1854, s. 10), in which the Loss of undeclared articles through

(*o*) *Venkatachala v. S. I. Rail. Co.*,
I. L. R. 5 Mad. 208; *Behrens v. G.*
N. Rail. Co., 7 H. & N. 950.

(*p*) *Hearn v. L. & S. W. Rail.*
Co., 10 Exch. 793.

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 criminal act
 of railway
 servants.

words were "no such railway company shall *in any case* be answerable for loss of, or injury to," &c., it was decided that the section applied to cases where the loss had been caused by the criminal acts of the company's servants(*q*). That case, however, can hardly be considered an authority on sect. 75 of the present Act, first, because the words "in any case," on which Turner, C. J., laid stress, are not found in the last-mentioned section; and next, because the decision proceeded on the assumption that the case of *Bradley v. Waterhouse* (*r*), which was cited on behalf of the plaintiff, was not in point, as having been decided on sect. 8 of the English Carriers Act of 1830 (which expressly provides that nothing in the Act shall be deemed to protect the carrier from liability to answer for loss or injury arising from the felonious acts of any servant, &c., in his employ, nor to protect any such servant from liability for any loss or injury occasioned by his or their personal neglect or misconduct). This would seem to be an error of fact, inasmuch as *Bradley v. Waterhouse* was tried before the passing of the Carriers Act, namely, in 1828, before Lord Tenterden, C. J., who directed the jury that "carriers were generally answerable for the honesty of their servants," but not if the loss had been occasioned by the plaintiff's own conduct.

(*q*) *Venkatachala v. S. I. Rail. Co.*,
 I. L. R. 5 Mad. 208.

(*r*) *Moody & Malkin*, 154.

The case is purely a common law authority, and is evidence of the common law rule prior to, and independent of, the statute.

So, also, is the case of *Machu v. London & S. W. Rail. Co. (s)*. In that case a bale of silk, the value of which had not been declared, was stolen while in a van on the road from the station to its destination by Johnson, in whose custody it had been placed, and who was in the employ of Chaplin & Horne, a firm employed by the railway company to carry goods for them. The defendants contended that Johnson was not a servant in their employ within sect. 8 of the Carriers Act, but a verdict was found for the plaintiff, and, upon a motion to enter a verdict for the defendants, Lord Cranworth said: "The statute must be construed with respect to this company as it would have been under the old system. The question then arises, Is the company liable for this felonious act? *They would undoubtedly be liable unless the statute has limited their liability.*" And the verdict was upheld.

The question, therefore, is whether the terms of sect. 75 relieve a railway administration from that liability for the criminal acts of their servants, which would otherwise attach to them. The words are not so wide as those in *Venkatachala v. South Indian Rail. Co. (t)*, or in *Moheswar Das v.*

(s) 2 Ex. 415.

(t) I. L. R. 5 Mad. 208.

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Carter (u), or in *Taubman v. Pacific Steam Nav. Co.* (x), which were held to include loss, &c., caused by the fraud or wilful default of the company's servants. (See *ante*, p. 95.)

They seem to be equivalent to the language of the condition in *Peek v. N. Staffordshire Rail. Co.* (y), "responsible for loss of, or injury to"; and though these words were considered by Lord Westbury capable of including even fraud or dishonesty on the part of the company's servants (z), yet the point has never been judicially decided so, and the balance of authority appears to incline the other way (a).

Who are
servants.

On the question of how a "servant" is, for this purpose, to be defined, it should be observed that in *Machu v. L. & S. W. Rail. Co.* (*ubi supra*), it was held that every person was a servant of a railway company, within the meaning of the 8th section of the Carriers Act, who was directly or indirectly employed by them to do what they had contracted to do by themselves, or by others under them, although not actually hired, retained, or paid by them, but the servant of a contractor whom they employ. And it makes no difference whether such servant is actually employed to carry the goods for the company when he steals

(u) I. L. R. 10 Cal. 210.

(x) 26 L. T. N. S. 704.

(y) 10 H. L. C. 473.

(z) S. C., at p. 567.

(a) See *ante*, pp. 102—104, and
Hearn v. L. & S. W. Rail. Co., 10
Ex. 801.

them, or whether he is not, at the time when he steals them, acting for or on behalf of the company, or transacting any of the business of the company at all (b).

In the case of *Stephens v. London & S. W. Rail. Co.*, a parcel of silk having been delivered at a receiving office for transmission by defendants' railway, without any declaration of value being made, and having been collected for carriage by the defendants, was subsequently stolen from one of their stations by a person in the employ of the proprietor of the receiving office by means of a forged order. It was held that the defendants were not protected by the provisions of the Carriers Act, as the loss had arisen from the felonious act of a person who was a servant of the defendants within the meaning of sect. 8.

By sect. 3 (7) of the present Act "railway servant" means any person employed by a railway administration in connection with the service of a railway; and by sect. 148 (2) includes for certain purposes a person employed upon a railway in connection with the service thereof by a person fulfilling a contract with the railway administration.

The declaration of value is no part of the contract, but is conclusive against the party making

Effect of
declaration of
value.

(b) *Stephens v. L. & S. W. Rail. Co.*, 18 Q. B. Div. 121.

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it, so as to preclude him from recovering damages higher than the value declared (c).

Non-scheduled articles,
declaration of
contents.

In the case of non-scheduled articles, a carrier is entitled at common law, and as provided by sect. 15 of the Act of 1879, and by sect. 58 of this Act, to demand a declaration of contents. Such a declaration, though (unless altered by the carrier) it is the basis of the contract, is not part of the contract; and an innocent misstatement of a material fact does not in itself avoid the contract. In order to do so, the misstatement must be wilful and fraudulent (d). So, in *Ishwardas Gulabchandā v. G. I. P. Rail. Co.* (e), it was held that the misdescription without fraudulent intent of bags of sugar candy as alum did not exonerate the railway company from all liability for the loss of the bags, but that the plaintiff was entitled to recover the value of alum only, and the company to charge the freight of alum only.

The contract, however, is avoided if the misdescription be made with intent to deceive. Thus, in *Shaikh Roheemoollah v. Palmer* (f), a carrying company, not a railway company, was held not liable for the loss of a box, the contents of which, a parcel of shawls value Rs. 400 packed in the middle of shoes value Rs. 27, were falsely de-

(c) *M'Cance v. L. & N. W. Rail. Co.*, 7 H. & N. 477. See sect. 75 (2) of the present Act.

(d) *Lebeau v. General Steam Navi-*

gation Co., L. R. 8 O. P. 88.

(e) I. L. R. 3 Bom. 120.

(f) 1 Coryton's Bengal Reports, 24, 12th Aug. 1864.

scribed as shoes only by the party forwarding it. Mr. Justice Macpherson, in giving judgment, said that the goods were delivered under a misrepresentation as to their description, which vitiated the contract. The case came within the words of Mr. Baron Parke, in *Walker v. Jackson(g)*, that is to say: "If anything is delivered to a person to be carried, it is the duty of the person receiving it to ask such questions about it as may be necessary; if he asks no questions, and there be no fraud to give the case a false complexion on the delivery of the parcel he is bound to carry the parcel as it is. . . . If they are answered improperly, so as to deceive him, then there is no contract between the parties; it is a fraud which vitiates the contract altogether." Macpherson, J., held that in the present case the questions were asked and answered so as to mislead, and that it was not necessary for the defendants to show that they would have charged a higher rate had they known that (as the fact was) shawls were packed with the shoes. If they were deceived by the representation, and thereby incurred a greater risk than they would have done, the contract was vitiated.

The rule laid down in *Ishwardas Gulabchand v. G. I. P. Rail. Co.* is, in part, embodied in sect. 78 of this Act, so far as it provides that in respect

(g) 10 M. & W. 161, at p. 168.

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of the loss of goods falsely described the administration shall not in any case be responsible to an amount exceeding the value calculated according to the false description.

The section does not say affirmatively in what cases the administration is to be responsible for the loss of falsely-described goods. Its silence in this respect is quite compatible with the principle of the cases above referred to, that in the case of a wilfully false description the carrier is exonerated from all responsibility; in that of an innocently false description he is only partially exonerated.

Carrier's contract, with whom.

In the absence of special circumstance, the carrier's contract is with the person in whom the property of the goods is vested. Thus, if there be a valid contract between consignor and consignee, the latter is the proper person to sue the carrier; if no such valid contract, the former, although the consignee may have appointed the carrier (*h*).

If goods are sent upon approval only, the consignor is the proper person to sue (*i*).

Evidence.

At common law, if goods intrusted to a common carrier be lost or damaged, the law will *conclusively presume* that the carrier has been guilty of

(*h*) *Dutton v. Solomonson*, 3 Bos. & P. 582; *Coombs v. Bristol and Exeter Rail. Co.*, 3 H. & N. 510.

(*i*) *Swain v. Shepherd*, 1 M. & Rob. 223.

negligence, unless he can show that the loss or damage was occasioned by what is technically called the act of God, or by the King's enemies. And the loss or damage of luggage, while under the custody of a stage coachman, a cabman, or even a gratuitous bailee, will raise a *prima facie* inference of want of care, which, in the absence of evidence to the contrary, will render the bailee liable to an action (*k*).

Sect. 13 of the Railway Act, 1879, relieved a plaintiff in a suit against a carrier by railway from the burden of proving negligence against the latter, and left it to the latter to prove that the loss, damage, or non-delivery of the goods was due to a cause for which he was not responsible.

So, under the present Act, though the liability of a carrier by railway is only that of a bailee for hire, and there is consequently no conclusive presumption of negligence against him in case of loss of or damage to property entrusted to him, yet the burden of proving no negligence lies upon him. It is not necessary for the plaintiff to prove how the loss was caused in any suit against a railway administration for compensation for loss of animals or goods (sect. 76), or, in the words of sect. 9 of the Carriers Act, 1865 (the applicability of which section to railways seems

(*k*) Taylor on Evidence, § 150, and cases there cited.

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revived by the repeal of Act IV. 1879, s. 2. See *ante*, p. 69), "In any suit brought against a common carrier for the loss, damage, or non-delivery of goods entrusted to him for carriage, it shall not be necessary for the plaintiff to prove that such loss, damage, or non-delivery was owing to the negligence or criminal act of the carrier, his servants or agents." In a case where goods had been delivered to a railway company in India for carriage, under a condition that the company should not be responsible "for loss or damage arising from fire, the act of God, or civil commotion," and in the course of the journey a fire broke out in the train, and a large portion of the goods were destroyed, it was held that the ninth section of the Carriers Act, 1865, was general, and said that "in any suit" brought against a common carrier for loss, damage, or non-delivery of goods, the burden of proof of negligence or criminality should not be cast upon the plaintiff. Consequently, notwithstanding the condition, the plaintiff was not called on, in the first instance, to prove affirmatively that the fire was caused by the negligence or misconduct of the company's servants (*l*).

Delivery,
time of.

A common carrier's duty to deliver safely has nothing to do with the time of delivery—that is a matter of contract; and when there is no

(*l*) *Ishwardas Gulabchand v. G. I. P. Rail. Co.*, I. L. R. 3 Bom. 120.

express contract, there is an implied contract to deliver within a reasonable time. It must depend on the circumstances of each case what is a reasonable time. It is his duty to convey the goods without an unnecessary delay or deviation, but it may be necessary, for the safe carriage of the goods, that he should either delay or deviate in his course, and he is then justified in doing so. Where the delay is caused by an accident entirely beyond the control of the carrier, he is not liable. A railway company is not responsible for a delay caused by a second railway company, which, under an agreement with the first, sanctioned by Act of Parliament, has running powers over their line, because the second company does not merely use the line by permission of the first company, but in exercise of a statutory right (*m*).

A contract by a railway company to carry goods by a given train, which ordinarily arrives in London at a particular hour, does not amount to a warranty that it will so arrive, although the company's servants be informed that the object of the sender requires that it should so arrive. There is nothing unreasonable in a condition relieving a common carrier from responsibility for loss of market, provided there is delivery within reasonable time (*n*).

(*m*) *Taylor v. G. N. R.*, L. R. 1
C. P. 385.

(*n*) *Lord v. Midland Rail. Co.*,
L. R. 2 C. P. 339.

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Although a carrier may not be bound to deliver goods on any specific day, or within any specific time, he is bound to deliver them within reasonable time, and what constitutes reasonable time must be determined upon the consideration of all the circumstances of the case (*o*).

Delivery,
mode of.

A railway company is under a common law obligation to provide a safe mode of exit and transit. Where there was none such, and the goods were live animals ("It might have been different if the goods had been inanimate," said Mr. Baron Martin), it was held that there was no such complete delivery as to exonerate the company, though the animals were brought out of the truck on to the platform, and the owners' servants were there and touched them (*p*). In the same case, it was also held that a condition assuming to limit such obligation was void, as unreasonable, under sect. 7 of the Railway and Canal Traffic Act, 1854.

If the carrier delivers at the place indicated by the sender, or does what is equivalent to a delivery there (*according to the usual course of business*, which must be taken to be incorporated in the sender's directions to the carrier), he does all that he is bound to do. He obeys the sender's directions, and is guilty of no wrong. To make

(*o*) *Buldeo Dass v. Nathoomull*,
2 Agra, 132.

(*p*) *Rooth v. N. E. R.*, L. R. 2
Ex. 173.

him liable, there must be some fault: it is a question of fact whether there has been negligence to make him guilty of conversion (*q*). PART II.

On the subject of delivery, the provisions of the Indian Contract Act are in accordance, so far as they go, with the common law. The following are the most important:—Sect. 160: “It is the duty of the bailee to return or deliver, according to the bailor’s directions, the goods bailed, without demand, as soon as the time for which they were bailed has expired, or the purpose for which they were bailed has been accomplished.” Under Indian Contract Act.

Sect. 161: “If, by the fault of the bailee, the goods are not returned, delivered or tendered at the proper time, he is responsible to the bailor for any loss, destruction or deterioration of the goods from that time.”

Sect. 166: “If the bailor has no title to the goods, and the bailee, in good faith, delivers them back to, or according to the directions of, the bailor, the bailee is not responsible to the owner in respect of such delivery.”

Sect. 117 of the Indian Evidence Act I. of 1872, provides that while no bailee shall be permitted to deny that his bailor had, at the time when the bailment commenced, authority to make it; yet, that if he delivers the goods bailed to a person other than the bailor, he may prove that

(*q*) *M’Kean v. M’Ivor*, L. R. 6 Ex. 36.

PART II. such person had a right to them as against the bailor.

By sect. 167 of the Contract Act, if a person other than the bailor claims goods bailed, he may apply to the Court to stop the delivery to the bailor, and to decide the title.

And by sect. 57 of the present Railway Act, the railway administration is empowered to require an indemnity, on delivery of goods, in cases where the same are claimed by two or more persons, or the ticket or receipt given for them is not forthcoming.

End of duty
as carrier.

When a carrier has done all that he contracted to do, his relation as carrier ceases, and a duty is cast upon him of acting as a reasonable man (*r*). So, after a refusal of the goods at the consignee's address, he becomes an involuntary bailee, and is only bound to act with reasonable care and caution in respect of them. A misdelivery under such circumstances is not necessarily, as a matter of law, a conversion, but it is a question of fact whether he has exercised reasonable care and caution (*s*). The contract of the carrier being not only to carry, but also to deliver, it follows that to a certain extent the custody of the goods, as carrier, must extend beyond, as well as precede, the period of their transit from the place of con-

(*r*) Per Martin, B., in *Heugh v. L. & N. W. Railway*, L. R. 5 Ex. 51. (*s*) *Heugh v. L. & N. W. Railway*.

signment to destination. There is a necessary interval between receipt and dispatch, and a necessary interval between arrival and delivery, during which latter the goods remain in his hands as carrier. *A fortiori* will this be the case where there is unreasonable delay on the part of the carrier, if the consignee is ready to receive. But when once the consignee is *in morâ* by delaying to take away the goods beyond a reasonable time, the obligation of the carrier becomes that of an ordinary bailee, being confined to taking proper care of the goods as warehouseman, and he ceases to be liable in case of accident (*t*). Just as the carrier is entitled to a reasonable time within which to deliver, so the recipient of the goods is entitled to a reasonable time, which he cannot for his own convenience, or by his own laches, prolong, to demand and receive delivery. What will amount to a reasonable time is sometimes a question of difficulty, but is a question of fact, not of law (*u*).

So with regard to passenger's luggage, it is the duty of a railway company to have it ready for delivery upon the platform at the usual place of delivery until the owner, in the exercise of due

(*t*) Under the Railway Act of 1890 this distinction does not hold good; the liability of a carrier by railway being that of an ordinary bailee for hire under the Contract

Act: sects. 151, 152, 161.

(*u*) Per Cockburn, C. J., delivering the judgment of the Court, in *Chapman v. G. W. Rail. Co.*, 5 Q. B. Div. 278.

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diligence, can receive it; and the liability of the company, as carriers, does not cease until a reasonable time has been allowed to the owner to do so (*v*).

Again, in *Surutram Bhaya v. Great Indian Peninsula Rail. Co.* (*x*), Westropp, C. J., said that the principle quoted in *Patscheider v. Great Western Rail. Co.*, by Cleasby, J., from Redfield on Carriers, that "it is the duty of a railway company, in regard to the luggage of a passenger which has reached its destination, to have the baggage ready for delivery upon the platform at the usual place of delivery until the owner, in the exercise of due diligence, can call and receive it, and it is the owner's duty to call for and remove it within a reasonable time—applied also to a consignment of goods."

Liability of
warehouse-
man.

A misdelivery by a warehouseman, as well as by a carrier, is an unauthorized act, whether it be a conversion or whether it be a breach of contract, or a breach of duty, which vests at once a right of action in the owner (*y*).

Under sect. 47 (f) of the present Act every railway company, and, in the case of a railway administered by the Government, an officer appointed by the Governor-General in Council in

(*v*) *Patscheider v. G. W. Rail. Co.*,
3 Ex. D. 153.

(*x*) I. L. R. 3 Bom. 96.

(*y*) Per Thesiger, L. J., *Huort v. L. & N. W. Rail. Co.*, 4 Ex. Div. 188.

this behalf, is to make general rules consistent with this Act for the purpose, among other things, of regulating the terms and conditions on which the railway administration will warehouse or retain goods at any station on behalf of the consignee or owner; but it does not appear that such rules have yet been made.

The responsibility of a railway administration as a warehouseman is the same under the Contract Act as at common law; that is, apart from special contract, to take as much care of the goods bailed as a man of ordinary prudence would, under similar circumstances, take of his own goods of the same bulk, quality and value.

The contract of the warehouseman is to take due and reasonable care of the goods intrusted to him, which includes the keeping them in a suitable place, where they will not be exposed to depredation, or to damage by weather, breakage or otherwise. If, notwithstanding such due and reasonable care, the goods are stolen, burnt or damaged, he is not responsible; but if these casualties happen through his negligence, he is (z). He undertakes no further obligation than to take proper care that the goods are safely kept from loss or injury. But if the bailor and bailee agree that the goods shall be deposited on other terms than those implied by law, the duty of the bailee,

(z) Per Lush, J., *Harris v. G. W. Rail. Co.*, 1 Q. B. D. at p. 517.

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and, consequently, his responsibility, are determined by the terms on which both parties have agreed (a).

The power of a railway administration to limit their liability for goods deposited with them to be warehoused is not restricted by sect. 72 (2) of this Act, which only applies to goods delivered to them for carriage.

Contract by
ticket.

A common form of special contract, whether for deposit or carriage, is contract by ticket. The authorities on this subject are examined, and the principles to be deduced from them thus stated by Stephen, J., in *Watkins v. Rymill* (b), "Thrown into a general form, the result of the authorities considered appears to be as follows:—A great number of contracts are in the present state of society made by the delivery by one of the contracting parties to the other of a document in a common form, stating the terms by which the person delivering it will enter into the proposed contract.

"Such a form constitutes the offer of the party who tenders it. If the form is accepted without objection by the person to whom it is tendered, this person is, as a general rule, bound by its contents, and his act amounts to an acceptance of the offer made to him, whether he reads the

(a) Per Blackburn, J., *S. C.*, at p. 530. (b) 10 Q. B. D. 178.

document or otherwise informs himself of its contents or not(c). To this general rule, however, there are a variety of exceptions. (1) The nature of the transaction may be such that the person accepting the document may suppose, not unreasonably, that the document contains no terms at all, but is a mere acknowledgment of an agreement not intended to be varied by special terms. Some illustrations of this exception may be found in the judgments in *Parker v. S. E. Rail. Co.*, and in the language of some of the Lords in *Henderson v. Stevenson (ubi infra)*, though these must be received with caution, for reasons given by Lord Blackburn in his judgment in *Harris v. G. W. Rail. Co. (d)*. (2) A second exception would be the case of fraud, as if the conditions were printed in such a manner as to mislead the person accepting the document(e). (3) If, without being fraudulent, the document is misleading, and does actually mislead the person who has taken it(f). (4) Where the conditions

(c) *Zunz v. S. E. Railway*, L. R. 4 Q. B. 539; *Harris v. G. W. Railway*, 1 Q. B. Div. 515. The judgment of Lord Bramwell in *Parker v. S. E. Railway*, 2 C. P. Div. 416; *Burke v. S. E. Railway*, 5 C. P. D. 1.

(d) *I. e.*, because they were not part of the *ratio decidendi*.

(e) See *Allan v. Mawson*, 4 Camp. 115; and the case cited by Lord Hardwicke in 2 Atk. 32; referred

to by Lord Blackburn, *Harris v. G. W. Railway*, 1 Q. B. Div. p. 530.

(f) *Henderson v. Stevenson*, L. R. 2 H. L. Sc. 470, in which case there was no reference on the front of the ticket to the back where the conditions were printed, and the plaintiff swore that he did not look at the back. Held, that the conditions did not affect the company's liability.

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are unreasonable in themselves, or irrelevant to the main purpose of the contract. Illustrations are suggested by Lord Bramwell, in *Parker v. S. E. Rail. Co. (g)*, one being the case of a ticket having on it a condition that the goods deposited in a cloak room should become the absolute property of the railway if not removed in two days."

The latest judgment of a Court of Appeal, however, on this subject, is the ruling of the majority (Mellish & Baggallay, L. JJ.) in *Parker v. S. E. Rail. Co. (g)*, that the proper question to put to the jury is, "whether the railway company did what was reasonably sufficient to give the plaintiff notice of the condition." And the last House of Lords case is *Henderson v. Stevenson (h)*.

The case of *Henderson v. Stevenson (h)* is a conclusive authority that if the person receiving a ticket (which as a document is complete on the face of it) does not know that there is any writing upon the back of the ticket, he is not bound by a condition printed on the back. If he knows that there are conditions on the ticket, he is by them bound, though he does not, in fact, know what the conditions are: *Harris v. G. W. Rail. Co. (i)*. The moot point is whether, when a person knows that there is writing or printing on the ticket, but does not know such writing or printing to

(g) 2 C. P. Div. 416.

(h) L. R. 2 H. L. Sc. 470.

(i) 1 Q. B. Div. 515.

contain conditions, and does not read it, he is, under these circumstances, bound as *a matter of law* by the conditions contained in the ticket; or whether his being bound depends on some question of fact to be determined by the jury, viz., whether he had *reasonable notice* that the writing or printing contained conditions. The former was the opinion of Bramwell, L. J., in *Parker v. S. E. Rail. Co.*, the latter that of his colleagues.

Rights over Goods while in the Carrier's hands.

There has to be considered, in connection with the transit by carrier, the right of stoppage *in transitu*, or the right of the unpaid vendor to stop goods *in transitu* in the event of the vendee's insolvency. This subject has been dealt with by the Indian legislature in the Indian Contract Act, sects. 99 to 106. Sect. 99 gives the power to stop in transit; sect. 100 enacts that goods are to be deemed in transit while they are in the possession of the carrier, or lodged at any place in the course of transmission to the buyer, and are not yet come into the possession of the buyer, or any person on his behalf, otherwise than as being in possession of the carrier, or as being so lodged. This is in accordance with English law. When goods are placed in the possession of a carrier to be carried for the vendor to be delivered to the purchaser, the

Stoppage in
transitu.

PART II.

transitus is not at an end so long as the carrier continues to hold the goods as a carrier. It is at an end if he agrees with the consignee to hold the goods for the consignee as his agent, not as carrier; the same principle applies to a warehouseman or wharfinger (*f*). The question always is whether the wharfinger is in possession *quâ* agent of the buyer. Until the buyer does something to evince an intention of possessing the goods, the right of the unpaid vendor to stop the goods remains (*g*).

Right ceases
when goods
come into
vendee's
possession.

The right of stoppage is gone when the *transitus prescribed by the vendor* is at an end, and the goods have been delivered to the purchaser or his agent, though they may not have arrived at their ultimate destination (*h*). The law is clearly settled that the unpaid vendor has a right to retake the goods before they have arrived at the destination originally contemplated by the purchaser, unless in the meantime they have come to the actual or constructive possession of the vendee. If the vendee take them out of the possession of the carrier into his own before their arrival, with or without the consent of the carrier, there seems to be no doubt that the transit would be at an end. A case of constructive possession

(*f*) By the Court of Appeal, 783; *Bolton v. Lancashire and Yorkshire Rail. Co.*, L. R. 1 C. P. 431.
Ex parte Cooper, In re Maclaren,
11 Ch. Div. 69.

(*h*) *Ex parte Gibbs, In re Whitworth*, 1 Ch. D. 101.

(*g*) *Ex parte Barrow*, 6 Ch. D.

is, where the carrier enters expressly, or by implication, into a new agreement, distinct from the original contract for carriage, to hold the goods for the consignee as his agent (i). PART II.

There may be a part delivery, which would Part delivery. operate as a constructive delivery of the whole, but that rule is confined to cases where the delivery of part is intended to be a delivery of the whole (k). And in the absence of evidence to the contrary, it must, as a general rule, be assumed that the delivery of part is intended to operate only as a delivery of that part (l).

By sect. 101 of the Contract Act, the seller's right of stoppage does not, except in the cases hereinafter mentioned, cease on the buyer's re-selling the goods while in transit, and receiving the price, but continues until the goods have been delivered to the second buyer, or to some person on his behalf. Effect of re-sale of goods in transitu.

And so, by English law, there is no doubt that the right of a vendor to stop *in transitu* exists so long as the *transitus* is not at an end; and, as a general rule, the mere sale of goods while they are *in transitu* does not determine the *transitus* (m).

(i) Per Baron Parke, delivering the judgment of the Court, in *Whitehead v. Anderson*, 9 M. & W. at p. 534, cited by Bacon, V.-C., in *Ex parte Gibbs*.

(k) *Coventry v. Gladstone*, L. R.

6 Eq. 44, at p. 50.

(l) *Ex parte Cooper*, In re *Mac-laren*, 11 Ch. Div. 68.

(m) *Ex parte Golding*, *Davis & Co., Limited*, In re *Knight*, 13 Ch. Div. 628.

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Cessation of
right of
stoppage in
transit, on
assignment by
buyer of bill
of lading.

“The right of stoppage ceases if the buyer, having obtained a bill of lading or other document showing title to the goods, assigns it while the goods are in transit to a second buyer, who is acting in good faith, and who gives valuable consideration for them” (n).

The expression “document showing title to goods” would seem to include a dock-warrant, a warehouse-keeper’s certificate, wharfinger’s certificate, or warrant or order for delivery (o).

English law, which long made a distinction between bills of lading and other documents of title in this respect, is now to the same effect.

It is so stated in Smith’s Leading Cases (p): The vendee may, by negotiating the bill of lading to a *bonâ fide* transferee, defeat the vendor’s right to stop *in transitu*. And the recent Act to amend the Factors Acts (40 & 41 Vict. c. 39) has extended this doctrine by enacting (sect. 5) that “where any document of title to goods has been lawfully indorsed, or otherwise transferred to any person as a vendee or owner of the goods, and such person transfers such document by indorsement (or by delivery when the document is by custom, or, by its express terms, transferable by delivery, or makes the goods deliverable to the bearer) to a person who takes the same *bonâ fide*, and for

(n) Contract Act, s. 102.

Exception 1.

(o) See Contract Act, s. 108,

(p) Vol. i. p. 807, 9th ed.

valuable consideration, the last-mentioned transfer shall have the same effect for defeating any vendor's lien or right of stoppage *in transitu* as the transfer of a bill of lading has for defeating the right of stoppage *in transitu*.

In *Rodger v. Comptoir d'Escompte de Paris* (q), it was decided by the Judicial Committee of the Privy Council that the release of an antecedent claim was not a good consideration for a bill of lading, so as to defeat the vendor's right of stoppage *in transitu*. But the Court of Appeal has expressly dissented from this view, and held that the transfer of a bill of lading for valuable consideration defeats the right of stoppage *in transitu*, although the consideration was past, and not given at the time of the transfer (r).

But where the bill of lading has been transferred by the consignee only by way of pledge, the vendor can still stop *in transitu*, subject to the obligation of paying to the pledgee the amount of his advance (s). This only applies to a pledge for a specific advance, not to a pledge for securing a general balance of account (t).

Effect of
pledge of bill
of lading.

To the same effect is sect. 103 of the Contract Act:—"Where a bill of lading or other instrument of title to any goods is assigned by the

(q) L. R. 2 P. C. 393.

(s) *In re Weatsinthus*, 5 B. & Ad.

(r) *Leask v. Scott Brothers*, 2 Q. 817.

B. Div. 376.

(t) *Spalding v. Ruding*, 6 Beav.

376.

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buyer of such goods by way of pledge, to secure an advance made specifically upon it, in good faith, the seller cannot, except on payment or tender to the pledgee of the advance so made, stop the goods in transit.”

So, in *Kemp v. Falk* (o), Selborne, L. C., said that the cases of *In re Westzinthus* (p) and *Spalding v. Ruding* (q) clearly establish that the right of stoppage *in transitu* is not discharged absolutely by an indorsement of a bill of lading *by way of security or pledge*, but that it remains, in equity, at all events, as it was before, subject to a charge in favour of the indorsee of the bill of lading, which must be paid off, and which, being paid off, the person entitled to and exercising the right of stoppage *in transitu* stands in exactly the same position, as to everybody else, as if there had been no security, and no pledge, and no indorsement of the bill of lading.

And, the case of a bill of lading and other documents of title under 40 & 41 Vict. c. 39, s. 56 excepted, as a general rule, if a vendee sells goods before they have been delivered to him, he sells them subject to the vendor's right to stop *in transitu*, because the second vendee of a chattel cannot, generally speaking, stand in a better position than his immediate vendor (r).

(o) 7 App. Cas. 573.

(p) 5 B. & Ad. 817.

(q) 6 Beav. 376.

(r) *Lickbarrow v. Mason*, 1 Smith's L. C., 9th ed. p. 807.

It has been laid down by the Court of Appeal (s) PART II.
 that when the purchaser of goods has re-sold them, though the vendor loses by the re-sale the right to stop the goods themselves *in transitu*, he is entitled, if he gives that which would, had there been no re-sale, have been a valid notice of stoppage *in transitu*, to intercept, to the extent of his own unpaid purchase-money, so much of the sub-purchaser's purchase-money as remains unpaid by him. *Ex parte Golding, Davis & Co.; Ex parte Falk.*

But in the House of Lords the Court of Appeal's decision in *Ex parte Falk*, *In re Kiell*, was affirmed on grounds independent of *Ex parte Golding, Davis & Co.*, and the decision in the latter case was questioned by Selborne, L. C., who said:—"Where the sub-purchasers get a good title as against the right of stoppage *in transitu*, there can be no stoppage *in transitu* as against the purchase-money payable by them to their vendor. At all events, until I hear authority for that proposition, I am bound to say that it is not consistent with my idea of the right of stoppage *in transitu*, that it should apply to anything except to the goods which are *in transitu*" (t).

Sections 104, 105, and 106 of the Contract Act provide that the seller may effect stoppage in transit either by taking actual possession of the goods or by giving notice of his claim to the Stoppage, how effected, and rights of seller on stoppage.

(s) *Ex parte Golding, Davis & Co.*, *re Kiell*, 14 Ch. Div. 446.
 13 Ch. Div. 628; *Ex parte Falk*, *In* (t) 7 App. Cas. at p. 578.

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carrier or other depositary in whose possession they are ; that such notice may be given either to the person who has the immediate possession of the goods or to the principal whose servant has possession, and that in the latter case the notice must be given at such a time and under such circumstances that the principal, by the exercise of reasonable diligence, may communicate it to his servant in time to prevent a delivery to the buyer; and, lastly, that stoppage in transit entitles the seller to hold the goods stopped until the price of the whole of the goods sold is paid.

Transfer of
railway
receipt.

The transfer of a railway receipt for goods may, in connection with other circumstances, be sufficient to pass the property in and right of possession to the goods. If the goods are delivered to the railway company, and by them accepted on the terms of being delivered to the vendee to cover advances or acceptances made by him in favour of the sender, then the property and right of possession pass, and it is immaterial whether they pass by the delivery of a bill of lading or by the delivery of a receipt. In such a case the delivery of the receipt appears to be a symbolical transfer of the property, and may be considered the same as if the goods had passed from hand to hand (*u*).

(*u*) *Eagleton v. E. I. R.*, 8 B. L. 10 Bing. 246, and *Evans v. Nichol*, R. 581, following *Holl v. Griffin*, 3 M. & G. 614.

The transfer, however, of a railway receipt would clearly be insufficient to affect the right of stoppage *in transitu*. In a recent case, decided by the High Court at Bombay, it was held, that railway receipts were not instruments of title within the meaning of sect. 103 of the Indian Contract Act, and that the unpaid vendor was not deprived of his right to stop the goods in transit, by the indorsement of such receipts, to secure a specific advance (*v*). And it would seem free from doubt that railway administrations in India are under no obligation to issue railway receipts at all for goods other than passengers' luggage, and that the practice of treating such receipts as documents of title, by delivering goods to any indorsee of the receipt, is carried on, where it prevails, entirely at the railway administration's own risk.

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Does not
defeat right
of stoppage
in transitu.

By the Indian Contract Act, s. 91, a delivery to a wharfinger or carrier of the goods sold has the same effect as a delivery to the buyer, but does not render the buyer liable for the price of goods which do not reach him, unless the delivery is so made as to enable him to hold the wharfinger or carrier responsible for the safe custody or delivery of the goods.

Effect of
delivery to
carrier as
between
buyer and
seller.

At common law, so long as goods, though delivered to a common carrier appointed by the

(*v*) Referred to by Scoble, Q.C., Proceedings of Council of G. G., 21 March, 1890.

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Carrier by
railway's lien.

consignee, remain at the risk of the consignor, they are not delivered to the consignee (*x*).

Section 55 of the present Act, following sect. 14 of Act IV. of 1879, confers on a railway administration a general lien and a right of sale, which otherwise they would not possess. The Indian Contract Act gives a bailee no power of selling the goods to which his lien extends, and gives the carrier no general lien. This is in accordance with the common law, by which a carrier has a particular lien upon the goods for the cost of their carriage, but (apart from special agreement) no general lien for a balance of account (*y*). And if a person who has a lien over goods parts with the possession of them, he loses the lien, and if he sells them he is guilty of a tortious act (*z*).

The Railways Clauses Act, 1845, s. 97, which gives a railway company in England a general lien with power of sale, applies only to tolls due for the use of the line by persons conveying goods in their own carriages, and not to tolls or charges due for goods carried by the company as carriers (*a*).

It has been decided by the House of Lords that a carrier retaining goods by virtue of his

(*x*) *Winter v. Way*, 1 Mad. H. C. R. 200, following *Dunlop v. Lambert*, 6 Cl. & Fin. 600.

(*y*) *Rushforth v. Hadfield*, 6 East, 519, and 7 East, 224.

(*z*) *Mulliner v. Florence*, 3 Q. B. Div. 484; *Thames Ironworks Co. v. Patent Derrick Co.*, 1 J. & H. 93.

(*a*) *Wallis v. L. & S. W. Rail. Co.*, L. R. 5 Ex. 62.

lien is not at common law entitled to make any charge for warehousing the goods (*b*).

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In the case referred to the principle was thus explained by Lord Wensleydale: "No person has by law a right to add to his lien upon a chattel a charge for keeping it till the debt is paid: that is, in truth, a charge for keeping it for his own benefit, not for the benefit of the person whose chattel is in his possession. That was the opinion of all the judges of the Courts below, and I think their opinion is perfectly right" (*c*).

But sect. 55 of the present Act authorizes a carrier by railway not only to sell, but to retain from the sale proceeds all charges and expenses of the detention, notice, and sale, including, in the case of animals, the expenses of the feeding, watering, and tending thereof. And, generally, the expression "all charges and expenses of the detention" will cover all charges properly incurred in taking such reasonable care of the goods or animals as a reasonable owner would take of his own, and as is required from a bailee under sect. 151 of the Contract Act.

Carriage of Passengers.

The common law right of a traveller to be conveyed by the carrier of passengers on his readiness to pay the usual fare is subject to the con-

Limitations
of passenger's
right to be
carried.

(*b*) *British Empire Shipping Co. v. Somerset*, 8 H. L. C. 338. (*c*) *S. C.*, p. 344.

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dition that he offer himself as a passenger at a reasonable time and place. A passenger by a train cannot claim to have the distribution of tickets resumed on his behalf, which has been already closed for the public outside the station (*d*).

At common law, carriers by railway, like other carriers of passengers, are not compellable to carry a passenger unless there be room in the train (*e*); but their position may be different if by the issue of a ticket or otherwise they have contracted to carry him by that train. The case of intermediate stations was met by sect. 18 of the Indian Railway Act of 1879, which provided that at such stations the fares should be deemed to be accepted, and the tickets furnished only upon condition that there be room in the train. Where tickets are issued subject to no such condition, expressed or implied, probably at common law all holders are entitled to room in the train.

The law is so stated by Mr. Macnamara, in his work on Carriers, p. 449: "Upon an unconditional contract to carry, it seems that a railway company are bound to find room for all (*f*). A railway company are bound to find room in every train for every person holding a ticket who presents himself at a starting station, but at intermediate stations they are allowed to issue tickets conditionally on there being room, in accordance

(*d*) *Pratab Daji v. Bombay Baroda & C. I. Rail. Co.*, I. L. R. 1 Bom. at p. 58.

(*e*) *Lovett v. Hobbs*, 2 Show. 127.
(*f*) *Hawcroft v. G. N. R.*, 21 L. J. Q. B. 178.

with a bye-law on the subject" (to the same effect as sect. 18 of Act IV. of 1879). PART II.

Hawcroft v. G. N. Rail. Co., though it hardly appears to go the whole length of the statement cited, is certainly an authority for the proposition that a person holding a ticket authorizing him to travel by a particular train, is entitled to maintain an action if when he presents himself as a passenger by that train he finds no room for him in it.

But now, under the present Act (sect. 67), the difference between intermediate and starting stations no longer exists; and fares are deemed to be accepted and tickets issued subject to the condition of there being room available in the train for which the tickets are issued. Under Indian Railway Act.

The mere issue of a ticket does not amount to a contract on the part of a railway company, or impose upon them a duty, to have a train ready to start at the time at which the passenger is led to expect it; and a through ticket is simply a ticket for the passenger's conveyance from A to B, and is no evidence of a contract to carry from A to B within a reasonable time *simpliciter*, but only of a contract to carry within a reasonable time, with reference to the usual course of the company as contained in their time-bills (*g*). But where a railway company advertised, by their time-tables, a through train from London to Hull, Import of issue of ticket.

(*g*) *Hurst v. G. W. R.*, 19 C. B. N. S. 310.

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after they knew that the connecting train (belonging to another company) had been discontinued, and a passenger, having made his arrangements on the faith of these time-tables, travelled by an early train from London to Peterborough, one of the defendant company's stations, and, after transacting his business there, asked for a ticket from Peterborough to Hull by the evening train, so advertised, and found there was no such train, and brought his action for damages, it was held that he was entitled to recover, as for a false representation (*g*).

Liability
for unpunctuality,
and
measure of
damages.

Where there was a condition in the company's time-tables that "*Every attention will be paid to ensure punctuality, so far as it is possible, but the company do not undertake that the trains shall start or arrive at the times specified in the bills, nor will they be accountable for any loss, inconvenience or injury which may arise from delays or detention nor for the arrival of the company's own trains in time for the nominally corresponding train of any other company or party:*" and, through the neglect of the company, one of their trains did, in fact, arrive too late to enable a booked-through passenger to catch the corresponding train of another company: it was held that the words in *italics* imported a *contract* to use due attention to keep the times specified in the bills, as far as

(*g*) *Denton v. G. N. Railway*, 5 Bell, C. J., Wightman and E. & B. 860 (A. D. 1856): *Crompton, JJ.*

practicable, and that, the contract having been broken, the passenger might recover from the company, as damages, *any expenditure which, according to the ordinary habits of society, a person who is delayed in his journey would naturally incur at his own cost, if he had no company to look to*; but not such as he would not think of putting himself to if he had no company to look to (*h*). But where the condition was that the company would not be accountable for injury, &c., which might arise from delay, &c., unless *in consequence of the wilful misconduct* of the company's servants, and nothing was said about any endeavour to secure punctuality, A. L. Smith, J., said that he had very little doubt that the condition was so framed for the purpose of getting out of the decision in the *Le Blanche* case; and the Court (Hawkins and Smith, JJ.) held that delay and detention caused by a collision on a foggy morning, as to which collision there was no evidence whether it had or had not arisen from inevitable accident, was not delay and detention arising in consequence of wilful misconduct of the company's servants, and that a passenger who had thereby missed his connecting train was not entitled to be sent on in a special train (*i*).

And a railway company may, by apt words, exclude itself from all liability for unpunctuality.

(*h*) *Le Blanche v. L. & N. W. Rail. Co.*, 1 C. P. Div. 286.

(*i*) *Woodgate v. G. W. Railway*, 51 L. T. N. S. 826 (A.D. 1886).

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So, where the condition in the time-tables was that the hours therein stated were "appointed as those at which it is intended, as far as circumstances will permit, the passenger trains should arrive at, and depart from, the several stations; but their departure or arrival at the times stated, or the arrival of any train passing over any portion of the company's lines in time for any nominally corresponding train on any other portion of their lines, is not guaranteed: nor will the company, under any circumstances, be held responsible for delay or detention, however occasioned, or any consequences arising therefrom"; with a similar provision with regard to through tickets over other lines: it was held by the Court (Huddleston, B., and Wills, J.) that the condition formed part of the contract, and that the railway company refused to guarantee the punctuality of their trains, according to the times mentioned in the tables, from whatever cause the want of punctuality might arise (*k*).

The rule is that, in actions for breach of contract, the damages must be such as are capable of being estimated, and such as are the direct and natural consequences of the breach. Thus, for a breach of contract to carry, the cost of a special conveyance to destination may be recovered, *if*

(*k*) *McCartan v. N. E. Railway*, subsequent to *Woodgate v. G. W. Railway*, which was cited.
54 L. J. Q. B. Div. 441 (A.D. 1885),

reasonable, within the Le Blanche case rule; or, if a passenger is thereby compelled to pass the night at an hotel, the amount of the hotel bill (*l*); or damages for personal inconvenience, such as having to walk home (*m*), but not the doctor's bill for illness occasioned by walking home, as being too remote (*m*); nor damages for loss of time and expense incurred through being prevented from keeping appointments (*l*).

A carrier of passengers is not (like a carrier of goods at common law) an insurer. The railway company's duty is to take reasonable care of a passenger, so as not to expose him to danger; and if they negligently expose him to danger, they might be guilty of manslaughter, and would certainly be liable in damages. But where there is a special agreement that a person shall "travel at his own risk," it excludes all claim to recover damages from the company for negligence, though it does not affect their liability to criminal proceedings (*n*).

Liability for accident to passengers.

To passengers travelling at their own risk.

The rule exempting the company from damages under such a special agreement applies not only to the actual transit on the railway, but also to the access to and departure from it (*o*).

(*l*) *Hamlin v. G. N. Railway*, 1 H. & N. 408.

(*m*) *Hobbs v. L. & S. W. Railway*, L. R. 10 Q. B. 111.

(*n*) *McCawley v. Furness Rail. Co.*, L. R. 8 Q. B. 57.

(*o*) *Gallin v. L. & N. W. Rail. Co.*, L. R. 10 Q. B. 212.

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Does not
extend to
latent defect
in carriage.

A carrier of passengers, not being an insurer in respect of them, does not *warrant* that the carriage in which the passenger travels is road-worthy. His obligation is to take due care, which in this case means a high degree of care, and casts on him the duty of exercising all vigilance, to see that whatever is required for the safe conveyance of passengers is in fit and proper order; but he is not responsible for a latent defect, which no human skill or care could have prevented or detected (*r*).

Nor depend
upon express
contract.

The liability for injury to a passenger from negligence does not depend upon express contract. A railway company are liable in respect of a wrongful act which leads to a passenger's injury, by virtue of their actual reception of him into one of their carriages: *Foulkes v. Metropolitan District Railway (s)*. In that case, the following propositions were laid down by Thesiger, L. J.:—

(1.) A railway company issuing a ticket for a journey partly over its own line and partly over the line of another company, is presumably responsible for the safety of the passenger over the whole journey, and is liable to him for injuries caused by negligence of railway servants or defective construction of carriages or stations, to whichever company they belong: *G. W.*

(*r*) *Redhead v. Midland Rail. Co.*,
L. R. 4 Q. B. 379.

(*s*) 5 C. P. Div. 157; 49 L. J.
Q. B. 361.

Railway v. Blake (t); *Thomas v. Rhymney Railway* (u). PART II.

(2.) Under certain circumstances, a railway company may be liable, though there was no direct contract with the person injured and suing: *Austin v. G. W. Railway* (v); *Marshall v. York, &c., Railway* (x) (of which last case Blackburn, J., said, in *Austin v. G. W. Railway*, that what was there laid down was quite correct—viz., that the right which a passenger by railway has to be carried safely does not depend on his having made a contract, but that *the fact of his being a passenger* casts a duty on the company to carry him safely).

(3.) There are cases in which the carrier may be liable, even though there be no direct contract for the carriage of the party injured and suing between the carrier and *anybody*: *Dalyell v. Tyrer* (y), where plaintiff had contracted with a public ferryman for a daily passage, and the ferryman having one day hired a boat and crew to take his place, and an accident having occurred to plaintiff through the negligence of the said crew, the *owner* of the boat and crew was held liable to him.

Thesiger, L. J., further stated that the true principle in a case like *Foulkes v. Metropolitan District Railway* was that the carrying company,

(t) 7 H. & N. 987.

(x) 11 C. B. 655.

(u) L. R. 6 Q. B. 266.

(y) 28 L. J. Q. B. 52.

(v) L. R. 2 Q. B. 442.

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so far as concerns its own line, in which term a line over which it has running powers is to be included, and its own acts and omissions, is under the same obligations with reference to the security of the passenger as it would have been if it had directly contracted with him.

In *Austin v. Great Western Rail. Co.* (x), the plaintiff's mother, carrying in her arms the plaintiff, a child over three years old, and consequently liable to pay half fare, took a ticket for herself but not for the plaintiff. By the negligence of defendants, an accident occurred to the train, and the plaintiff was injured. When the plaintiff's mother took her ticket no question was asked as to plaintiff's age by the defendant's servants, and there was no intention on the part of the mother to defraud the defendants. It was held that the plaintiff was entitled to recover, by Cockburn, C. J., Shee and Lush, JJ., on the ground that there was an entire contract to carry both mother and child, which operated in favour of each; by Blackburn, J., on the ground taken in *Marshall v. York, Newcastle and Berwick Rail. Co.* (y), that the right which a passenger by railway has to be carried safely, does not depend on his having made a contract, but that the fact of his being a passenger casts a duty on the company to carry him safely. *If there had been fraud on the part of the plaintiff, or if*

(x) L. R. 2 Q. B. 442.

(y) 11 C. B. 655.

the plaintiff had been taken into the train without the defendant's authority, no such duty would arise. But here the child, through an honest mistake on the mother's part, was taken into the train by the railway company, and was received as a passenger by their servants with their authority.

The rule is thus stated by Mr. Macnamara (z), "Unless there be an intention in the passenger to defraud, the mere non-payment of fare will not exempt the railway company from liability for negligence."

The principle enunciated by Thesiger, L. J., in *Foulkes v. Metropolitan District Rail. Co.*, was extended to passengers' luggage by the later case of *Hooper v. London and North Western Rail. Co.* (a), in which it was held by Denman and Lindley, JJ., that (in the case of a through ticket) the second company, which had not issued the ticket, having received the passenger's luggage into their van, were responsible for the loss of it: on the authority of the *Foulkes* case, which was taken to have overruled *Mytton v. Midland Rail. Co.* (b). It may be somewhat difficult to reconcile the decision followed with *Bristol and Exeter Rail. Co. v. Collins* (c), (*ante*, p. 80), as Lindley, J., admitted, but it agrees with the principle of *Martin*

(z) Page 496, *Law of Carriers* 1880.
(1889).

(a) 50 L. J. Q. B. 103, 2 Dec.

(b) 4 H. & N. 615.

(c) 7 H. L. C. 194.

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v. *Great Indian Peninsula Rail. Co.* (*ante*, p. 88). And in *Hooper v. London and North Western Rail. Co.*, there was evidence that the loss was caused by the second railway company's negligence; and this being so, the question of a contract between the parties was held immaterial, as the action was founded on negligence causing loss.

It must be remembered that the Foulkes' case, being a decision on the duty of a carrier of passengers, can only be an authority where there is negligence on the part of the second railway company; whereas the question considered in the earlier cases was the common law liability of the carrier of goods as an insurer, apart from negligence. The provisions of Act IX. of 1890, s. 80, agree with *Hooper v. London and North Western Rail. Co.*

Liability of railway carrier for extraneous negligence of contractor, or for other railway company's negligence.

But though a railway company are bound to take all reasonable precautions with reference to any danger which may be reasonably expected upon their line, or the line of another company over which they carry, yet they are not answerable for mischief occasioned by an extraneous matter as to which they have no ground to suppose that proper care has not been taken by the persons whose duty it is to take such care, *e.g.*, by the falling of works with which the company have nothing to do, and which are being executed by contractors over whom they have no control, and

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which are often executed elsewhere without mischief (*d*). So if a company is carrying a passenger over their own line, and the train is run into by a train belonging to another company, which has running powers over the line, through the negligence of the latter, the former company is not liable to the passenger for his personal injuries (*e*).

In an action against a railway company for negligence, it is necessary, in order to render the company liable, to give affirmative proof of negligence on their part, and not merely to prove the occurrence of the accident, and to rely upon that as *prima facie* evidence of negligence. Except when the maxim "*res ipsa loquitur*" applies, as in cases of collision between two trains of the same company (*f*). There must be evidence not only of negligence but of negligence connected with the accident; of *incuria dans locum injuriæ*, in the words of Lord Cairns, L. C. (*g*).

Railway accidents; negligence must be connected with accident.

So in *Wakelin v. London and South Western Rail. Co.* (*h*), it was held that assuming that there is evidence of negligence on the part of a railway company, yet if there is no evidence to connect that negligence with the accident, there is no case to go to the jury.

(*d*) *Daniel v. Metropolitan Rail. Co.*, L. R. 5 H. L. 45.

L. J. Ex. 3. See *Scott v. London Dock Co.*, *post*, p. 156.

(*e*) *Wright v. Midland Rail. Co.*, L. R. 8 Ex. 137 (A.D. 1873).

(*g*) In *Metropolitan Rail. Co. v. Jackson*, 3 App. Cas. 193.

(*f*) *Bird v. G. N. Rail. Co.*, 28

(*h*) 12 App. Cas. 41.

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When, however, the immediate cause of the accident is not the company's negligence, but the passenger's own act in endeavouring to escape from peril, or grave inconvenience due to such negligence, there is evidence of negligence connected with the accident.

In delivering the judgment of the Court (Field and Blackburn, JJ.), in *Robson v. North Eastern Rail. Co.* (i), Field, J., said: "It has been long established that if a person by a negligent breach of duty expose the person towards whom the duty is contracted to obvious peril, the act of the latter in endeavouring to escape from the peril, although it may be the immediate cause of injury, is not the less to be regarded as the wrongful act of the wrongdoer (k). And this doctrine has, we think, been rightly extended in more recent times to a 'grave inconvenience,' when the danger to which the passenger is exposed is not in itself obvious. In *Adams v. Lancashire and Yorkshire Rail. Co.* (l), the doctrine was actually expressed by Brett, J., who says: 'If the inconvenience is so great that it is reasonable to get rid of it by an act, not obviously dangerous, and executed without care-

(i) L. R. 10 Q. B. at p. 274.

(k) *Jones v. Boyce*, 1 Starkie, 493 (A.D. 1816). There Lord Ellenborough ruled that a coach proprietor, by whose default a passenger was placed in so perilous a situation as to render it prudent for

him to leap from the coach, whereby his leg was broken, though the coach itself was not actually overturned, was responsible in damages to the passenger.

(l) L. R. 4 C. P. at p. 744.

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lessness, the person causing the inconvenience by his negligence would be liable for any injury that might result from an attempt to avoid such inconvenience.' And, although the decision in that case has been questioned, the rule laid down by Brett, J., was approved of in *Gee v. Metropolitan Rail. Co.* (m), and is one in which we entirely concur."

If there be negligence proved on the part of the company, and yet if the person, by the exercise of reasonable care and skill on his part, could have avoided the accident, then the person is guilty of "contributory negligence," and it is his carelessness, and not that of the company, which causes the accident. In such a case it is a question of fact whether the negligence of the company, or the want of reasonable care in the person, is the *causa causans* of the accident (n); though whether there is evidence enough to leave the question of fact open, is a question of law. Thus, if a railway train, which ought to whistle on passing a station, were to pass through without whistling, and a man, in broad daylight with nothing to obstruct his view, were to cross in front of the train and be killed, there would in that case be no evidence to connect the negli-

Contributory
negligence.

(m) L. R. 8 Q. B. at p. 173.

Slattery, 3 App. Cas. 1155, at pp.(n) Per Cairns, L. C., *Dublin*,

1166, 1167.

Wicklow and Wexford Rail. Co. v.

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gence of the company in not whistling with the accident(*o*). It would be otherwise if it were night, and there were something to obstruct the man's view and embarrass his faculties(*p*). The cases of *N. E. Rail. Co. v. Wanless*(*q*) and *Bridges v. North London Rail. Co.*(*r*) determined that a man is not necessarily to be regarded as having caused or contributed to his own death by getting out of a carriage, or by crossing a line of railway in a manner *prima facie* dangerous and imprudent (from which his death actually followed), if there is evidence of acts or omissions on the part of the company by which he might have been put off his guard and led to suppose that he might safely act as he did(*s*). And though a plaintiff may have been guilty of negligence, and although that negligence may, in fact, have contributed to the accident which is the subject of the action; yet, if the defendant could in the result, by the exercise of ordinary care and diligence, have avoided the mischief which happened, the plaintiff's negligence will not excuse him(*t*).

*Bridges v.
London &
N. W. Rail.
Co.*

The case of *Bridges v. N. London Rail. Co.*(*u*), which had been misunderstood by certain learned

(*o*) See *Davey v. L. & S. W. Railway*, 12 Q. B. Div. 70.

(*p*) *S. C.*, per Cairns, L. C.

(*q*) L. R. 7 H. L. 12.

(*r*) L. R. 7 H. L. 213.

(*s*) *S. C.*, per Lord Selborne.

(*t*) *Radley v. L. & N. W. Railway*, 1 App. Cas. 764.

(*u*) L. R. 7 H. L. 213.

judges, was explained in *Metropolitan Rail. Co. v. Jackson* (x). It did not, as had been supposed, establish either of the propositions: (1) that whether negligence can be inferred from any given state of facts, is itself a question of fact for the jury; or (2), that the jurors are the proper judges whether, if once any negligence is proved, the accident which has occurred is to be connected with such negligence as its cause, or as materially contributing thereto. That case did not take away from the judge the duty and responsibility of determining as to the existence or non-existence of evidence fit to be considered. It laid down no new rule; it simply affirmed the proposition that when such evidence exists the jury must be allowed to decide as to its weight and value (y).

In *Wakelin v. L. & S. W. Rail. Co.*, the following observations as to the onus of proof with regard to contributory negligence were made by Lord Watson (z): "I am of opinion that the onus of proving affirmatively that there was contributory negligence on the part of the person injured, rests in the first instance upon the defendants, and that, in the absence of evidence tending to that conclusion, the plaintiff is not bound to prove the negative in order to entitle her to a verdict in her favour. That opinion was expressed by

Contributory
negligence:
onus of proof.

(x) 3 App. Cas. 193.

(z) 12 App. Cas. at p. 47.

(y) Per Lords Cairns and O'Hagan, at pp. 200, 201.

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Lord Hatherley and Lord Penzance in *The Dublin, Wicklow & Wexford Rail. Co. v. Slattery* (a). The difficulty of dealing with the question of onus in cases like the present arises from the fact, that in most cases it is well-nigh impossible for the plaintiff to lay his evidence before a jury or the court, without disclosing circumstances which either point to, or tend to rebut, the conclusion that the injured party was guilty of contributory negligence. If the plaintiff's evidence were sufficient to show that the negligence of the defendants did materially contribute to the injury, and threw no light upon the question of the injured party's negligence, then I should be of opinion that, in the absence of any counter-evidence from the defendants, it ought to be presumed that, in point of fact, there was no such contributory negligence. Even if the plaintiff's evidence did disclose facts and circumstances bearing upon the question, which were neither sufficient *per se* to prove such contributory negligence, nor to cast the onus of disproving it on the plaintiff, I should remain of the same opinion. . . But, as Lord Hatherley said in *Dublin, Wicklow & Wexford Rail. Co. v. Slattery*, 'If such contributory negligence be admitted by the plaintiff, or be proved by the plaintiff's witnesses while establishing negligence against the defendants, I do

(a) 3 App. Cas. 1169, 1180.

not think that there is anything left for the jury to decide, there being no contest of fact.' ”

This opinion, expressed in 1886 before the House of Lords, and concurred in by Lord Blackburn, must be considered of greater weight than that expressed by Lord Esher, then Brett, M. R., in *Davey v. L. & S. W. Rail. Co.* (b), that in such actions the burden of proof lies entirely upon the plaintiff to prove both affirmatively that the accident was caused by the negligence of the defendants, and negatively that he was not guilty of negligence contributing to the accident. Lord Esher himself is stated to have subsequently regretted his judgment in this case (c).

A class of accidents in which the question of negligence on the part of the company, and contributory negligence on the part of the passenger, has been much discussed, is that of injuries occurring to passengers in attempting to alight from trains or carriages which have stopped short of, or overshoot, the platform. Stopping short of or overshooting the platform.

For porters to call out the name of the station before the train has come to a standstill, is no evidence of negligence (d).

Mere overshooting or stopping short of a platform is not, in itself, negligence ; but to bring a

(b) 12 Q. B. Div. 70.

(d) *Weller v. L. B. & S. C. Rail.*

(c) Per Lopes, J., in *Brown v. G. W. Rail. Co.*, 52 L. T. N. S. 622.

Co., L. R. 9 C. P. at p. 132.

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train to a stop in a place where alighting is attended with danger, under circumstances which warrant the passenger in believing that it is intended that he shall get out, and that he may do so safely, without giving him any warning of his danger, is negligence (*e*).

If a passenger alights, and in so doing injures himself, it depends upon circumstances whether the railway company are liable. To render them liable, first, the passenger must be justified in alighting; and secondly, the accident must not be due to his own action in the mode of alighting. If the descent is obviously and apparently imprudent and dangerous, the person attempting it does so at his own risk, even if the alternative be to be carried on in the train (*f*). And if the passenger jumps, when there is a footboard, without waiting for assistance, and trusting to his own ability, he does so at his own risk (*g*).

But where the passenger is justified in alighting, it is the duty of the company to provide him with reasonable means of doing so; and if the ordinary and usual means of descent are absent, and he uses the only means, provided with ordinary care, the company are liable if he injures himself (*h*).

(*e*) *Cockle v. L. & S. E. Rail. Co.*,
L. R. 7 C. P. 321; *Weller v. L. B.*
& *S. C. Rail. Co.*, L. R. 9 C. P.
126.

(*f*) *Siner v. G. W. Rail. Co.*,
L. R. 4 Ex. 117.

(*g*) *S. C.*

(*h*) *Robson v. N. E. Rail. Co.*

A passenger may be justified in alighting by an invitation to descend, which, again, may be express or implied. What amounts to an invitation to descend is a question of fact in each case(*i*).

The cases are not easy to reconcile in all respects, but they appear to show that a passenger may be justified in alighting by—

- (1) Invitation of the company's servants, express(*k*) or implied(*l*).
- (2) The reasonable apprehension of being carried on beyond the passenger's proper station when the train has come to a standstill(*m*).

Provided, in both cases, that:—

- (1) The danger of alighting be not obvious and apparent.
- (2) The passenger use the means provided for alighting with ordinary care, and
- (3) Seek for assistance in alighting, if required, and do not trust to his own ability to overcome the difficulty, so as to be the immediate cause himself of the accident (as by jumping without necessity).

L. R. 10 Q. B. 27; 2 Q. B. Div. 85.

(*i*) *Lewis v. L. C. & D. Rail. Co.*, L. R. 9 Q. B. 66; *Bridges v. N. L. Rail. Co.*, L. R. 7 H. L. 213.

(*k*) *Foy v. L. B. & S. C. Rail. Co.*, 18 C. B. N. S. 225.

(*l*) *Praeger v. Bristol and Exeter*

Rail. Co., 24 L. T. N. S. 105;

Cockle v. L. & S. E. Rail. Co., L. R.

7 C. P. 321; *Weller v. L. B. & S.*

C. Rail. Co., L. R. 9 C. P. 126.

(*m*) *Robson v. N. E. Rail. Co.*,

L. R. 10 Q. B. at p. 275; *Siner v.*

G. W. Rail. Co., L. R. 4 Ex. at

p. 124.

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If the train stops at a dangerous place, and by reason of the darkness of the night, or because of being in a tunnel, the passenger cannot see the danger there may be in descending, and he alights, either upon express invitation from the company's servants, or after waiting a reasonable time, and is injured, there is evidence of negligence on the part of the company (*m*). And in India it has been decided, where a railway company negligently kept a station badly lighted, and one of their trains negligently overshot the station, and their servants gave no warning against alighting, and the plaintiff, following the example of other persons in the carriage, alighted, and in doing so broke his leg, that the injury was caused by the company's negligence—on the principle stated in *Scott v. London Dock Company* (*n*), that "There must be reasonable evidence of negligence. But when the thing is shown to be under the management of the defendant or his servants, and the accident is such as in the ordinary course of things does not happen if those who have the management use proper care, it affords reasonable evidence, in the absence of explanation by defendant, that the accident came from want of care" (*o*).

Thorogood v. Bryan over-ruled.

The doctrine, established in 1849 by the

(*m*) *Cockle v. L. & S. E. Rail. Co.*,
L. R. 7 C. P. 321; *Bridges v. N. L.*
Rail. Co., L. R. 7 H. L. 213.

(*n*) 34 L. J. Ex. 220.

(*o*) *Woodhouse v. Calcutta & S. E.*
Rail. Co., 9 Weekly Reporter, 73,
Civil.

PART II.

judgment in *Thorogood v. Bryan* (*p*), that a passenger is identified with his carrier, so that, for instance, a passenger in the train of company A. could not maintain an action against company B. for negligence, if there was contributory negligence on the part of company A., was at last overruled by the Court of Appeal in *The Bernina* (*q*), and their judgment was affirmed by the House of Lords (*r*).

The damages recoverable by a person injured in a railway accident are:—

Damages recoverable for injury in railway accident.

1. A fair and reasonable compensation (not a mathematically perfect one) for his bodily sufferings.

2. A fair and reasonable compensation for his medical expenses.

3. A fair and reasonable compensation for his pecuniary loss, *e.g.* in being unable to follow his profession. In estimating the pecuniary loss, the independent income of the plaintiff is not to be taken as a kind of set-off, so as to reduce the amount of damages, though it might possibly reduce the amount of bodily suffering, and so the damages for that (*s*). Loss of profits, from incapacity to attend to business, may be recovered (*t*), and the action to recover them, as

(*p*) 8 C. B. 115.

Co., 5 C. P. Div. 280.

(*q*) 12 P. D. 58.

(*t*) *Bradshaw v. Lancashire and*

(*r*) 13 App. Cas. 1.

Yorkshire Rail. Co., L. R. 10 C. P.

(*s*) *Phillips v. L. & S. W. Rail.*

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PART II.

damages to the estate, arising out of breach of contract to carry, does not die with the person but survives to the executor, independently of the damages recoverable under Lord Campbell's Act (*t*).

In an action for injuries caused by a railway company's negligence, a sum received by plaintiff on an accidental insurance policy cannot be taken into account in reduction of damages (*u*). The damages recoverable for negligence must be the natural and reasonable result of the defendant's act—such a consequence as, in the ordinary course of things, would flow from the act (*x*). Damages for a nervous shock or mental injury, unaccompanied by any actual physical injury, caused by fright at an impending collision, are too remote. Where the gatekeeper of a railway company had negligently invited the plaintiffs to drive over a level crossing, and the plaintiffs were placed in imminent peril of being killed by a train in consequence, and one of them received a nervous shock, and afterwards became seriously ill from the fright, it was held that no damages were recoverable (*y*).

Liability of
railway com-
pany for
negligence of
contractor.

There is an implied warranty in the contract of a railway company with its passengers that not

(*t*) *S. C.*

105.

(*u*) *Bradburn v. G. W. Railway,*
L. R. 10 Ex. 1.

(*y*) *Victorian Railway Commis-
sioners v. Coultas*, 13 App. Cas. 222
(before the Privy Council).

(*x*) *The Notting Hill*, 9 P. D.

only its own servants, but also the independent contractors employed by them, have used *due care* in the construction of the carriages and railway works (z). The carrier of passengers is liable not only for those defects of construction which he might himself guard against, but also for those which arise from want of care on the part of the maker (a). Thus, in *Grote v. Chester & Holyhead Rail. Co.* (b), where an accident had happened from the defective construction of a bridge over a railway, for the erection of which the company had employed a competent engineer, Parke, B., held that the company would be liable unless the engineer had used reasonable care and employed proper materials in the work.

The law is thus stated by Williams, J.:—
 “Unquestionably, no one can be made liable for an act or breach of duty unless it be traceable to himself, or his servant or servants, in the course of his or their employment. Consequently, if an independent contractor is employed to do a lawful act, and in the course of the work he or his servants commit some casual act of wrong or negligence, the employer is not answerable. That rule is, however, inapplicable to cases in which

During construction of works.

(z) *Francis v. Cockrell*, L. R. 5 Q. B. 184, 501. This case was cited with approval and followed in *Searle v. Laverick*, L. R. 9 Q. B. 122.

(a) *Sharp v. Grey*, 9 Bingh. at p. 459.

(b) 2 Ex. 251.

PART II.

the act which occasions the injury is one which the contractor was employed to do; nor by a parity of reasoning to cases in which the contractor is entrusted with the performance of a duty incumbent upon his employer, and neglects its fulfilment, whereby an injury is occasioned" (d).

The question in such cases seems to be whether the accident was of a kind which it was the duty of the railway company to take reasonable means to prevent.

So Lord Blackburn :—"Since *Quarman v. Burnett* (e), it has been considered settled law that one employing another is not liable for his collateral negligence, unless the relation of master and servant existed between them. So that a person employing a contractor to do work is not liable for the negligence of that contractor or his servants. On the other hand, a person causing something to be done the doing of which casts on him a duty, cannot escape from the responsibility attaching on him of seeing that duty performed by delegating it to a contractor. He may bargain with the contractor that he shall perform the duty, and stipulate for an indemnity from him if it is not performed, but he cannot thereby relieve himself from liability to those injured by the failure to

(d) *Pickard v. Smith*, 10 C. B. N. S. 470. (e) 6 M. & W. 499.

perform it" (*f*). And, again:—"But in all the cases on the subject there was a duty cast by law on the party who was held liable. Cockburn, C. J., it is true, says, in *Bower v. Peate* (*g*), that a man who orders a work to be executed, from which, in the natural course of things, injurious consequences to his neighbour must be expected to arise, unless means are adopted by which such consequences may be prevented, is bound to see to the doing of that which is necessary to prevent the mischief, and cannot relieve himself of responsibility by employing some one else, whether contractor or independent person. . . . I doubt whether this is not too broadly stated" (*h*).

If, however, there is no evidence that the accident was a probable accident, *which might reasonably have been foreseen*, so as to make it the duty of the company to provide against it, then the company would not be liable but the contractor, if the accident were caused by the negligence of one of his servants. In a case where a man in the service of a sub-contractor, who had been

(*f*) *Dalton v. Angus*, 6 App. Cas. 740, at p. 829.

(*g*) 1 Q. B. D. 321.

(*h*) Per Lord Blackburn, *Hughes v. Percival*, 8 App. Cas. 443, at p. 446, in which case defendant was held liable for the negligence of his builder in cutting into and

causing the fall of a party-wall between plaintiff's and defendant's houses, on the ground that the law cast upon him a duty to see that reasonable skill and care were used in operations involving the use of the wall.

PART II.

Liability to
volunteers.

employed by his superior contractor to plaster a house, in walking shook a plank which caused a tool to fall out of a window of the house and injure a person passing, the superior contractor was held not liable for the injury, it being a highly improbable accident (*i*).

It is settled by *Degg v. Midland Rail. Co.* (*k*) and *Potter v. Faulkner* (*l*), that if a man's servant invites a friend as a mere volunteer, for his own amusement as it were, to take part in a dangerous duty, and he meets with injury in the course of it, the master is not liable (*m*). But a man who is on the premises of a railway company, not as a mere volunteer, but as being engaged in a transaction of common interest to both parties with the assent of the company—such, for instance, as a consignee of coals assisting in unloading the coal waggons—can recover damages from the company if he is injured by the condition of the premises being dangerous (*n*), or by the negligence of the company's servants (*o*), provided he is not in the position of a fellow-servant.

So it has been laid down that the duty of a railway company towards those whom in practice

(*i*) *Pearson v. Cor*, 2 C. P. Div. Div. 252.

369.

(*k*) 1 H. & N. 773.

(*l*) 1 B. & S. 800.

(*m*) Per Mellish, L. J., in *Wright v. L. & N. W. Rail. Co.*, 1 Q. B.

(*n*) *Holmes v. N. E. Rail. Co.*, L. R. 4 Ex. 254.

(*o*) *Wright v. L. & N. W. Rail. Co.*, *ubi supra*.

they allow to accompany passengers, in order to see them off by the train, without asking special permission, is not lower than towards those whom they accompany. The passenger's friend, so permitted to be present by constant acquiescence on the part of the railway, is not in the nature of a person barely licensed to be there, but is invited to go to the same extent as the passenger whom he accompanies (*p*). But the company would have no right to leave anything like a "trap" on their premises, even against a mere licensee—*i. e.*, one who has leave and license, but no right, except the right of not being treated as a trespasser (*q*).

Liability to Servants.

Apart from statute, the master is not liable to his servant (or anyone in the position of a servant as a volunteer (*r*)) for injuries caused by the negligence of a fellow-servant and sustained in their common employment. All that the master is bound to do is to select proper and competent servants and to furnish them with adequate materials and resources for the work. He cannot

(*p*) Per Denman, J., in *Watkins v. G. W. Rail. Co.*, 46 L. J. C. P. D. 816, citing *Indermaur v. Dames*, L. R. 2 C. P. 311.

(*q*) *Corby v. Hill*, 4 C. B. (N. S.) 567; *Boleh v. Smith*, 31 L. J. (N. S.) Ex. 201.

(*r*) *Swainson v. N. E. Rail. Co.*, 3 Ex. Div. 341.

PART II.

warrant the competency of his servants. A manager or foreman is a fellow-servant. Workmen do not cease to be fellow-workmen because they are not all equal in point of station or authority (*s*). In order to give rise to the exemption from liability there must be a common employment and a common master; not necessarily for a definite time or fixed wages. So where two railway companies are in joint occupation of a station, but are not in partnership as to the business carried on there, though they maintain "a joint station staff," one company is liable to the servant of the other company for injuries caused by the negligence of a servant of the former company (*t*).

The servant engages to run the ordinary risks of the employment, including the negligence of his fellow-servants, but not unexpected and unforeseen dangers. It is the duty of the master if hidden and secret dangers exist upon his premises known to him but unknown to his workmen, to disclose them to the latter that they may take precautions. A railway company ought not to expose the workmen engaged on their line, or

(*s*) *Wilson v. Merry*, L. R. 1 Scotch Appeals (H. L.), 326, and see cases there cited.

(*t*) *Swainson v. N. E. Rail. Co.*, 3 Ex. Div. 341, and see cases there

cited, especially *Voss v. Lancashire and Yorkshire Rail. Co.*, 2 H. & N. 728, and *Warburton v. G. W. Rail. Co.*, L. R. 2 Ex. 30.

at their stations, to unexpected and unforeseen dangers which they have no means of guarding against (*u*). But the master is not liable if the servant knew of the danger. "Out of many cases to which reference may be made, *Woodley v. Metropolitan District Rail. Co.* (*v*), and *Britton v. Great Western Cotton Co.* (*w*), recognise in clear terms the principle that a person who continues in an employment with full knowledge of the risk run, and who voluntarily goes to do that which he knows will expose him to danger, cannot recover for injuries so received, and the reason of this principle is expressed both powerfully and tersely by Lord Bramwell in a memorandum written by him on the case of *Clayards v. Dethick* (*x*), and printed in the Appendix B to Smith on Negligence. Lord Bramwell there points out that in such a case the accident is not due to the defendant's negligence but to the voluntary act of the plaintiff" (*y*).

So in *Griffiths v. London and St. Katharine's Docks Co.* (*z*), it was held by the Court (Day and A. L. Smith, JJ.) that in an action of negligence brought by a servant against his master for per-

(*u*) *Voss v. Lancashire and Yorkshire Rail. Co.*, *ubi supra*; *Watling v. Oastler*, L. R. 6 Ex. 73.

(*v*) 2 Ex. Div. 384.

(*w*) L. R. 7 Ex. 130.

(*z*) 12 Q. B. 439.

(*y*) Per Wills, J., in *Thomas v. Quartermaine*, 17 Q. B. D. 414, C. A.; 18 Q. B. Div. 685. See also *Yarmouth v. France*, 19 Q. B. D. 647.

(*z*) 12 Q. B. D. 495.

PART II.

sonal injury resulting from the unsafe state of the premises upon which the servant was employed, the statement of claim must allege not only that the master knew but that the servant was ignorant of the danger (z).

Day, J., said, "If a master employs a servant to do work for him, not knowing of any special or latent danger in the work, the servant takes the consequence of any danger there may be in it. If the master knows of danger which the servant does not, it is the duty of the master to communicate his knowledge of the danger to the servant. The master is liable if he is cognisant and the servant is not cognisant of the danger. If the servant knows of the danger and does the act which may and does cause injury to him, he has nothing to complain of and cannot bring an action for the damage sustained. He may be justified in declining to perform a particular act not in the course of his employment, but if it is in the course of his employment he undertook to do that dangerous thing."

If a man chooses to accept the employment or to continue in it with a knowledge of the danger, he must abide the consequences so far as any claim to compensation against the employer is concerned. Morally speaking, those who employ men on

(s) This decision was affirmed on the same grounds by the Court of Appeal, 13 Q. B. Div. 259.

dangerous work without doing all in their power to obviate the danger, are highly reprehensible. The workman who depends on his employment for the bread of himself and his family, is thus tempted to incur risks to which, as a matter of humanity, he ought not to be exposed. But, looking at the matter in a legal point of view, if a man, for the sake of the employment, takes it or continues in it with a knowledge of its risks, he must trust to himself to keep clear of injury (a).

It seems that in the case of open and patent dangers, the actual knowledge of the servant is of no importance, because the law implies his acceptance of the risk.

In *Yarmouth v. France* (b), the law, as it stood before the Employers' Liability Act, is thus stated by Lord Esher, M. R.: "Under the old law it would have been said, 'You' (the servant) 'have entered into or continued in this employment where this thing of which you complain is open and palpable, and, therefore, it is an implied condition of your contract of service that you take upon yourself the risk of accidents therefrom, and consequently you have no remedy against

(a) Per Cockburn, C. J., *Woodley v. Metropolitan District Rail. Co.*, 2 Ex. Div. at p. 389. The authority of this judgment was expressly recognized by Bowen and Fry,

L. JJ., in *Thomas v. Quartermaine*, and by Lopes, L. J., in *Yarmouth v. France*.

(b) 18 Q. B. Div. 685.

PART II

your employer.' As between master and servant, that was the way the immunity from liability was always stated. The maxim '*Volenti non fit injuria*,' was not wanted as between master and servant. It was only wanted, if at all, where no such relation as that of master and servant existed" (c). And again (d), "Before the Employers' Liability Act there was this condition in the contract of hiring, that if there was a defect in the premises or machinery which was open and palpable, whether the servant actually knew it or not, he accepted the employment subject to the risk."

Volenti non fit injuria.

The condition implied by the law extends, however, only to open and palpable dangers. If the danger is not open and palpable, but known to the employer, his liability depends on the question whether the risk was voluntarily incurred by the servant, and in this question the servant's knowledge is an important element. Such knowledge is not a conclusive defence in itself. The maxim is not "*Scienti non fit injuria*," but "*Volenti*." There may be a perception of the existence of the danger without comprehension of the risk: as where the workman is of imperfect intelligence, or, though he knows the danger, remains imperfectly informed. There may again be concurrent facts which justify the inquiry,

(c) Page 651.

(d) At p. 653.

whether the risk, though known, was really encountered voluntarily. But when it is a knowledge under circumstances that leave no inference open but one, viz., that the risk has been voluntarily encountered, the defence is complete (e).

The law has been so stated by Lord Justice Bowen.

In *Membery v. G. W. Rail. Co.* (f), however, the most recent case on the subject before the House of Lords, Lord Bramwell strongly dissented from what he termed the novel notion respecting the maxim, “Volenti non fit injuria;” and held “that where a man is not physically constrained, where he can, at his option, do a thing or not, and he does it, the maxim applies.” Lords Halsbury and Herschell, on the other hand, expressly said that they abstained from expressing an opinion on the limits of the doctrine, and that the question was left entirely open by their decision in that case.

(e) Per Bowen, L. J., in *Thomas v. Quartermaine*, 18 Q. B. Div. pp. 696, 697.
(f) 14 App. Cas. 179.

Part III.
THE INDIAN RAILWAYS ACT, 1890,
WITH A COMMENTARY.

[ACT No. IX. OF 1890.]

PASSED BY THE GOVERNOR-GENERAL OF INDIA IN COUNCIL.

*(Received the assent of the Governor-General on the
21st March, 1890.)*

*An Act to consolidate, amend and add to the Law
relating to Railways in India.*

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

CHAPTER I.

PRELIMINARY.

PART III.

1.—(1) This Act may be called the Indian
Railways Act, 1890.

Title, extent
and com-
mencement.

(2) It extends to the whole of British India,
inclusive of Upper Burma and (in so far as it has
been or may be extended under the provisions of
the Sindh-Pishin Railway Act, 1887) of British
Baluchistan, and applies also to all subjects of

[Act IV. 1879,
s. 1.]*

XI. of 1887.

* The marginal references in brackets indicate the corresponding provisions in previous enactments.

PART III. Her Majesty within the dominions of Princes and States in India in alliance with Her Majesty, and to all native subjects of Her Majesty without and beyond British India and those dominions; and

By this sub-section the application of the Act is, in the exercise and in the terms of the power conferred by 28 & 29 Vict. c. 17, s. 1, and 32 & 33 Vict. c. 98, s. 1, extended beyond the limits of British India to (1) all subjects of Her Majesty, British or otherwise, within the dominions of Princes and States in India in alliance with Her Majesty; and (2) all native Indian subjects of Her Majesty without and beyond British India and not within the dominions of the Princes and States referred to. The extent, however, to which the Act can apply to either of these classes must be limited by the subject-matter and object of the Act; in other words, it can only apply to them, so far as circumstances admit, in connection with railways which come within the scope of Act. The only railways which appear to be within the scope of the Act are those over which the Governor-General in Council has power and authority; such as (in addition to British Indian lines) those which exist in divers places beyond the limits of British India where by treaty, capitulation, agreement, or otherwise, the Governor-General in Council has power and jurisdiction. And the duties imposed, and the offences created by the Act, must be taken to relate to such railways alone. The greater part of the language of the Act is unintelligible on any other supposition: see *post*, sect. 3 (6), note.

The Legislature appears to have contemplated two cases: (1) that of a railway administered wholly or in part under the supervision of the Government of India passing through a portion of the territory of a native state where the Governor-General in Council has power and jurisdiction, confined it may be to the line itself. In such a case the Governor-General in Council, though unable to legislate for subjects of the native state, would properly exercise his power of legisla-

ting for British subjects. (2) The other case in the contemplation by the Legislature seems to be that of a railway subject to the jurisdiction of the Governor-General in Council in some place, neither in British India nor in a native state, where native subjects of Her Majesty resort: in view of which the Act is made applicable to all such native subjects. This, however, must be understood as a provision rather for future contingencies than for existing facts. Apparently no railway of the kind is at present in existence.

The trial of offences committed in places beyond British India is provided for by the Foreign Jurisdiction and Extradition Act XXI. of 1879, which, after reciting that doubts had arisen how far the exercise by the Governor-General in Council of power and jurisdiction in divers places beyond British India and the delegation thereof to political agents and others, were controlled by and dependent on the laws of British India, provides (sect. 4) for the exercise and delegation of such power and jurisdiction, and by sect. 8 extends the law relating to offences and to criminal procedure for the time being in force in British India (subject to such modification as the Governor-General in Council from time to time directs) (*a*) to all European British subjects in the dominions of Princes and States in India in alliance with Her Majesty; and (*b*) to all native Indian subjects of Her Majesty in any place beyond the limits of British India. Sect. 9 further enacts that when a European British subject commits an offence in the dominions of a Prince or State in India in alliance with Her Majesty, or when a native Indian subject of Her Majesty commits an offence at any place beyond the limits of British India, he may be dealt with, in respect of such offence, as if it had been committed at any place within British India at which he may be found: provided that the political agent, if any, certify that the charge ought to be inquired into in British India. (See *post*, s. 134.)

By Act I. of 1868, s. 2 (8), British India means, unless there be something repugnant in the subject or context, the territories for the time being vested in Her Majesty by 21 & 22 Vict. c. 106, other than the settlement of Prince of Wales'

PART III. Island, Singapore and Malacca, which settlement ceased in 1866, by virtue of 29 & 30 Vict. c. 115, to be part of India.

(3) It shall come into force on the first day of May, 1890.

Repeal.

[Act IV. 1879,
s. 2.]

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

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

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

Definitions.

[Act IV. 1879,
s. 3.]

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

XI. of 1886.

(1) “tramway” means a tramway constructed under the Indian Tramways Act, 1886, or any special Act relating to tramways:

(2) “ferry” includes a bridge of boats, pontoons, or rafts, a swing-bridge, a flying-bridge

and a temporary bridge, and the approaches to, and landing places of, a ferry : PART III.

(3) “inland water” means any canal, river, lake, or navigable water in British India :

(4) “railway” means a railway, or any portion of a railway, for the public carriage of passengers, animals or goods, and includes—

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

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

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

(d) all ferries, ships, boats and rafts which are used on inland waters for the purposes of the traffic of a railway and belong to, or are hired or worked by the authority administering the railway :

(5) “railway company” includes any persons, whether incorporated or not, who are owners or lessees of a railway or parties to an agreement for working a railway : [34 & 35 Vict.
c. 78, s. 2.
36 & 37 Vict.
c. 48, s. 3.]

(6) “railway administration” or “administration,” in the case of a railway administered by [Act IV. 1879,
s. 3.]

PART III. the Government or a native state, means the manager of the railway and includes the Government or the native State, and, in the case of a railway administered by a railway company, means the railway company :

Though the definition of railway administration, in the case of a railway administered by the Government or a native State, is made to include the Government or State, as the case may be, it appears from the Statement of Objects and Reasons that this is only for the purposes of Chapter VII. of the Act, relating to the responsibility of railway administrations as carriers.

[Act IV. 1879,
s. 3.]

(7) "railway servant" means any person employed by a railway administration in connection with the service of a railway :

(8) "Inspector" means an Inspector of Railways appointed under this Act :

[8 Vict. c. 20,
s. 3.]

(9) "goods" includes inanimate things of every kind :

[35 & 36 Vict.
c. 50, s. 2.]

(10) "rolling stock" includes locomotive engines, tenders, carriages, wagons, trucks, and trollies of all kinds :

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

(11) "traffic" includes rolling-stock of every description as well as passengers, animals, and goods :

(12) "through traffic" means traffic which is carried over the railways of two or more railway administrations :

[8 Vict. c. 20,
s. 3.]

(13) "rate" includes any fare, charge or other

payment for the carriage of any passenger, animal or goods : PART III.

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

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

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

(17) "maund" means a weight of three thousand two hundred tolas, each tola being a weight of one hundred and eighty grains Troy : and

(18) "Collector" means the chief officer in charge of the land revenue administration of a district, and includes any officer specially appointed by the Local Government to discharge the functions of a Collector under this Act.

CHAPTER II.

INSPECTION OF RAILWAYS.

4. (1) The Governor-General in Council may appoint persons, by name or by virtue of their office, to be Inspectors of Railways.

Appointment
and duties of
Inspectors.
[34 & 35 Vict.
c. 78, s. 3.]
Act IV. 1883,
s. 2.]

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PART III.

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

- (a) to inspect railways with a view to determine whether they are fit to be opened for the public carriage of passengers, and to report thereon to the Governor-General in Council as required by this Act ;
- (b) to make such periodical or other inspections of any railway or of any rolling-stock used thereon as the Governor-General in Council may direct ;
- (c) to make inquiry under this Act into the cause of any accident on a railway ;
- (d) to perform such other duties as are imposed on him by this Act or any other enactment for the time being in force relating to railways.

**Powers of
Inspectors.**

[34 & 35 Vict.
c. 78, s. 4.
Act IV. 1883,
s. 2.]
XLV. of 1860.

5. An Inspector shall, for the purpose of any of the duties which he is required or authorised to perform under this Act, be deemed to be a public servant within the meaning of the Indian Penal Code, and, subject to the control of the Governor-General in Council, shall for that purpose have the following powers, namely :—

- (a) to enter upon and inspect any railway or any rolling-stock used thereon ;
- (b) by an order in writing under his hand addressed to the railway administration, to

require the attendance before him of any railway servant, and to require answers or returns to such inquiries as he thinks fit to make from such railway servant or from the railway administration ;

PART III.

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

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

Facilities to be afforded to Inspectors.
[Act IV. 1833, s. 2.]

CHAPTER III.

CONSTRUCTION AND MAINTENANCE OF WORKS.

7. (1) Subject to the provisions of this Act and, in the case of immoveable property not belonging to the railway administration, to the provisions of any enactment for the time being in force for the acquisition of land for public purposes and for companies, and subject also, in the case of a railway company, to the provisions of any contract

Authority of railway administrations to execute all necessary works.
[8 Vict. c. 20, s. 16.]

PART III. between the company and the Government, a railway administration may, for the purpose of constructing a railway or the accommodation or other works connected therewith, and notwithstanding anything in any other enactment for the time being in force,—

- (a) make or construct in, upon, across, under or over any lands, or any streets, hills, valleys, roads, railways or tramways, or any rivers, canals, brooks, streams or other waters, or any drains, water-pipes, gas-pipes or telegraph lines, such temporary or permanent inclined planes, arches, tunnels, culverts, embankments, aqueducts, bridges, roads, ways, passages, conduits, drains, piers, cuttings and fences as the railway administration thinks proper ;
- (b) alter the course of any rivers, brooks, streams, or watercourses, for the purpose of constructing and maintaining tunnels, bridges, passages or other works over or under them, and divert or alter, as well temporarily as permanently, the course of any rivers, brooks, streams or watercourses, or any roads, streets or ways, or raise or sink the level thereof, in order the more conveniently to carry them over or under or by the side of the railway, as the railway administration thinks proper ;

- (c) make drains or conduits into, through or under any lands adjoining the railway for the purpose of conveying water from or to the railway :
- (d) erect and construct such houses, warehouses, offices and other buildings, and such yards, stations, wharves, engines, machinery, apparatus and other works and conveniences as the railway administration thinks proper ;
- (e) alter, repair, or discontinue such buildings, works and conveniences as aforesaid or any of them, and substitute others in their stead ; and
- (f) do all other acts necessary for making, maintaining, altering or repairing and using the railway.

“ This section follows generally the terms of the English enactment 8 Vict. c. 20, s. 16, but supersedes any local enactments which prohibit the construction of railways over gas pipes and the like without the previous permission of municipal commissioners : ” Statement of Objects and Reasons.

It has been decided that 8 Vict. c. 20, s. 16, does not empower a railway company to divert a public footpath, so as to place it upon land of which the company has not acquired the ownership.

“ It is said,” observed Cairns, L. J., in giving judgment in the case referred to (*Rangeley v. Midland Rail. Co.*, 3 Ch. Ap. 306), “ that this clause authorizes a railway company to divert a public road, and to place the diverted or new road upon land which is not their own, and of which they have not become purchasers under their Act of Parliament. . . . Under the powers given to railway companies to become the purchasers

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of land, they would have no authority to divert public highways or roads or rivers, whether navigable or not navigable. It was, therefore, absolutely necessary that a specific and particular power should be given to them to execute works of that kind. The 16th section enables them to do what by the mere ownership or purchase of the land they could not do, namely, to deprive the public of rights which they might have over highways, and over rivers, and over public drains, and things of that kind. But the 16th section is prefaced by what seems to override the whole, namely, 'subject to the provisions and restrictions in this and the special Act and any Act incorporated therewith,' the company may exercise the powers which are specified." And he went on to point out that those powers must be exercised subject to the provisions of the Lands Clauses Act, and that the company must acquire and pay for the land on to which they proposed to divert the road.

Again, it is settled that the power given to a railway company in the same 16th section to divert the course of a river or road," in order the more conveniently to carry the same over, or under, or by the side of the railway as they may think proper, is subject to the limit that it be an act necessary for making, maintaining, altering, or repairing, and using the railway, and only authorizes such a diversion when the road or river presents an actual obstacle to the construction of the line, and not in a case where the diversion is merely for the purpose of saving the company expense. (*Reg. v. Wycombe Rail. Co.*, L. R. 2 Q. B. 310; *Pugh v. Golden Valley Rail. Co.*, 12 Ch. D. 274; 15 Ch. Div. 330.) And an act is not "necessary" within the 16th section of the said Act merely because it enables the company to execute their works more economically. (*Fenwick v. East London Rail. Co.*, 20 Equity, 544.)

So the powers of interference with public and private rights, now, for the first time, conferred on Indian Railway Administrations by sect. 7, are overridden by the provisions specified in the first paragraph, and are also qualified by clause (f), so as to be confined to matters which are not only done in the construction of the railway, but which are actually necessary to its construction or use.

In the case of a railway company, these powers are made subject to the provisions of any contract between the company and the government. This saves the right of the Secretary of State under the existing contracts to determine the direction of the line and the situation, number, and dimensions of the stations and offices, and to supervise the execution and maintenance of the works. As the Secretary of State is bound by the contracts to provide the land required for the purposes of the railway, there would probably be no occasion at present for any company to exercise the powers conferred on it by this section; but a future company may be in a different position.

(2) The exercise of the powers conferred on a railway administration by sub-section (1) shall be subject to the control of the Governor-General in Council.

The words "subject to the control of the Governor-General in Council" occur again in sect. 54. In neither case is the nature of the control defined, nor any penalty imposed in case of disobedience thereto by a company.

The sub-section itself does not appear to make the exercise of the powers conferred on a railway administration by sub-sect. (1) *conditional* on the previous sanction or subsequent approval of the Governor-General in Council; but to give him a general right of interference with the exercise of such powers, as he may see occasion; including, perhaps, the right of making general rules regulating the mode in which the powers are to be exercised.

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

Alteration of
pipes, wires
and drains.
[Act XIII.
1886, s. 14.]

PART III. Provided that—

- (a) when the railway administration desires to alter the position of any such pipe, wire or drain it shall give reasonable notice of its intention to do so, and of the time at which it will begin to do so, to the local authority or company having control over the pipe, wire or drain, or, when the pipe, wire or drain is not under the control of a local authority or company, to the person under whose control the pipe, wire or drain is;
- (b) a local authority, company or person receiving notice under proviso (a) may send a person to superintend the work, and the railway administration shall execute the work to the reasonable satisfaction of the person so sent and shall make arrangements for continuing during the execution of the work the supply of gas, water, compressed air or electricity or the maintenance of the drainage, as the case may be.

Temporary
entry upon
land for
repairing or
preventing
accident.
[5 & 6 Vict.
c. 55, s. 14.]

9. (1) The Governor-General in Council may authorise any railway administration, in case of any slip or other accident happening or being apprehended to any cutting, embankment or other work under the control of the railway administration, to enter upon any lands adjoining

its railway for the purpose of repairing or preventing the accident, and to do all such works as may be necessary for the purpose.

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

10. (1) A railway administration shall do as little damage as possible in the exercise of the powers conferred by any of the three last foregoing sections, and compensation shall be paid for any damage caused by the exercise thereof.

Payment of compensation for damage caused by lawful exercise of powers under sections 7, 8 or 9. [8 Vict. c. 20, s. 16.]

(2) A suit shall not lie to recover such compensation, but in case of dispute the amount thereof shall, on application to the Collector, be determined and paid in accordance, so far as may be, with the provisions of sections 11 to 15, both inclusive, and sections 18 to 42, both inclusive,

PART III.
X. of 1870.

of the Land Acquisition Act, 1870, and the provisions of sections 57 and 58 of that Act shall apply to the award of compensation.

Compensation under this section is, in case of dispute, to be determined and paid according to the procedure prescribed in the Land Acquisition Act of 1870. There is much in the sections here referred to of that Act which is inapplicable to compensation for damage where land is not taken, but the procedure can be followed without difficulty. In the Indian Railways Bill of 1888, the section ran as follows: "A railway administration shall do as little damage as possible in the exercise of the powers conferred by any of the three last foregoing sections, and such compensation shall be paid to persons affected by the exercise thereof as may be agreed upon, or as, in case of dispute, may be awarded under the Land Acquisition Act, 1870, or settled according to the procedure prescribed in that Act for the settlement of cases of disputed compensation."

It was pointed out, however (on the authority of the opinion to that effect understood to have been given by the Advocate-General of Bengal in *The Karachi Tramway case*), that the Land Acquisition Act does not apply to the compulsory acquisition of easements, and that it was doubtful whether, under the section as it then stood, any compensation could be granted for interference with traffic by crossing on a level, or over or under another railway or road. To meet this objection, the section was remodelled so as to provide for compensation for all damage caused by the exercise of the three last foregoing sections.

Accommodation
works.

[8 Vict. c. 20,
s. 68.]

11. (1) A railway administration shall make and maintain the following works for the accommodation of the owners and occupiers of lands adjoining the railway, namely:—

(a) such and so many convenient crossings,

bridges, arches, culverts and passages over, under or by the sides of, or leading to or from, the railway as may, in the opinion of the Governor-General in Council, be necessary for the purpose of making good any interruptions caused by the railway to the use of the lands through which the railway is made, and

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

(2) Subject to the other provisions of this Act, the works specified in clauses (a) and (b) of subsection (1) shall be made during or immediately after the laying out or formation of the railway over the lands traversed thereby, and in such manner as to cause as little damage or inconvenience as possible to persons interested in the lands or affected by the works.

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

- (a) a railway administration shall not be re-

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

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

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

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

- (4) The Governor-General in Council may

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

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12. If an owner or occupier of any land affected by a railway considers the works made under the last foregoing section to be insufficient for the commodious use of the land, or if the Local Government or a local authority desires to construct a public road or other work across, under or over a railway, he or it, as the case may be, may at any time require the railway administration to make at his or its expense such further accommodation works as he or it thinks necessary and are agreed to by the railway administration or as, in case of difference of opinion, may be authorised by the Governor-General in Council.

Power for owner, occupier or local authority to cause additional accommodation works to be made.

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

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

Fences, screens, gates and bars.

[Act IV. 1879, s. 52.

5 & 6 Vict. c. 55, s. 10.]

(a) boundary-marks or fences be provided or renewed by a railway administration for a

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- railway or any part thereof and for roads constructed in connection therewith ;
- [8 Vict. c. 20, s. 63.] (b) any works in the nature of a screen near to or adjoining the side of any public road constructed before the making of a railway be provided or renewed by a railway administration for the purpose of preventing danger to passengers on the road by reason of horses or other animals being frightened by the sight or noise of the rolling-stock moving on the railway ;
- [5 & 6 Vict. c. 56, s. 9.] (c) suitable gates, chains, bars, stiles or hand-rails be erected or renewed by a railway administration at places where a railway crosses a public road on the level ;
- [8 Vict. c. 20, s. 48.] (d) persons be employed by a railway administration to open and shut such gates, chains or bars.

“This section provides for the erection of fences in pursuance of express requisitions by the Governor-General in Council, instead of under rules which can hardly be so drawn as to be applicable to all cases :” Statement of Objects and Reasons. Sect. 52 of Act IV. of 1879 empowered the Governor-General in Council to make rules for the same and similar purposes. See *post*, sect. 125, and sect. 87.

Over and under bridges.
[26 & 27 Vict. c. 92, s. 7.
8 Vict. c. 20, s. 46.]

14. (1) Where a railway administration has constructed a railway across a public road on the level, the Governor-General in Council may at any time, if it appears to him necessary for the public safety, require the railway administration,

within such time as he thinks fit, to carry the road either under or over the railway by means of a bridge or arch, with convenient ascents and descents and other convenient approaches, instead of crossing the road on the level, or to execute such other works as, in the circumstances of the case, may appear to the Governor-General in Council to be best adapted for removing or diminishing the danger arising from the level-crossing.

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The section does not throw upon the railway administration the burden of maintaining the road or other works which it may be called upon to construct: even when the provisions of sub-sect. (2) are not put in force.

(2) The Governor-General in Council may require, as a condition of making a requisition under sub-section (1), that the local authority, if any, which maintains the road shall undertake to pay the whole of the cost to the railway administration of complying with the requisition or such portion of the cost as the Governor-General in Council thinks just. [51 & 52 Vict. c. 25, s. 16.]

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

- (a) where there is danger that a tree standing near a railway may fall on the railway so as to obstruct traffic,
- (b) when a tree obstructs the view of any fixed signal,

Removal of trees dangerous to or obstructing the working of a railway. [31 & 32 Vict. c. 119, s. 24. Act XIII. 1885, s. 18.]

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

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

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

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

(5) A Civil Court shall not entertain a suit to recover compensation for any tree felled or otherwise dealt with under this section.

Similar powers are given under the Telegraph Act XIII. of 1885, sect. 18 of which enacts that (1) If any tree standing or lying near a telegraph line interrupts, or is likely to

interrupt, telegraphic communication, a magistrate of the first or second class may, on the application of the telegraph authority, cause the tree to be removed or dealt with in such other way as he deems fit. (2) When disposing of an application under sub-sect. (1), the magistrate shall, in the case of any tree in existence before the telegraph line was placed, award to the persons interested in the tree such compensation as he thinks reasonable, and the award shall be final.

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The telegraph authority, however, has not the power conferred by sub-sect. (2) of this section.

CHAPTER IV.

OPENING OF RAILWAYS.

16. (1) A railway administration may, with the previous sanction of the Governor-General in Council, use upon a railway locomotive engines or other motive power, and rolling-stock to be drawn or propelled thereby.

Right to use locomotives.
[Act IV. 1879,
s. 4.
8 Vict. c. 20,
s. 86.]

(2) But rolling-stock shall not be moved upon a railway by steam or other motive power until such general rules for the railway as may be deemed to be necessary have been made, sanctioned and published under this Act.

Unless a railway company have express statutable power to use locomotive engines it will be liable for damage done by fire proceeding from them, even though there be no negligence on the part of the company. (*Jones v. Festiniog Rail. Co.*, L. R. 3 Q. B. 733.) "But the principle that a man in exercising a right which belongs to him may be liable, without negligence, for injury done to another person, has been held inapplicable to rights conferred by statute. This distinc-

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tion was acted upon in *Vaughan v. Taff Vale Rail. Co.*, 5 H. & N. 679, where it was held by the Exchequer Chamber that a railway company were not responsible for damage from fire kindled by sparks from their locomotive engine, in the absence of negligence, because they were authorized to use locomotive engines by statute. Chief Justice Cockburn observes, 'where the legislature has sanctioned and authorized the use of a particular thing, and it is used for the purpose for which it was authorized, and every precaution has been observed to prevent injury, the sanction of the legislature carries with it this consequence, that if damages result from the use of such a thing, independently of negligence, the person using it is not responsible.' " (*Madras Rail. Co. v. Zemindar of Carvatenagarum*, L. R. 1 Indian App. at p. 384.) On the other hand, the company, if guilty of negligence, are liable for a fire caused by sparks from an engine, though authorized by statute to use locomotives. (*Smith v. L. & S. W. Rail. Co.*, L. R. 6 C. P. 14; *Geddis v. Proprietors of Bann Reservoir*, 3 App. Cas. 430.) In the latter case, at p. 455, Lord Blackburn thus lays down the law :—

"It is now thoroughly well established that no action will lie for doing that which the legislature has authorized, if it be done without negligence, although it does occasion damage to any one; but an action does lie for doing that which the legislature has authorized, if it be done negligently. *And I think that if by a reasonable exercise of the powers, either given by statute to the promoters, or which they have at common law, the damage could be prevented, it is, within this rule, 'negligence' not to make such reasonable exercise of their powers.*" And, again, in *London & Brighton Rail. Co. v. Truman* (11 App. Cas. at p. 61), Lord Blackburn says, "I do not think that if the company failed either in the fulfilment of the common law duty of taking proper care in the management of the traffic, which is what is in common language called negligence, or neglected any duty that on the construction of the whole Act it appears was cast upon them, which in a more technical sense is also included in the word 'negligence,' they are freed from an injunction."

So, in an action against a railway company in India to recover compensation for damages occasioned by a fire caused by a spark from one of the engines of the company, it was held that the company was authorized to run locomotive engines on the lines of railway constructed by the company under the statutory powers given to it, and that, therefore, the company were not liable for damage caused in working the line under such statutory powers without proof of negligence, and that there was no proof of such negligence. (*Halford v. East Indian Rail. Co.*, 14 B. L. R. 1.) It is to be observed that the Railway Act in force when this case was decided (in the year 1874) contained no clause authorizing the use of locomotives, and the ground on which the company was held to have legal authority to use locomotive engines apparently was, that though there was no express mention of them in their special Acts, yet that the legislature, by giving power to construct a railway of the size and nature contemplated by the Acts, must be presumed to have intended that power to use locomotives should be included.

General authority to use locomotives, with the previous sanction of the Governor-General in Council, was given by Act IV. of 1879, s. 4.

It is not to be expected that the legislature will expressly and in terms authorize an individual or a company to commit a nuisance or to do damage to a neighbour. But if a section gives power to use and employ locomotive engines, and if such locomotives cannot possibly be used without occasioning vibration and consequent injury to neighbouring houses, upon the principle of law that "*Cuicunque aliquis quid concedit, concedere videtur et id, sine quo res ipsa esse non potuit*," it must be taken that power is given to cause that vibration without liability to an action. The right given to use the locomotive would otherwise be nugatory. (*Hammersmith, &c. Rail. Co. v. Brand*, L. R. 4 H. L. at p. 202. See *London & Brighton Rail. Co. v. Truman*, 11 App. Cas. 46.)

In *Raj Mohun Bose v. E. I. Rail. Co.*, 10 B. L. R. 241, where a nuisance had been created by the railway company through smoke caused by workshops, forges, and furnaces

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erected by them under the sanction of the Bengal Government on land originally belonging to the plaintiff's father, and purchased from him by government for the purposes of the railway under Reg. I. of 1824, and Act XLII. of 1850—which contain no provision, as in ss. 24 and 25 of Act VI. of 1857, or in the English statutes on the subject, for allowing compensation (beyond the mere value of the land taken) for damages in respect of adjoining land—it was held that it was no defence to say that the company was not liable, because the nuisance had been caused by them in the reasonable exercise of powers conferred upon them by the legislature. “It cannot be said that the government, simply because, in the exercise of statutory powers, it has taken land on paying its value, can create a nuisance on it to the injury of the person from whom it was taken, and who remains in possession of adjoining land. The government merely becomes proprietor of the land appropriated and acquires no higher rights in it than any other purchaser. In saying this I am speaking of land taken by government under Reg. I. of 1824, and Act XLII. of 1850, which contain no provision, as in ss. 24 and 25 of Act VI. of 1857, or in the English statutes on the subject, for allowing compensation (beyond the mere value of the land taken) for damages in respect of adjoining land. The defendant's position is not improved or altered by the stat. 12 & 13 Vict. c. 93 (Local), under which the East Indian Railway Company is incorporated, for the purpose of making and maintaining railways in this country, nor by the agreement of the 17th August, 1849, entered into (under that statute) by and between the railway company and the East India Company. The general effect of the East India Railway Company Act and the agreement is no more than to authorize and direct the railway company to make and maintain such railway stations, offices, machinery, and other works and conveniences (connected with making, maintaining, and working the railways) as in the opinion of the East India Company may be necessary or expedient. The having such workshops, furnaces, and forges as these now complained of, may in itself be proper and be within the powers of the defendant

company; but it does not follow that they are entitled to have their workshops, furnaces, and forges in such place, or to use them in such a manner as to constitute a nuisance to their neighbours." *Per Macpherson, J.*, who proceeded to distinguish the case of *Hammersmith Railway v. Brand*, L. R. 4 H. L. 171, on the ground that in that case the nuisance—vibration—was unavoidable, while here there was no necessity at all for it. "The decision of the House of Lords in *The Hammersmith Rail. Co. v. Brand*, does not assist the defendants. The nuisance in that case—vibration—was one which was unavoidable, and must necessarily be caused if the railway was to be used at all and trains were to run on it with locomotives. So, in *Rex v. Pease*, 4 B. & Ad. 30, the legislature had authorized the nuisance, *i. e.*, the use of locomotive engines in the manner in which, and place where, they were used. But in the present case there is no sort of necessity for having the workshops where they are, and the nuisance might easily have been avoided. It may be necessary for the defendants to have such workshops; but it is in no degree a matter of necessity that they should have them on this particular piece of ground, or in any other place where they will cause a nuisance to anybody."

Act VI. of 1857 is now replaced by Act X. of 1870, which Act, though providing (sect. 24) for compensation in respect of damage sustained at the time of awarding compensation by the person interested by reason of the severance of the land acquired from his other land, and of the acquisition injuriously affecting his other property in any other manner, expressly excludes from consideration, in determining the amount of compensation, any damage which, after the time of awarding compensation, is likely to be caused by the use to which the land acquired will be put. (Sect. 25.) It cannot now be assumed that government acquiring under this Act land which in its opinion is needed for a public purpose, or which it is satisfied is needed for a company for the construction of some work likely to prove useful to the public, acquires in such land no higher rights than would be enjoyed by a private purchaser; or that a railway administration

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using land so acquired for them for a purpose incidental and necessary to the authorized use of their railway, without negligence, can be restrained from doing so on the ground of a nuisance being thereby occasioned to adjoining land owners.

The observations of Macpherson, J., in *Raj Mohun Bose v. E. I. Rail. Co.*, must be read by the light of more recent decisions of the House of Lords. In *London, Brighton & S. C. Rail. Co. v. Truman*, 11 App. Cas. 45 (A.D. 1885), a railway company were by their Act authorized, among other things, to carry cattle, and also to purchase, by agreement, lands "in such places as should be deemed eligible" for the purpose of providing additional stations, yards, and other conveniences for receiving, loading, or keeping cattle and other traffic to be carried by the railway. The Act contained no provision for compensation in respect of lands so purchased. Under this power the company bought land adjoining one of their stations, and used it as a yard for their cattle traffic. To the occupiers of houses near the station the noise of the cattle and drovers was a nuisance which, but for the Act, would have been actionable. There was no negligence in the mode in which the company conducted the business. It was held by the House of Lords that the purpose for which the land was acquired being expressly authorized by the Act, and being incidental and necessary to the authorized use of the railway for the cattle traffic, the company were authorized to do what they did and were not bound to choose a site more convenient to other persons; and that the adjoining occupiers were not entitled to an injunction to restrain the company.

Lord Selborne, in the course of his opinion, said (p. 56): "It was urged that the company having an option as to place were bound to exercise it so that no adjoining landowner (or, I suppose, any other person) should suffer detriment from the subsequent use of the land for the authorized purposes. If it were the duty of the company in deciding upon the eligibility of the place to be governed by such considerations, they might be placed in very great difficulty. For even if any place could be found where no person would be liable to suffer detriment

from the establishment of loading and unloading places for cattle near his land, it is obvious that the other considerations relative to the convenience of the company's traffic, which the legislature must primarily have had in view, might have to be disregarded."

And Lord Blackburn said (p. 60) that there could be no doubt that if, on the true construction of a statute, it appears to be the intention of the legislature that powers should be exercised, the proper exercise of which may occasion a nuisance to the owners of neighbouring land, and that this should be free from liability to an action for damages or an injunction, effect must be given to the intention of the legislature. And he came to the conclusion, on the facts, that the company did on very sufficient grounds *bond fide* judge it requisite that there should be further conveniences for carrying cattle, and *bond fide* think the spot eligible; and that the true construction of their Act was that the legislature intended them to be judges of this (p. 62).

The statute, however, may be of a different nature, as was the case in *Metropolitan Asylum District v. Hill*, 6 App. Cas. 193. There, as Lord Selborne pointed out (p. 201), the Act did not necessarily require anything to be done under it which might not be done without causing a nuisance. As to the things which might or might not be done under it, there was no evidence on the face of the Act that the legislature supposed it to be impossible for any of them to be done (if they were done at all) somewhere, and under some circumstances, without creating a nuisance. The legislature had manifested no intention that any of the optional powers conferred by it should be exercised at the expense of, or so as to interfere with, any man's private rights. The only sense in which the legislature could be properly said to have authorized those things to be done was that it had enabled certain persons to do them if, and when, and where they could obtain by free bargain and contract the means of doing so. Between legislation of that permissive character and the Railway Acts, as a class, the distinction, broadly stated, amounts to this: that under the former a small-pox hospital may be built and

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maintained if it can be done without creating a nuisance, whereas, under the latter a railway may be made and used whether a nuisance be created or not. *Per Lord Halsbury, L. C., London, &c. Rail. Co. v. Truman*, 11 App. Cas. at p. 53.

Notice of intended opening of a railway.

[Act IV. 1883, s. 2.]

17. (1) Subject to the provisions of sub-section (2), a railway administration shall, one month at least before it intends to open any railway for the public carriage of passengers, give to the Governor-General in Council notice in writing of its intention.

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

Sanction of the Government a condition precedent to the opening of a railway.

[Act IV. 1883, s. 2.]

18. A railway shall not be opened for the public carriage of passengers until the Governor-General in Council, or an Inspector empowered by the Governor-General in Council in this behalf, has by order sanctioned the opening thereof for that purpose.

Procedure in sanctioning the opening of a railway.

[Act IV. 1883, s. 2.]

19. (1) The sanction of the Governor-General in Council under the last foregoing section shall not be given until an Inspector has, after inspection of the railway, reported in writing to the Governor-General in Council—

- (a) that he has made a careful inspection of the railway and rolling-stock ;
- (b) that the moving and fixed dimensions

prescribed by the Governor-General in Council have not been infringed; PART III.

- (c) that the weight of rails, strength of bridges, [5 & 6 Vict.
c. 55, s. 16.]
general structural character of the works, and the size of and maximum gross load upon the axles of any rolling-stock are such as have been prescribed by the Governor-General in Council;
- (d) that the railway is sufficiently supplied with rolling stock;
- (e) that general rules for the working of the railway when opened for the public carriage of passengers have been made, sanctioned and published under this Act; and
- (f) that, in his opinion, the railway can be opened for the public carriage of passengers without danger to the public using it.

(2) If in the opinion of the Inspector the railway cannot be so opened without danger to the public using it, he shall state that opinion together with the grounds therefor to the Governor-General in Council, and the Governor-General in Council may thereupon order the railway administration to postpone the opening of the railway. [5 & 6 Vict.
c. 55, s. 6.]

(3) An order under the last foregoing subsection must set forth the requirements to be complied with as a condition precedent to the opening of the railway being sanctioned, and shall direct the postponement of the opening of

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the railway until those requirements have been complied with or the Governor-General in Council is otherwise satisfied that the railway can be opened without danger to the public using it.

[Act IV. 1883,
s. 2.]

(4) The sanction given under this section may be either absolute or subject to such conditions as the Governor-General in Council thinks necessary for the safety of the public.

[Act IV. 1883,
s. 2.]

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

Application of
the provisions
of the three
last foregoing
sections to
material
alterations of
a railway.
[34 & 35 Vict.
c. 78, s. 5.]

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

(2) The works referred to in sub-section (1) are additional lines of railway, deviation lines, stations, junctions and crossings on the level, and any alteration or re-construction materially affecting the structural character of any work to

which the provisions of sections 17, 18 and 19 apply or are extended by this section. PART III.

21. When an accident has occurred resulting in a temporary suspension of traffic, and either the original line and works have been rapidly restored to their original standard, or a temporary diversion has been laid for the purpose of restoring communication, the original line and works so restored, or the temporary diversion, as the case may be, may, in the absence of the Inspector, be opened for the public carriage of passengers, subject to the following conditions, namely :—

Exceptional provision.

(a) that the railway servant in charge of the works undertaken by reason of the accident has certified in writing that the opening of the restored line and works, or of the temporary diversion, will not in his opinion be attended with danger to the public using the line and works or the diversion ; and

(b) that notice by telegraph of the opening of the line and works or the diversion shall be sent, as soon as may be, to the Inspector appointed for the railway.

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

Power to make rules with respect to the opening of railways.

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Power to close
an opened
railway.

[Act IV. 1883,
s. 2.]

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

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

(2) An order under sub-section (1) must set forth the grounds on which it is founded.

Re-opening
of a closed
railway.

[Act IV. 1883,
s. 2.]

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

[Act IV. 1883,
s. 2.]

(2) When the Governor-General in Council has ordered under the last foregoing section that the use of any specified rolling-stock be discontinued, that rolling-stock shall not be used until an Inspector has reported that it is fit for

use and the Governor-General in Council has sanctioned its use. PART III.

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

25. (1) The Governor-General in Council may, by general or special order, authorize the discharge of any of his functions under this Chapter by an Inspector, and may cancel any sanction or order given by an Inspector discharging any such function or attach thereto any condition which the Governor-General in Council might have imposed if the sanction or order had been given by himself.

Delegation of powers under this Chapter to Inspectors. [Act IV. 1883, s. 2.]

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

CHAPTER V.

RAILWAY COMMISSIONS AND TRAFFIC FACILITIES.

“Closely following the law in England, the Chapter imposes on railway administrations the general duty of arranging to receive, forward and deliver traffic, without unreasonable

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delay, and without partiality or undue preference, and the special duty of so treating through traffic at through rates. If the Governor-General in Council is satisfied that any person has just ground of complaint against a railway administration for breach of either duty, he may refer the case to a Railway Commission for decision. Such a commission is to be appointed only when there are cases to be referred to it, and it will be deemed to be dissolved as soon as it has decided those cases. It is to consist of a Law Commissioner, who is to be a judge of the High Court having jurisdiction in reference to European British subjects under the Code of Criminal Procedure, 1882, in the place where the Governor-General in Council has ordered the commission to sit, and of two Lay Commissioners, of whom one must be an expert in railway business, and one may be a representative of the mercantile community, or any other person whom the Governor-General in Council sees fit to appoint. The commission so constituted may, in any case referred to it, make any order by way of injunction, which may in the circumstances appear to the Commissioners to be suitable. If two of the Commissioners concur upon a question of fact, their decision on that question is to be conclusive. From other decisions of the Commissioners, an appeal will lie to a bench of not less than three judges of the High Court of which the Law Commissioner was a member, or, from a decision of a Railway Commission in Burmah, to such a bench of the High Court of Judicature at Fort William in Bengal."—*Statement of Objects and Reasons.*

Injunctions made by a Railway Commission, or by a High Court under this Chapter, may be enforced by the High Court, of which the Law Commissioner was a member, ordering the party disobeying them to pay a sum not exceeding one thousand rupees for every day during which the injunction is disobeyed after the date of the order directing such payment; and the payment of such sum may be enforced by the Court which made the order, as if that Court had given a decree for the same.

Clauses (b) and (c) of sect. 28 provide for the reference to

Railway Commissioners of other differences than such as relate to traffic facilities.

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The Act, however, leaves it entirely to the discretion of the Governor-General in Council to decide upon the occasions when, if ever, a Railway Commission is to be appointed.

In his speech on the Bill, when last before the Council of the Governor-General, Sir A. Scoble pointed out that it was a measure of general application, and that the insertion of a clause that nothing in the Act should affect existing contracts between Government and railway companies in the particulars for which such contracts expressly provide, had been advisedly omitted, on the ground that the bill contained nothing to affect injuriously the contract rights of the companies so as to give them reasonable cause for complaint. The contracts of four companies provided that they should carry on the business of carriers in accordance with the law of India for the time being; those of five others contained a clause barring claims in respect of the prejudicial effect upon the undertaking or the profits thereof of any Act of the Indian Legislature of general applicability, for the time being in force. With regard to these, therefore, there was no necessity for any special reservation. The contracts of three companies only contained no express clause on the subject, the G. I. P., the B. B. & C. I., and the Madras (leaving out of account the South Indian Railway, whose contract would expire in a few months), and even supposing that these companies must not be held, in contracting to carry on the business of carriers in a particular country, to have contracted to carry it on in accordance with the law for the time being in force in that country, he argued that it would be detrimental to the public interest not to extend to these companies the provisions of the Bill, which might be in conflict with the terms or tenor of their contracts, and which would be found in sections 42 to 44, those, namely, with regard to undue preference, reasonable facilities for traffic on its own system and for through traffic, and the quotation and apportionment of through rates.

The fact admits of no question that the provisions of sections 42—44 do seriously interfere with some of the privi-

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leges of the guaranteed companies under their contracts. The powers of the companies under their contracts with respect to fixing rates have been stated above (p. 78). But under section 42 of this Act, a railway administration is not to give any undue or unreasonable preference to any particular person or railway administration, and what constitutes such may be left to the commissioners to decide: and any railway administration may be required by another to forward through traffic at a through rate, the share of which allotted to the forwarding administration may be lower than the maximum which it is entitled to charge; and if objection is made thereto, the case may, on the request of any of the administrations, be referred to the commissioners for decision.

Railway Commissions.

Constitution
of Railway
Commission.

[17 & 18 Vict.
c. 31.
36 & 37 Vict.
c. 48.
51 & 52 Vict.
c. 25.]

26. (1) For the purposes of this Chapter the Governor-General in Council shall, as occasion may in his opinion require, appoint a commission, styled a Railway Commission (in this Act referred to as the Commissioners) and consisting of one Law Commissioner and two Lay Commissioners.

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

(3) The Law Commissioner shall be such judge of the High Court having jurisdiction in reference to European British subjects under the Code of Criminal Procedure, 1882, in the place where the Commissioners are to sit as, in the case of a High Court established under the statute 24 & 25 Victoria, chapter 104, the Chief Justice or, in the

X. of 1882.

case of the Chief Court of the Punjab, the Senior Judge or, in the case of the Court of the Recorder of Rangoon, the Chief Commissioner of Burma may, on the request of the Governor-General in Council, assign by writing under his hand.

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

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

Restriction of jurisdiction of Railway Commission to cases specially referred.

28. In any of the following circumstances, namely:—

Reference of cases to Railway Commission.

- (a) where complaint is made to the Governor-General in Council of anything done or any omission made by a railway administration in violation or contravention of any provision of this Chapter ;
- (b) where any difference which is under the provisions of any agreement required or authorised to be referred to arbitration arises between railway administrations, and the railway administrations apply to the Governor-General in Council to have it referred to the Commissioners ;
- (c) where any other difference, being a differ-

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ence between railway administrations or one to which a railway administration is a party, arises, and the parties thereto apply to the Governor-General in Council to have it referred to the Commissioners; the Governor-General in Council may, if he thinks fit, refer the case to the Commissioners for decision.

Constitution
of Railway
Commission
in session.

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

Powers of
Railway
Commission.

30. (1) In hearing any such case the Commissioners shall have all the powers which may be exercised in the hearing of an original civil suit by a High Court.

(2) The decision shall, if the Commissioners differ in opinion, be in accordance with the opinion of the majority, and the final order in the case shall be by way of injunction and not otherwise.

[51 & 52 Vict.
c. 35, s. 50.]

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

Appeals from
orders of
Railway
Commission.

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

(2) Subject to the provisions of sub-section (1),

an appeal shall lie from an order of the Commissioners— PART III.

- (a) where the Law Commissioner was the Recorder or Additional Recorder of Rangoon, to the High Court of Judicature at Fort William in Bengal, and
 - (b) in any other case, to the High Court of which the Law Commissioner was a member.
- (3) Such an appeal must be presented within six months from the date of the order appealed from, and shall be heard by a bench of as many Judges, not being fewer than three, as the High Court may by rule prescribe.
- (4) In the hearing of the appeal the High Court shall, subject to the other provisions of this chapter, have all the powers which it has as an Appellate Court under the Code of Civil Procedure, and may XIV. of 1882. make any order which the Commissioners could have made.

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

33. (1) The Commissioners, in the exercise of Assessors. their jurisdiction under this chapter, may, from

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time to time, with the general or special sanction of the Governor-General in Council, call in one or more persons of engineering or other technical knowledge to act as assessors.

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

Power of the Governor-General in Council to make rules for the purposes of this chapter.

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

Costs of proceedings under this chapter.

35. The costs of and incidental to any proceedings before the Commissioners or the High Court under this chapter shall be in the discretion of the Commissioners or the High Court, as the case may be, and the payment of costs awarded by the Commissioners may be enforced by the Court of which the Law Commissioner was a Judge as if the payment had been ordered by a decree of a High Court.

Execution of order of Railway Commission and High Court.

36. (1) The Court of which the Law Commissioner was a Judge may, if it appears on the application of any person who was a party to the proceedings before the Commissioners or on appeal before the High Court, or of the represen-

tative of any such person, that an injunction made under this chapter by the Commissioners or by a High Court has not been obeyed by the party enjoined, order such party to pay a sum not exceeding one thousand rupees for every day during which the injunction is disobeyed after the date of the order directing such payment.

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(2) The payment of such sum may be enforced by the Court which made the order as if that Court had given a decree for the same, and the Court may direct that the whole or any part of the sum shall be paid to the person making the application under sub-section (1) or to the Government.

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

Evidence of documents.

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

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

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Dissolution
of Railway
Commission.

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

Provided that, on the application of any person who was a party to the proceedings before the Commissioners, or of the representative of any such person, the Governor-General in Council may, if he thinks fit, in any case in which the order passed by the Commissioners is not open to appeal, re-appoint the Commissioners for the purpose of hearing an application for a review of their decision and of granting the same and re-hearing the case if they think that the case should be re-heard.

Finality of
orders of
Railway
Commission
subject to the
foregoing pro-
visions of this
chapter.

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

Upon the provision at the end of sect. 15 of the Regulation of Railways Act, 1873 (36 & 37 Vict. c. 48), that "any decision of the Commissioners under this section shall be binding on all Courts, and in all legal proceedings whatever," it was held by a Divisional Court of the Queen's Bench Division that full efficacy would be given to the words by holding "that they mean that in all other proceedings between the same parties, as, for instance, in an action to recover overcharges, the same question arising in respect of the same state of facts

shall be concluded by the decision of the Commissioners.”
 (*Hall & Co. v. L. B. & S. C. Rail. Co.*, 15 Q. B. D. 505, at
 p. 534.)

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41. Except as provided in this Act, no suit shall be instituted or proceeding taken for anything done or any omission made by a railway administration in violation or contravention of any provision of this chapter or of any order made thereunder by the Commissioners or by a High Court.

Bar of jurisdiction of ordinary Courts in certain matters cognizable by Railway Commission.

Except as provided in the Act, that is, upon complaint made to the Governor-General in Council and referred to the Commissioners, no suit is to be instituted or proceeding taken for anything done or any omission made by a railway administration in violation or contravention of any provision of Chapter V., or of any order made thereunder by the Commissioners or by a High Court. So the Railway and Canal Traffic Act of 1854, by sect. 6, enacted that no proceeding should be taken for any violation or contravention of that Act, except in the manner therein provided; but that nothing therein contained should take away or diminish any rights, remedies, or privileges of any person or company against any railway or canal or railway and canal company under the existing law.

So far, then, as Chapter V. of the Indian Railways Act, 1890, imposes duties on railway administration beyond those imposed by the previously existing law, no suit will lie to enforce their performance, the only remedy being by injunction from the Commissioners (sect. 30 (2)), or from the High Court on appeal (sect. 31 (4)). Nor, it is conceived, can the provisions of the Chapter be used by way of defence, any more than by way of attack, in a suit before an ordinary Court. It has been decided on the similar clause in the Railway and Canal Traffic Act, 1854, that it is no defence to an action by a railway company to recover charges for the

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carriage of goods, that the charges sued for are an undue preference or unreasonable disadvantage within the meaning of sect. 2 of that Act, nor can the defendant in such an action set off or recover by counterclaim over-payments in respect of previous charges which were unreasonable within that section. (*Lancashire and Yorkshire Rail. Co. v. Greenwood and Sons*, 21 Q. B. D. 215, where Cave, J., explains the observations of Lord Halsbury in the *Denaby Main Colliery case*, 11 App. Cas. at p. 112.)

Again, as the question whether there has been a breach of the Railway and Canal Traffic Act, sect. 2, cannot be raised before an ordinary Court, so neither after that question has been raised before the Railway Commissioners, and their decision has established that there has been an undue preference within sect. 2 of the Act, can the person over-charged recover by action in an ordinary Court sums which he has paid under protest, and which are shown by such decision to be over-charges. The only remedy for a breach of the Act is before the Railway Commissioners; and the only remedy they can give has regard to the future, not the past. (See *ante*, sect. 30 (2), and *Rhymney Rail. Co. v. Rhymney Iron Co.*, 25 Q. B. Div. 146, following *Manchester, &c. Rail. Co. v. Denaby Main Colliery Co.*, 14 Q. B. Div. 209, and the opinion of Lord Blackburn in the House of Lords in the same case, 11 App. Cas. at p. 121.)

But the jurisdiction of the ordinary Courts is not ousted in cases where there is a breach of a duty, independent of the provisions of this Chapter. In this connection, the remarks of Manisty, J., in *Reg. v. Railway Commissioners and Distingu-ton Iron Co.*, 22 Q. B. D. at p. 656, on the Railway and Canal Traffic Act, may be referred to. "Many things in the shape of preference and undue advantage, and so on, were not the subject of any proceeding, either criminal or civil, and in order to meet those cases powers were given to the Railway Commissioners to arrange as to traffic, and as to giving facilities for traffic, and as to preventing undue prejudice and undue favour to different parties. The object of the Act was to provide for cases in which there was no remedy. . . .

The first question, therefore, always is: 'Is this a case in which you can bring your action?' If it is, bring your action. The question of excessive charge is the subject of an action. *Brown's case*, 7 Q. B. D. 182, is precise upon it, and exactly in point. Then there was *Pryce v. Monmouthshire Canal and Rail. Co.*, 4 App. Cas. 197, which is a very important case, because it involved a question of charging what was said to be an excess, and also a charge for stopping and a charge for terminals. . . . That case came before the Court, and went to the Exchequer Chamber, and to the House of Lords, and all these questions of excessive charges, stoppage, and terminals, were treated as matters to be dealt with in the ordinary way by action, and the House of Lords held that a charge for stoppage was legal and a terminal. I only mention it as showing that there is no doubt that all these questions are questions to be tried in the ordinary Courts, and if they are, in my humble opinion they are not within the jurisdiction of the Railway Commissioners."

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Traffic Facilities.

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

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

[8 Vict. c. 20, s. 90.

17 & 18 Vict. c. 31, s. 2.

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

Duty of railway administrations to arrange for receiving and forwarding traffic without unreasonable delay and without partiality.

[17 & 18 Vict. c. 31, s. 2.]

[17 & 18 Vict. c. 31, s. 2.]

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[17 & 18 Vict.
c. 31, s. 2.]

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

[36 & 37 Vict.
c. 48, s. 11.
51 & 52 Vict.
c. 25, s. 25.]

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

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

Provided as follows:—

(a) the railway administration requiring the traffic to be forwarded shall give written

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- notice of the proposed through rate to each forwarding railway administration, stating both its amount and its apportionment and the route by which the traffic is proposed to be forwarded. The proposed through rate for animals or goods may be per truck or per maund ;
- (b) each forwarding railway administration shall, within the prescribed period after the receipt of such notice, by written notice inform the railway administration requiring the traffic to be forwarded whether it agrees to the rate, apportionment and route, and, if it has any objection, what the grounds of the objection are ; [51 & 52 Vict. c. 25, s. 25, sub-s. (2).]
- (c) if at the expiration of the prescribed period no such objection has been sent by any forwarding railway administration, the rate shall come into operation at the expiration of that period ; [51 & 52 Vict. c. 25, s. 25, sub-s. (3).]
- (d) if an objection to the rate, apportionment or route has been sent within the prescribed period, the Governor-General in Council may, if he thinks fit, on the request of any of the railway administrations, refer the case to the Commissioners for their decision ; [51 & 52 Vict. c. 25, s. 25, sub-s. (4).]
- (e) if the objection is to the granting of the rate or to the route, the Commissioners shall [51 & 52 Vict. c. 25, s. 25, sub-s. (5).]

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

[51 & 52 Vict.
c. 25, s. 25,
sub-s. (7).]

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

[51 & 52 Vict.
c. 25, s. 25,
sub-s. (8).]

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

[51 & 52 Vict.
c. 25, s. 25,
sub-s. (9).]

(h) the Commissioners shall not in any case compel any railway administration to ac-

cept lower mileage rates than the mileage rates which the administration may for the time being legally be charging for like traffic carried by a like mode of transit on any other line of communication between the same points, being the points of departure and arrival of the through route ;

- (i) subject to the foregoing provisions of this sub-section, the Commissioners shall have full power to decide that any proposed through rate is due and reasonable, notwithstanding that a less amount may be allotted to any forwarding railway administration out of the through rate than the maximum rate which the railway administration is entitled to charge, and to allow and apportion the through rate accordingly ;
- (j) the prescribed period mentioned in this sub-section shall be one month, or such longer period as the Governor-General in Council may by general or special order prescribe.

[51 & 52 Vict
c. 25, s. 26.]

Sub-sects. (1), (2), and (3), are taken with merely verbal variations from sect. 2 of the Railway and Canal Traffic Act, 1854.

Sub-sect. 4, with provisos (a) to (h), are copied from sect. 11 of the Railway and Canal Traffic Act, 1873, which again is repeated (with the addition of provisions for forwarding through traffic at the request of an individual) in sect. 25

PART III. of the Railway and Canal Traffic Act, 1888. Proviso (i) is the same as sect. 26 of the last-named Act.

Sect. 43, sub-sects. (1) and (2), corresponds to sect. 27 of the same Act, sub-sects. (1) and (2), with the omission of any mention of "difference in treatment," and of the special proviso concerning home and foreign merchandize. Neither does this Act, as the English Act does, contain any power to charge "group rates," or any power to dock companies or harbour boards to complain of undue preference.

Reasonable Facilities.

The mere fact that railway companies make charges for the conveyance of passengers in excess of those which they are authorized to make, but without undue preference, is not a breach of their obligation to afford "reasonable facilities." (*G. W. Rail. Co. v. Railway Commrs.*, 7 Q. B. Div. 182.) And the mere refusal by a railway company to receive and forward the traffic of persons in general except upon prepayment of charges somewhat in excess of the maximum authorized is not a denial of reasonable facilities, nor an undue or unreasonable prejudice within the meaning of sect. 2 of the Railway and Canal Traffic Act, 1854. (*The Queen v. Railway Commrs. and Distington Iron Co.*, 22 Q. B. D. 642.) In the latter case (decided 5th March, 1889) Huddleston, B., construing the second section of the Act, said: "What then is the meaning of facilities? It is clear that the word has no reference to excessive charges at all, but is used with reference to the convenience to be afforded in receiving, and forwarding, and delivering traffic, and so on, and the return of carriages; and that that is the right view appears from the judgment of Brett, L. J., in *S. E. Rail. Co. v. Railway Commrs.*, 6 Q. B. Div. at p. 600: when speaking of facilities he said: 'Their jurisdiction,' that is, the Railway Commissioners' jurisdiction, 'was further confined to this, that they could only properly deal with matters which might facilitate or impede the receiving, forwarding, or delivering of passengers or goods upon or from the existing railways or stations; they had no jurisdiction to entertain or deal with matters otherwise affect-

ing passengers and goods.' And in *G. W. Rail. Co. v. Railway Commrs.*, 7 Q. B. Div. at p. 196, Cotton, L. J., said: 'Now what I think comes within those words 'afford all reasonable facilities,' is the providing proper accommodation in the stations and in the carriages for the receiving and forwarding passengers, and for getting them in and out of their carriages, and the like. The mere fact that the charge is beyond that which Parliament has sanctioned is not, in my opinion, a refusal to afford reasonable facilities.'" Huddleston, B., added that the words in the same section "undue or unreasonable preference or disadvantage," and "prejudice or disadvantage" must mean a preference or a prejudice with reference to competing parties—an inequality, an unfairness with reference to others, or a prejudice to other works (*sic*),—and cannot mean that because there are excessive charges a prejudice arises to the applicants.

It is a question whether if such over-charges were of such an amount and such a nature that they had the effect, or it could be presumed that they were made with the intention of preventing the use by passengers of particular trains and stations, they would then amount to a "refusal of facilities" within the meaning of the section. In *G. W. Rail. Co. v. Railway Commrs.*, Brett and Cotton, L. JJ., expressed an opinion that it might be so; but in *The Queen v. Railway Commrs. and Distington Iron Co.*, their observations to this effect were treated as *obiter dicta* by Huddleston, B., who said that he should doubt whether such would be the case. (22 Q. B. D. at p. 651.)

It would seem from *S. E. Rail. Co. v. Railway Commrs.*, 6 Q. B. Div. 586 (decided on sect. 2 of 17 & 18 Vict. c. 31), that there is no obligation under sect. 42 to establish stations at any particular places or place, unless the administration thinks fit to do so. The "railway," as interpreted by the Act, includes only stations "*constructed* for the purposes of or in connection with the railway," that is [according to the reasoning of the Court, in the case cited, on the words in the English Act, viz., stations "used for the purposes of public traffic"], *existing* stations. But when the administration has

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in fact constructed a station at a particular place for the purposes of or in connection with the railway, and invites the public to resort to it for the purpose of being received or delivered as passengers to or from trains announced as starting from or stopping at that station, or of having their goods received there for carriage, or delivered there after carriage, it is bound by the Act to afford at that station (to the extent of its powers) all reasonable facilities for receiving, forwarding, and delivering such passengers and goods. And the obligation to afford all reasonable facilities is not circumscribed by the precise extent, capacity, and structural arrangements of the buildings, booking offices, and platforms, &c., *de facto* provided at the time of the complaint by the administration, if these are insufficient for the ordinary traffic of the station, and if by alterations, or other improvements which the administration has adequate power to make, all necessary facilities might be afforded. And a company violates and contravenes the Act, if (having sufficient powers) it keeps its platforms, booking offices, and other structures at any station in such a condition, as to space and other arrangements, as to cause dangerous or obstructive confusion, delay, or other impediment to the proper reception, transmission, or delivery of the ordinary traffic of that station, whether consisting of passengers or of goods. (*Per* Lord Selborne, L. C., in *S. E. Rail. Co. v. Railway Commissioners*, 6 Q. B. Div. at pp. 592, 593.)

It is a question whether the 42nd section leaves a railway administration any discretion whether or not it will undertake the carriage of a particular class of traffic. In the case of *Dickson v. G. N. Rail. Co.*, 18 Q. B. Div. 176, the Court of Appeal was of opinion that the corresponding section of the English Act did not. Lindley, L. J., said: "Until the passing of the Railway and Canal Traffic Act, 1854, the duty of railway companies to carry any particular class of goods depended upon whether they did or did not profess to carry such goods as common carriers. The Railway and Canal Traffic Act, 1854, materially altered the law in this respect; for it enacts, by sect. 2, that every railway company shall afford all

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reasonable facilities for receiving, forwarding, and delivering traffic; and by sect. 1 the word traffic includes passengers and their luggage, and goods, animals, and other things. This Act imposes on railway companies the duty to afford reasonable facilities for carrying all passengers, goods, and animals. There may be an exception in the case of specially dangerous goods" (as to which, in India, see *post*, sect. 59), "but these are not now in question. The duty thus imposed on railway companies is inconsistent with their right to refuse to carry any particular class of goods or animals which they have facilities for carrying, and is inconsistent with their right to refuse to carry such goods or animals except upon terms which are unreasonable. Railway companies are bound to carry goods and animals which they have facilities for carrying. They are bound to provide reasonable facilities for carrying them, and *are, in other words, bound to carry them at reasonable times and on reasonable terms.*" Lopes, L. J., took the same view: "Up to 1854, railway companies, unless compelled by some statute, could have refused to carry dogs or any other traffic which they did not profess to carry, and did not generally carry, as common carriers, and no action would lie to compel them. Two important matters are aimed at and hit by the Railway and Canal Traffic Act, 1854. It provides that railway companies shall afford all reasonable facilities for receiving, forwarding, and delivering traffic without delay and without partiality ('traffic' by the interpretation clause including animals), and gives a remedy, if facilities are withheld, on application to the Court of Common Pleas, a jurisdiction now transferred to the Railway Commissioners. Since the passing of that Act railway companies cannot, in my opinion, absolutely refuse to carry traffic which they have facilities for carrying, even if they did not profess to carry, and did not generally carry, such traffic, but would be compellable to carry it, not as common carriers, but with the liabilities of ordinary bailees, and subject to reasonable conditions."

On the other hand, in an earlier case before the Court of Appeal, Lord Selborne observed that a company may carry

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or not upon its own line as it thinks fit, and, if it does, may undertake that business under various conditions and limitations. But if and so far as it does undertake so to carry either passenger or goods traffic, it comes under the obligation to afford for that traffic the facilities required by the 2nd section of the Act. (*S. E. Rail. Co. v. Railway Commissioners*, 6 Q. B. Div. 586, at p. 592.) Lord Selborne's observation, however, was not directed to the contention raised in *Dickson v. G. N. Rail. Co.*, that a railway company is not compellable to carry except according to its profession, but to an entirely different argument; and the view taken by the Court in the latter case is supported by *Aberdeen Commercial Co. v. G. North of Scotland Rail. Co.*, 3 Nev. & Mac. 205, approved and explained by Bramwell, L. J., in *G. W. Rail. Co. v. Railway Commissioners*, 7 Q. B. Div. at p. 194.

Lord Selborne's words do not imply that a railway administration may carry on one part of their line and not on another at their discretion. On the contrary, as pointed out by Wills, J., in *Winsford Local Board v. Cheshire Lines Committee*, 24 Q. B. D. 456, there is nothing in this language, or in the rest of Lord Selborne's judgment, which in any way indicates that he meant that a railway company can now undertake to carry passengers on any one part of its line without becoming bound to carry them on its whole line. His plain meaning is, that if a railway company undertakes to carry passengers at all upon its own line, it comes under the obligation to provide "reasonable facilities" for dealing with passenger traffic over its whole line. The Railway Commissioners accordingly have jurisdiction to order a railway company to resume passenger traffic on a portion of its line on which such traffic has been discontinued. (*Winsford Local Board v. Cheshire Lines Committee*, *ubi supra*.)

Undue Preference.

Sect. 42 (2) is not universal in its scope, but the preference and advantage therein mentioned are to be limited by reference to the traffic on the railway, and to the receiving, forwarding, and delivering of such traffic. (*East and West*

India Dock Co. v. Shaw, Savill and Albion Co., 39 Ch. D. 524.) The section does not apply to any distinct business that may be carried on by a railway company unconnected with their railway. In the case in question Chitty, J., refused to restrain a railway company that also owned a dock unconnected with and twenty-five miles distant from their railway, from charging preferential dock dues at that dock to the prejudice of one shipowner, in favour of others; and said that his decision was supported by *West v. L. & N. W. Rail. Co.*, L. R. 5 C. P. 622, and *Bazendale v. L. & S. W. Rail. Co.*, 1 Ex. 137.

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There is no clause in this Act, like sect. 90 of the Railways Clauses Consolidation Act, 1845, requiring in express terms equality of charge as to goods of the same description carried from A. to B. *under the same circumstances*. But the words of sect. 42 are much more extensive, and any inequality of charge between different customers by a railway administration *for the same services in exactly similar circumstances* (in respect of traffic coming within the scope of the Act) would be an undue preference within the meaning of the section. (*Evershed v. L. & N. W. Rail. Co.*, 3 Q. B. Div. 135.) In that case the defendant company carted gratuitously for and allowed a rebate to three firms, whose premises were connected with another railway by which they would have otherwise despatched all their traffic; but did not cart gratuitously for, or allow rebate to, the plaintiff, whose premises were not connected with the other railway. The object of the defendant company was not to prejudice the plaintiff, but to secure a share of the traffic of the other three firms, which traffic yielded a profit, after carting gratuitously and allowing rebate. The Court of Appeal held the gratuitous carting and the allowance of rebate to be an undue preference of the three firms and a contravention of 17 & 18 Vict. c. 31, s. 2. Brett, L. J., said that the question was whether the defendants made any distinction between the plaintiff and any other persons who were under the same circumstances as he was with regard to themselves. The plaintiff and the three firms were, in their relations with the defendants, under the

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same circumstances in every material respect. The defendants did the same things for both the plaintiff and the three firms; and the quantity of beer they carried for the plaintiff and the three firms might be assumed to be the same. But the charges which they made to the plaintiff and to the three firms in respect of the same services were different. That was an undue preference within the statute.

And under sect. 42 it is open to any person to complain of undue preference, not only by reason of his being charged more for the carriage of his goods from A. to B. than another person, but also by reason of the charge for carriage from A. to B. being excessive as compared with the charge for carriage from B. to C. (*Lancashire & Yorkshire Rail. Co. v. Greenwood*, 21 Ch. D. at p. 217.)

The general rule on the subject is clearly shown by sect. 43 (1) which, following 51 & 52 Vict. c. 25, s. 27 (1), provides that where, in respect of like traffic or services, lower rates are charged to one trader or class of traders, or the traders in any local area, than to other traders, or classes of traders, or to the traders in another local area, the burden of proving that such lower charge does not amount to an undue preference shall lie on the railway administration.

Administrations whose lines are situate at the extreme ends of the proposed through route are not the only administrations entitled to request a through route and rate under sect. 42 (4), but administrations whose railways occupy an intermediate position may also do so. In *Central Wales and Carmarthen Junction Rail. Co. v. G. W. Rail. Co.*, 10 Q. B. D. 231, it was held that traffic, in respect of which a through rate was requested by a company owning such an intermediate railway, although it commenced and ended at stations off that company's line, was through traffic within the meaning of the corresponding section in the English Act.

Undue preference in case of unequal rates for like

43. (1) Whenever it is shown that a railway administration charges one trader or class of traders or the traders in any local area lower

rates for the same or similar animals or goods, or lower rates for the same or similar services, than it charges to other traders or classes of traders, or to the traders in another local area, the burden of proving that such lower charge does not amount to an undue preference shall lie on the railway administration.

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

It is to be observed that sect. 43 (1) does not in terms refer to passengers, and in *Caterham Rail. Co. v. Brighton and S. E. Rail. Co.*, 1 C. B. N. S. 410, it was held no undue preference within the meaning of the Railway and Canal Traffic Act, 1854, for a railway company to charge higher fares for distances on one of their branch lines than they charge for equal distances on another, nor to issue third class return tickets on one branch line and not on another. It was pointed out by Cresswell, J., that it cannot be said that because persons may travel for a less charge between Epsom and London than they can between Caterham and London, any undue or unreasonable preference is given to any particular person or company, or that they are subjected to any undue or unreasonable prejudice or disadvantage.

No application alleging undue preference in respect of passenger traffic appears to have ever succeeded in England.

The cases in which, without undue preference, a benefit may be given to one person which another has not in his dealings with a railway are thus referred to by Bramwell, L. J., in *Evershed v. L. & N. W. Rail. Co.*, 3 Q. B. Div. 143, "I am not going to attempt to lay down a precise rule, but speaking generally, and subject to qualification, it is open to a railway company to make a bargain with a person, provided they are willing to make the same bargain with any other, though that other may not be in a situation to make it. An obvious illustration may be found in season tickets; a man is taken a daily journey for a shilling, for which his neighbour who takes it once a month pays five shillings. He is entitled.

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to the same benefit, but it is one of which he cannot avail himself. So as to goods. If a million tons are carried for A. at a certain rate, B. may demand the same rate for the same quantity though he never will nor can, because his dealings are too small. It is reasonable that this should be so: a large business can be done at a cheaper rate than small."

So, also, in *Harris v. Cockermouth and Workington Rail. Co.*, 3 C. B. N. S. 693, Cockburn, C. J., said that the Court had intimated, if not absolutely decided, that a company was entitled to take into consideration any circumstances, either of a general or of a local and peculiar character, in considering the rate of charge which they would impose upon any particular traffic. As, for instance, if a company were to lay down a rule, that if a certain large quantity of goods were brought to be conveyed, they would charge less for the conveyance of that large quantity, than they would for the conveyance of a less quantity, regard being had to the cost of working the particular line: that would be a very fair ground to justify them in making a distinction between the case of a person who sent a ton of goods at a time and a person who sent only a hundred-weight. So, also, if a company were to make a distinction between terminal traffic and intermediate traffic, there might be very fair and sufficient reasons for their so doing. As, for instance, in respect of terminal traffic there might be competition with another railway, and in respect of terminal traffic as distinguished from intermediate traffic, it might well be that they could afford to carry goods over the whole line cheaper or proportionately so than they could over an intermediate part of the line. But in all such cases the general public would be treated with perfect equality, although as regards the charges between one place and another, there might be an apparent, though, for the reasons he had referred to, no real injustice.

So, in *Nicholson v. Great Western Rail. Co.*, 5 C. B. N. S. 366, it was held not an undue or unreasonable preference within the meaning of the Act for a railway company to carry goods for A. at a lower rate than for B., in consideration of A.'s guarantee for large quantities and full trains at regular

periods, provided the real object of the company was to obtain thereby a greater remunerative profit by the diminished cost of carriage, although the effect was to exclude from the lower rate B., who could not give such a guarantee. (See, also, *Strick v. Swansea Canal Co.*, 16 C. B. N. S. 245.) The reason of these decisions is that the company can carry at less cost to themselves large quantities of goods sent in regular consignments than small parcels sent at irregular intervals. (*Per Cotton, L. J., Evershed v. L. & N. W. Rail. Co.*, 3 Q. B. Div. at p. 149.)

The above cases and others show that difference in rates and difference in treatment may be warranted by difference in cost of carriage, or by the desire to prevent the competition of another railway; in each case the disproportion being justified by the circumstances of the traffic, provided the same advantages are extended to all persons able to avail themselves of them.

Another element for consideration in determining what amount of departure from the general rule is justifiable, is public convenience (*Beadell v. Eastern Counties Rail. Co.*, 2 C. B. N. S. 509; *Re Painter*, 2 C. B. N. S. 702); but public convenience is not to be considered exclusively. (*In re Palmer and London, Brighton, &c. Rail. Co.*, 6 C. P. 194.) In this case it was left an open question, whether a course of business necessary for securing an advantage to the public, which at the same time gave a monopoly to the railway company, would be an undue or unreasonable prejudice to other carriers, or merely an advantage arising from the inevitable conditions of the traffic. But it was stated that to raise such a question, it would be required of the company to show that their arrangements were made with a view to the necessities of the public, and that there were no practicable means by which other carriers could be included in these or similar arrangements.

In *Lees v. Lancashire and Yorkshire Rail. Co.* 1 N. & Mac. 352 (1874), the Railway Commissioners acted on the principle that in determining whether a preference shown by a railway company to one of its customers (a corporation) in carrying coals for the municipal gas works to a certain station only for

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the corporation and for no one else was an undue preference, the benefit and convenience of the public was an element to be taken into consideration. But in that case they found as a fact that the preference given to the corporation was not *per se* a detriment to the other customer. There was no competition of interest to make it so. The corporation did not sell coal. "Had it been otherwise, had Messrs. Lees and the corporation been in the position of trading companies competing with one another, each would have been entitled to be treated as the other, and it would have been for the public benefit that no difference should be made between them."

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

Sect. 43 (2) which, following 51 & 52 Vict. c. 25, s. 27 (2), enacts that in deciding whether a *lower charge* does or does not amount to an undue preference, the Commissioners may, so far as they think reasonable, in addition to any other considerations affecting the case, take into consideration whether such lower charge is necessary for the purpose of securing, in the interests of the public, the traffic in respect of which it is made, seems to go a step in advance of the last-cited decision, and applies to cases where a particular traffic, beneficial to the public, would be altogether lost if it were not carried at a special rate, which may be detrimental to the interests of other customers. But to justify any such inequality of rate it would be required of the railway administration to show that the traffic was for the interest of the public, and that there were no practicable means of preserving it except by making the lower charge.

The way in which special rates may conduce to the public interest was well illustrated by the President of the Board of Trade in moving the second reading of the Railway and Canal Traffic Bill in the House of Commons (10th May, 1888). Referring to sect. 27 (2), he said that very much of the trade of this country had been created, and was continued, on the faith of special rates, some of which were greatly to the advantage of the public. Without special rates, London would be confined for a railway-borne coal supply to the Midlands, and for fresh milk, fish and vegetables to the counties bordering the metropolis. Without special rates, the manufacturers of Lancashire would be confined to the Lancashire coal-fields, and industries situated at a distance from the sea board, such as the hardware trade of Sheffield and the Cleveland iron trade, would be placed at an immense disadvantage in the foreign markets.

It is not a difference of circumstances justifying an inequality of charge that those whom the railway charges less are seeking to develop a new trade. (*Oxlade v. N. E. Rail. Co.*, 1 C. B. N. S. 454; *Denaby Main Colliery Co. v. Manchester, S. & L. Rail. Co.*, 11 App. Cas. at p. 20, *per* Lord Blackburn.)

44. Where a railway administration is a party to an agreement for procuring the traffic of the railway to be carried on any inland water by any ferry, ship, boat or raft which does not belong to or is not hired or worked by the railway administration, the provisions of the two last foregoing sections applicable to a railway shall extend to the ferry, ship, boat or raft in so far as it is used for the purposes of the traffic of the railway.

Provision for facilities and equal treatment where ships or boats are used which are not part of a railway.

[51 & 52 Vict. c. 25, ss. 25, 28.]

This section follows the provisions of 51 & 52 Vict. c. 25, s. 25 (last clause but one), and s. 28.

See also *supra*, sect. 3 (4) (d).

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Terminals.

45. A railway administration may charge reasonable terminals.

This section recognizes, but does not create, the right to charge "terminals," that is, *all* terminals.

The Indian railway companies are bound by their respective contracts (entered into under statutory powers) to carry on the business of carriers, and to maintain the stations and other works as well as the rolling-stock, plant, and the line itself; and provision is made to limit the rates which they shall be entitled to charge in respect of passengers and goods for their "carriage," as it is expressed in the earlier contracts, or "for services rendered by way of conveyance," in the terms of the later contracts. The rates so authorized would probably cover everything that a railway company might be entitled to charge for the services and accommodation that a railway carrier is bound to render, but the limitation would not prohibit an extra charge, by previous agreement, in respect of conveniences and advantages afforded to their customers over and above the reasonable facilities inevitable and indispensable to the proper discharge of the railway carrier's duty. (*Pegler v. Monmouthshire Rail. & Canal Co.*, 30 L. J. N. S. 249.)

And though, under their contracts, the companies may have no express authority to charge except for carriage or for conveyance, yet a railway company is not confined to the charges expressly authorized by its Act, but may (unless expressly prohibited) make a charge for work done and services rendered which were incidental to, and consequent upon, those things which the legislature has authorized. (*London & N. W. Rail. Co. v. Price*, 11 Q. B. D. 485.)

In *Pegler v. Monmouthshire Rail., &c. Co.*, the defendant company were by their special Acts required (as are Indian railway companies by their contracts) to carry, as carriers, passengers and goods, for which they were entitled to demand tolls at certain rates therein specified. And by the interpretation clause, "toll" was to include the charge for goods conveyed by the railway, whether for the use of the railway, or for moving power, or for the use of carriages. In addition

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to the "tolls," the company, without any previous agreement, charged the plaintiff "terminal charges" for (1) receiving the goods (*i. e.*, 100 sacks of flour) by their porters when brought to their station; (2) weighing and invoicing the same and loading them on their trucks; (3) use of their station yards, sheds, and platforms; (4) gas-light and other conveniences necessarily connected with such stations, sheds, and platforms, for the purposes of receiving, loading and unloading goods; (5) making proper entries in respect of the goods in defendants' book; (6) the risk incidental to the loading, carrying, and unloading. It was held by the Court (Pollock, C. B., Martin, Bramwell, and Wilde, BB.), that the company had no right to charge anything for the services specified in excess of the tolls authorized by their Acts. But *semble*, that for some of the services, conveniences, and facilities afforded by the company beyond the mere carriage of the goods, they might, by previous agreement, charge something. Previously to this Act, therefore, and notwithstanding the restrictions imposed upon them by their contracts, Indian railway companies could by agreement make certain charges in the nature of "terminals," while State lines were, in this respect, under no restrictions at all.

And now, by sect. 45, all railway administrations alike are expressly empowered to charge reasonable terminals. By sect. 3 (14), the word "terminals" is interpreted as including "charges in respect of stations, sidings, wharves, dépôts, warehouses, cranes, and other similar matters, and of any services rendered thereat" (in the terms of the Railway and Canal Traffic Act, 1888), while by the preceding sub-section, "rate" includes any "fare, charge, or other payment for the carriage of any passenger, animal, or goods." As these two definitions must be taken to be mutually exclusive, it follows that terminals are not to include any charge which is properly covered by the payment made for the carriage of passenger, animal, or goods; that is, not merely for their haulage from point to point, but for all the services which are inseparable from the due performance of the railway administration's duty, as a simple carrier by railway.

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Neither definition, however, is exhaustive. The word terminals, as in the English Act of 1888, is made to include various charges which, in previous decisions of the Courts, had been held not to rank as such, but it is not made to exclude anything which may properly be called a terminal. The Legislature seems to have intentionally left it open to the Commissioners to settle what charges (when reasonable) are allowable as terminals in addition to those specified in the definition.

The English decisions on the subject prior to the Act of 1888 cannot for the most part be relied upon for guidance in India, inasmuch as they deal with companies which were not, as Indian railway companies are, bound to be carriers, and turn upon the construction of statutory powers essentially different from those conferred by this Act. (See, however, *Hall & Co. v. L. B. & S. C. Rail. Co.*, 15 Q. B. D. 505, and the cases there cited.)

The usual question in this class of cases was what services, in the case of a company under no obligation to act as a carrier, were to be considered as *incidental to conveyance*, and what services *incidental to the business of a carrier*. The former only were covered by the rate; for the latter an extra payment was authorized by the special Act.

The position of the Indian railway companies was quite different, they having from the first contracted to carry on the business of carriers, and consequently it is also a different question, what services are comprised in the rates which they are authorized to levy for carriage or conveyance. Clearly upon this point *Pegler v. Monmouthshire Rail., &c. Co.* (*ubi supra*) is a better authority than cases like *Hall v. L. B. & S. C. Rail. Co.*

According to Hodges on Railways, terminal charges are charges for loading and unloading and other services of a like nature which railway companies perform for their customers when the work of carrying is over. Each company derives its authority (if any) to make a terminal charge from its own special Act, and the nature of the charge is variously defined in these Acts. The Editor adds that a general charge for

services performed at the station, commonly called a "terminal charge," was gradually authorized in addition to the mileage rate. (Hodges on Railways, 7th ed. Vol. I. p. 560.)

In sect. 15 of the Regulation of Railways Act, 1873 (36 & 37 Vict. c. 48), the word "terminals" seems to mean charges for "loading and unloading, covering, collecting, delivery, and other services of a like nature."

Sect. 33 (3) of the Railway and Canal Traffic Act of 1888 (51 & 52 Vict. c. 25), which is the Act which contains the definition now being considered, appears to contemplate that every sum claimed by a railway company for carriage of merchandise shall be composed of (1) charge for conveyance over the railway; (2) terminal charges (if any); (3) dock charges (if any); so that in the contemplation of this section terminals are all the charges chargeable for carriage of merchandise, except the charge for conveyance over the railway and dock charges.

In sect. 61 of this Act, the component elements of a charge in respect of carriage of goods over a railway are (1) carriage of goods on the railway; (2) terminals; (3) demurrage; (4) collection, delivery, and other expenses. The last item seems to refer to collection and delivery *off* the railway, or cartage, which cannot be considered services "at" the stations within the meaning of sect. 3 (14). Demurrage, however, though it would appear to be more in the nature of liquidated damages for the detention of trucks caused by the consignee's delay, might possibly be included in that sub-section, and if this is so, the context requires that a narrower sense should be given to "terminals," as here used, than that which sect. 3 (14) would justify.

The question whether a charge for demurrage was, previous to the Act of 1888, a terminal, was raised, but not decided, in the case of *N. E. Rail. Co. v. Cairns*, 32 W. R. 829, where the charge was made for goods delivered (by notice of arrival) but not removed by the consignee, under conditions to the effect that such goods, if not removed within a specified time, would be charged for at a certain rate for each day of the

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delay, and would be held by the company as warehousemen at owner's sole risk.

In the original draft of this Act, terminals were defined as charges for loading, unloading, carrying, weighing, and covering goods at a terminal station; and the definition of a terminal station included a station at which a break of bulk is rendered necessary by a difference of gauge, crossing at a ferry, or other cause. Under sect. 3 (1), as it now stands, all the charges specified in the draft are allowable as terminals; and while there is no express mention of break of bulk, it appears open to the Commissioners to decide, in cases where break of bulk is rendered necessary, what, if anything, is a reasonable terminal under the circumstances.

The question whether, independently of the provisions of this chapter, a terminal is or is not excessive, may be raised before an ordinary Court; but no ordinary Court can entertain any question whether a terminal is unreasonable, in breach of sect. 45, or a contravention of an order made by the Commissioners or by a High Court under sect. 41, nor grant any relief or remedy in respect of its being so. (See note to sect. 41.)

The right of recovering terminals by suit is expressly reserved to a railway administration by sect. 55 (5), notwithstanding the lien for terminals conferred by the foregoing sub-sections.

Power of
Railway Com-
mission to fix
terminals.

[36 & 37 Vict.
c. 48, s. 15.]

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

By sect. 15 of the Regulation of Railways Act, 1873 (36 &

37 Vict. c. 48), power was given to the Railway Commissioners to determine questions arising with regard to terminal charges, where not fixed by Act of Parliament.

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(2) In deciding the question or dispute the Commissioners shall have regard only to the expenditure reasonably necessary to provide the accommodation in respect of which the terminals are charged, irrespective of the outlay which may have been actually incurred by the railway administration in providing that accommodation. [51 & 52 Vict. c. 25, s. 24 (1).]

Taken from 51 & 52 Vict. c. 25, s. 24 (1).

CHAPTER VI.

WORKING OF RAILWAYS.

General.

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

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

- (a) for regulating the mode in which, and the speed at which, rolling-stock used on the railway is to be moved or propelled;
- (b) for providing for the accommodation and convenience of passengers and regulating the carriage of their luggage;

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- (c) for declaring what shall be deemed to be, for the purposes of this Act, dangerous or offensive goods, and for regulating the carriage of such goods;
- (d) for regulating the conditions on which the railway administration will carry passengers suffering from infectious or contagious disorders, and providing for the disinfection of carriages which have been used by such passengers;
- [Act IV. 1883, s. 3.] (e) for regulating the conduct of the railway servants;
- (f) for regulating the terms and conditions on which the railway administration will warehouse or retain goods at any station on behalf of the consignee or owner; and,
- [26 & 27 Vict. c. 92, s. 32.] (g) generally, for regulating the travelling upon, and the use, working and management of, the railway.
- [Act IV. 1879, s. 8.] (2) The rules may provide that any person committing a breach of any of them shall be punished with fine which may extend to any sum not exceeding fifty rupees, and that, in the case of a rule made under clause (e) of sub-section (1), the railway servant shall forfeit a sum not exceeding one month's pay, which sum may be deducted by the railway administration from his pay.
- [Act IV. 1879, s. 8.] (3) A rule made under this section shall not

take effect until it has received the sanction of the Governor-General in Council and been published in the Gazette of India : PART III.

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

(4) The Governor-General in Council may cancel any rule made under this section, and the authority required by sub-section (1) to make rules thereunder may at any time, with the previous sanction of the Governor-General in Council, rescind or vary any such rule. [Act IV. 1879,
s. 8.]

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

(6) Every railway administration shall keep at each station on its railway a copy of the general rules for the time being in force under this section on the railway, and shall allow any per-

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PART III. son to inspect it free of charge at all reasonable times.

See Appendix, p. 406.

Disposal of
differences
between
railways re-
garding
conduct of
joint traffic.
[5 & 6 Vict.
c. 55, s. 11.]

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

“This section provides for the settlement by the Governor-General in Council of differences between railway administrators respecting the use of any common terminus or line of rails where the differences are such as to be likely to affect the safety of the public.” Statement of Objects and Reasons. See *post*, sect. 91. It overrides any provisions contained in the companies’ contracts for referring the matters in question to a different form of arbitration.

Agreements
with the
Governor-
General in
Council for

49. Any railway company, not being a company for which the Statute 42 and 43 Victoria, chapter 41, provides, may from time to time

make and carry into effect agreements with the Governor-General in Council for the construction of rolling-stock, plant or machinery used on, or in connection with, railways, or for leasing or taking on lease any rolling-stock, plant, machinery or equipments required for use on a railway, or for the maintenance of rolling-stock.

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construction
or lease of
rolling-stock.
[42 & 43 Vict.
c. 41, s. 4 (d).]

Sects. 49, 50, 51. "The effect of these sections will be to confer on railway companies domiciled in India the same privileges as are enjoyed by Indian railway companies domiciled in the United Kingdom." Statement of Objects and Reasons.

The companies for which the Indian Guaranteed Railways Act, 1879 (42 & 43 Vict. c. 41), provides are the guaranteed companies as defined in sect. 1 of that Act, viz., any of the companies specified in the schedule, and any railway company which, for the time being, constructs, maintains, or works a railway under any guarantee from, or arrangement with, the Secretary of State for India in Council.

Sections 49, 50, and 51 are not in terms confined to railway companies domiciled in India, but it does not appear that they could operate to extend the statutory powers given by an English Act to an English railway company working a railway in India and not coming within the above stated definition of a guaranteed company.

50. Any railway company, not being a company for which the Statute 42 and 43 Victoria, chapter 41, provides, may from time to time make with the Governor-General in Council, and carry into effect, or, with the sanction of the Governor-General in Council, make with any other railway administration, and carry into

Powers of
railway com-
panies to
enter into
working
agreements.
[42 & 43 Vict.
c. 41, s. 2.]

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effect, any agreement with respect to any of the following purposes, namely:—

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

[26 & 27 Vict.
c. 92, s. 22.]

Provided that the agreement shall not affect any of the rates which the railway administrations parties thereto are from time to time respectively authorised to demand and receive from any person, and that every person shall, notwithstanding

the agreement, be entitled to the use and benefit of the railways of any railway administrations, parties to the agreement, on the same terms and conditions, and on payment of the same rates, as he would be if the agreement had not been entered into.

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The proviso to section 50 is taken from 26 & 27 Vict. c. 92 (The Railways Clauses Act, 1863), s. 22.

51. Any railway company, not being a company for which the Statute 42 and 43 Victoria, chapter 41, provides, may from time to time exercise with the sanction of the Governor-General in Council all or any of the following powers, namely:—

Establishment of ferries and roadways for accommodation of traffic.

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

- (a) it may establish, for the accommodation of the traffic of its railway, any ferry equipped with machinery and plant of good quality and adequate in quantity to work the ferry;
- (b) it may work for purposes other than the accommodation of the traffic of the railway any ferry established by it under this section;
- (c) it may provide and maintain on any of its bridges roadways for foot-passengers, cattle, carriages, carts or other traffic;
- (d) it may construct and maintain roads for the accommodation of traffic passing to or from its railway;

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(e) it may provide and maintain any means of transport which may be required for the reasonable convenience of passengers, animals or goods carried or to be carried on its railway;

(f) it may charge tolls on the traffic using such ferries, roadways, roads or means of transport as it may provide under this section, according to tariffs to be arranged from time to time with the sanction of the Governor-General in Council.

Returns.

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

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

*Carriage of Property.*Maximum
load for
wagons.

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

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

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

54. (1) Subject to the control of the Governor-General in Council, a railway administration may impose conditions, not inconsistent with this Act or with any general rule thereunder, with respect to the receiving, forwarding or delivering of any animals or goods.

Power for railway administrations to impose conditions for working traffic.

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

(3) A railway administration shall not be bound to carry any animal suffering from any infectious or contagious disorder.

55. (1) If a person fails to pay on demand made by or on behalf of a railway administration any rate, terminal or other charge due from him in respect of any animals or goods, the railway

Lien for rates, terminals, and other charges.
[Act IV. 1879, s. 14.]

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administration may detain the whole or any of the animals or goods, or, if they have been removed from the railway, any other animals or goods of such person then being in or thereafter coming into its possession.

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

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

(4) If a person on whom a demand for any rate, terminal or other charge due from him has been made fails to remove from the railway within a reasonable time any animals or goods

which have been detained under sub-section (1), or any animals or goods which have remained unsold after a sale under sub-section (2), the railway administration may sell the whole of them, and dispose of the proceeds of the sale as nearly as may be under the provisions of sub-section (3).

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

See *ante*, p. 134.

56. (1) When any animals or goods have come into the possession of a railway administration for carriage or otherwise and are not claimed by the owner or other person appearing to the railway administration to be entitled thereto, the railway administration shall, if such owner or person is known, cause a notice to be served upon him, requiring him to remove the animals or goods.

Disposal of unclaimed things on a railway.

(2) If such owner or person is not known, or the notice cannot be served upon him, or he does not comply with the requisition in the notice, the railway administration may within a reasonable time, subject to the provisions of any other enactment for the time being in force, sell the animals or goods as nearly as may be under the

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provisions of the last foregoing section, rendering the surplus, if any, of the proceeds of the sale to any person entitled thereto.

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

57. Where any animals, goods or sale-proceeds in the possession of a railway administration are claimed by two or more persons, or the ticket or receipt given for the animals or goods is not forthcoming, the railway administration may withhold delivery of the animals, goods or sale-proceeds until the person entitled in its opinion to receive them has given an indemnity, to the satisfaction of the railway administration, against the claims of any other person with respect to the animals, goods or sale-proceeds.

Ante, p. 118.

See *Eagleton v. E. I. Rail. Co.*, 8 B. L. R. 581, and *ante*, p. 132.

The proposal to give railway receipts the same effect as bills of lading has not been adopted in this Act.

Requisitions for written accounts of description of goods.

[Act IV. 1879, s. 15.]

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

sufficient to determine the rate which the railway administration is entitled to charge in respect thereof.

(2) If such owner, person or consignee refuses or neglects to give such an account, and refuses to open the parcel or package containing the goods in order that their description may be ascertained, the railway administration may, (a) in respect of goods which have been brought for the purpose of being carried on the railway, refuse to carry the goods unless in respect thereof a rate is paid not exceeding the highest rate which may be in force at the time on the railway for any class of goods or, (b) in respect of goods which have been carried on the railway, charge a rate not exceeding such highest rate.

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

(4) If any difference arises between a railway servant and the owner or person having charge, or the consignee, of any goods which have been brought to be carried or have been carried on a railway, respecting the description of goods of

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

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which an account has been delivered under this section, the railway servant may detain and examine the goods.

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

(5) If it appears from the examination that the description of the goods is different from that stated in an account delivered under sub-section (1), the person who delivered the account, or, if that person is not the owner of the goods, then that person and the owner jointly and severally, shall be liable to pay to the railway administration the cost of the detention and examination of the goods, and the railway administration shall be exonerated from all responsibility for any loss which may have been caused by the detention or examination thereof.

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

(6) If it appears that the description of the goods is not different from that stated in an account delivered under sub-section (1), the railway administration shall pay the cost of the detention and examination, and be responsible to the owner of the goods for any such loss as aforesaid.

See *ante*, p. 110, and *post*, sect. 78 and sect. 106.

Dangerous or
offensive
goods.

[Act IV. 1879,
s. 16.
Act XII. 1886,
s. 16.]

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

(2) No person shall take any such goods with

him upon a railway without giving notice of their nature to the station-master or other railway servant in charge of the place where he brings the goods upon the railway, or shall tender or deliver any such goods for carriage upon a railway without distinctly marking their nature on the outside of the package containing them or otherwise giving notice in writing of their nature to the railway servant to whom he tenders or delivers them.

(3) Any railway servant may refuse to receive such goods for carriage and, when such goods have been so received without such notice as is mentioned in sub-section (1) having to his knowledge been given, may refuse to carry them or may stop their transit.

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

(5) Nothing in this section shall be construed to derogate from the Indian Explosives Act, 1884, IV. of 1884. or any rule under that Act, and nothing in sub-sections (1), (3) and (4) shall be construed to apply to any goods tendered or delivered for carriage by order or on behalf of the Government

PART III.**XX. of 1869.**

or to any goods which an officer, soldier, sailor or police-officer or a person enrolled as a volunteer under the Indian Volunteers Act, 1869, may take with him upon a railway in the course of his employment or duty as such.

Exhibition to the public of authority for quoted rates.

60. At every station at which a railway administration quotes a rate to any other station for the carriage of traffic other than passengers and their luggage, the railway servant appointed by the administration to quote the rate shall, at the request of any person, show to him at all reasonable times, and without payment of any fee, the rate-books or other documents in which the rate is authorized by the administration or administrations concerned.

Requisitions on railway administrations for details of gross charges.
[31 & 32 Vict. c. 119, s. 17.]

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

[51 & 52 Vict. c. 25, s. 33 (3).]

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

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

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

See note to sect. 45, *ante*, p. 237.

By 31 & 32 Vict. c. 119, s. 17, where any charge shall have been made by a company in respect of the conveyance of goods over their railway, the company are required to render, on application, an account distinguishing how much of the said charge is for the conveyance of the said goods on the railway, including therein tolls for the use of the railway, for the use of carriages, and for locomotive power, and how much of such charge is for loading and unloading, covering, collection, delivery, and for other expenses, but without particularising the several items.

And by 51 & 52 Vict. c. 25, s. 33 (3), the company is, upon application, to render an account of any charge made or claimed for the carriage of merchandise, and therein to distinguish the charge for conveyance over the railway from the terminal charges (if any) and from the dock charges (if any); and if any terminal charge or dock charge is included in such account, the nature and detail of the terminal expenses or dock charges in respect of which it is made are to be specified.

Carriage of Passengers.

62. The Governor-General in Council may require any railway administration to provide Communication between passengers

PART III.

and railway
servants in
charge of
trains.

[31 & 32 Vict.
c. 119, s. 22.]

and maintain in proper order, in any train worked by it which carries passengers, such efficient means of communication between the passengers and the railway servants in charge of the train as the Governor-General in Council has approved.

Maximum
number of
passengers
for each com-
partment.

[Act IV. 1879,
s. 8 (b).]

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

Reservation
of compart-
ments for
females.

64. (1) On and after the first day of January, 1891, every railway administration shall in every train carrying passengers reserve for the exclusive use of females one compartment at least of the lowest class of carriage forming part of the train.

(2) One such compartment so reserved shall, if the train is to run for a distance exceeding fifty miles, be provided with a closet.

Exhibition of
time-tables
and tables of

65. Every railway administration shall cause to be posted in a conspicuous and accessible place

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

PART III.

fares at
stations.
[Act IV. 1879,
s. 9.]

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

Supply of
tickets on
payment of
fares.
[Act IV. 1879,
s. 17.]

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

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

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

Provision for
case in which
tickets have
been issued
for trains not
having room
available for
additional
passengers.

(2) A person to whom a ticket has been issued

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PART III. and for whom there is not room available in the
 [Act IV. 1879, train for which the ticket was issued shall on
 s. 18.] returning the ticket within three hours after the
 departure of the train be entitled to have his
 fare at once refunded.

(3) A person for whom there is not room avail-
 able in the class of carriage for which he has
 purchased a ticket and who is obliged to travel
 in a carriage of a lower class shall be entitled on
 delivering up his ticket to a refund of the differ-
 ence between the fare paid by him and the fare
 payable for the class of carriage in which he
 travelled.

“The provisions of sect. 18 of the Indian Railway Act,
 1879, respecting the preferential rights of ticket holders,
 have been omitted as being unnecessary and in practice
 unworkable. The carriage of troops on railways administered
 by companies is regulated by the contracts between the
 Government and the companies.” (Statement of Objections
 and Reasons.)

Prohibition
 against tra-
 velling with-
 out pass or
 ticket.

[Act IV. 1879,
 s. 19.]

68. No person shall, without the permission of
 a railway servant, enter any carriage on a railway
 for the purpose of travelling therein as a passenger
 unless he has with him a proper pass or ticket.

The words “unless he has *with him*” are far more
 stringent than the words of sect. 19 of Act IV. of 1879,
 “without having first paid his fare and obtained a ticket.” The
 present section would apply to a season ticket holder who had
 forgotten his ticket. (See *post*, sect. 113.)

Exhibition

69. Every passenger by railway shall, on the

requisition of any railway servant appointed by the railway administration in this behalf, present his pass or ticket to the railway servant for examination, and at or near the end of the journey for which the pass or ticket was issued, or, in the case of a season pass or ticket, at the expiration of the period for which it is current, deliver up the pass or ticket to the railway servant.

PART III.

and surrender
of passes and
tickets.

[Act IV. 1879,
s. 17.]

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

Return and
season tickets.

71. (1) A railway administration may refuse to carry, except in accordance with the conditions prescribed under section 47, sub-section (1), clause (d), a person suffering from any infectious or contagious disorder.

Power to
refuse to
carry persons
suffering
from in-
fectious or
contagious
disorder.

[Act IV. 1879,
s. 20.]

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

(3) A railway servant giving such permission as is mentioned in sub-section (2) must arrange for the separation of the person suffering from the disorder from other persons being or travelling upon the railway.

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CHAPTER VII.

RESPONSIBILITY OF RAILWAY ADMINISTRATIONS AS
CARRIERS.

Measure of
the general
responsibility
of a railway
administra-
tion as a
carrier of
animals and
goods.

[Act IV. 1879,
s. 10.]

IX. of 1872.

72. (1) The responsibility of a railway administration for the loss, destruction or deterioration of animals or goods delivered to the administration to be carried by railway shall, subject to the other provisions of this Act, be that of a bailee under sections 151, 152 and 161 of the Indian Contract Act, 1872.

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

(a) is in writing signed by or on behalf of the person sending or delivering to the railway administration the animals or goods, and

(b) is otherwise in a form approved by the Governor-General in Council.

III. of 1865. (3) Nothing in the common law of England or in the Carriers Act, 1865, regarding the responsibility of common carriers with respect to the carriage of animals or goods, shall affect the responsibility as in this section defined of a railway administration.

See *ante*, pp. 63, 64, and 97—104.

Further pro-
vision with
respect to the

73. (1) The responsibility of a railway administration under the last foregoing section for

the loss, destruction or deterioration of animals delivered to the administration to be carried on a railway shall not in any case exceed, in the case of elephants or horses, five hundred rupees a head or, in the case of camels or horned cattle, fifty rupees a head or, in the case of sheep, goats, dogs or other animals, ten rupees a head, unless the person sending or delivering them to the administration caused them to be declared, or declared them, at the time of their delivery for carriage by railway, to be respectively of higher value than five hundred, fifty or ten rupees a head, as the case may be.

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liability of a
railway ad-
ministration
as a carrier
of animals.

[17 & 18 Vict.
c. 31, s. 7.]

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

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

This section is modelled on the 2nd and 3rd provisos of sect. 7 of the Railway and Canal Traffic Act, 1854. *Ante*, p. 87.

74. A railway administration shall not be responsible for the loss, destruction or deterioration

Further pro-
vision with
respect to the

PART III.

liability of a railway administration as a carrier of luggage.

[Act IV. 1879, s. 12.]

Further provision with respect to the liability of a railway administration as a carrier of articles of special value.

[Act IV. 1879, s. 11.]

1 Will. IV. c. 68, s. 1.]

of any luggage belonging to or in charge of a passenger unless a railway servant has booked and given a receipt therefor.

See *ante*, pp. 87—97.

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

See *ante*, pp. 104—110. This section, following 1 Will. IV. c. 68, s. 1 (but unlike sect. 11 of Act IV. of 1879), restricts the obligation of declaring to cases where the value exceeds one hundred rupees.

[1 Will. IV. c. 68, s. 9.]

(2) When any parcel or package of which the value has been declared under sub-section (1) has been lost or destroyed or has deteriorated, the compensation recoverable in respect of such loss,

destruction or deterioration shall not exceed the value so declared, and the burden of proving the value so declared to have been the true value shall, notwithstanding anything in the declaration, lie on the person claiming the compensation.

The carrier is not to be bound by the declaration of value, but is entitled to demand from the party suing proof of the actual value: as under sect. 9 of 1 Will. IV. c. 68.

(3) A railway administration may make it a condition of carrying a parcel declared to contain any article mentioned in the second schedule that a railway servant authorized in this behalf has been satisfied by examination or otherwise that the parcel actually contains the article declared to be therein.

Whether or not cotton fabrics bordered with silk or having a portion of silk otherwise used in their manufacture are "silks in a manufactured or unmanufactured state, wrought up or not wrought up with other materials" within the meaning of Act XVIII. of 1854, sect. 10, is a question of fact to be decided on the evidence, and the proper test for a judge to apply in such cases is to determine whether or not the value of the silk wrought up with other materials is more than half the value of the fabric. If it be not, the fabric cannot be considered to be silk within the meaning of the Act. (*Lakshmidas Hirachand v. Great Indian Peninsula Rail. Co.*, 4 Bomb. H. C. R. 129, following *Brunt v. Midland Rail. Co.*, 33 L. J. Ex. 137.)

The term "silks in a manufactured state and whether wrought up or not wrought up with other materials" used in the second schedule of the Indian Railway Act, 1879, does not apply to all classes of goods in which silk may be introduced. A cloth composed of silk and cotton thread, one-eighth being

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silk and seven-eighths cotton, the proportionate value of silk and cotton being one to four-and-a-half, does not come within the meaning of the said term. (*Saninadha Mudali v. S. Indian Rail. Co.*, I. L. R. 6 Mad. 420.)

Burden of proof in suits in respect of loss of animals or goods.

[Act IV. 1879, s. 13.]

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

See *ante*, p. 113.

Notification of claims to refunds of overcharges and to compensation for losses.

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

Sect. 77 "is designed to prevent the preferring of stale claims against railway administrations." (Statement of Objections and Reasons.)

Exoneration from responsibility in case of goods falsely described.

78. Notwithstanding anything in the foregoing provisions of this Chapter, a railway administration shall not be responsible for the loss,

destruction or deterioration of any goods with respect to the description of which an account materially false has been delivered under subsection²(1) of section 58 if the loss, destruction or deterioration is in any way brought about by the false account, nor in any case for an amount exceeding the value of the goods if such value were calculated in accordance with the description contained in the false account.

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See *ante*, pp. 110—112.

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

Settlement of compensation for injuries to officers, soldiers and followers on duty.

Where, on a railway belonging to and worked by Government, an accident happens to an officer, soldier, or servant travelling on duty, compensation is to be determined under

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the military regulations, which apply to injuries received otherwise than in action.

Act XIII. of 1855 is copied from 9 & 10 Vict. c. 93, Lord Campbell's Act.

Suits for compensation for injury to through-booked traffic.

80. Notwithstanding anything in any agreement purporting to limit the liability of a railway administration with respect to traffic while on the railway of another administration, a suit for compensation for loss of the life of, or personal injury to, a passenger, or for loss, destruction or deterioration of animals or goods where the passenger was or the animals or goods were booked through over the railways of two or more railway administrations, may be brought either against the railway administration from which the passenger obtained his pass or purchased his ticket, or to which the animals or goods were delivered by the consignor thereof, as the case may be, or against the railway administration on whose railway the loss, injury, destruction or deterioration occurred.

See *ante*, pp. 80—83.

The intention of the legislature in this section, though perhaps not very clearly expressed, seems to be, that where a suit for compensation to injury to through-booked traffic will otherwise lie, it may be brought *equally* against the booking administration and against the administration on whose railway the loss occurred; and that any agreement to the contrary, restricting the liability of the former to losses occurring on its own line only (like the condition in *Aldridge v. G. W. Rail. Co.*, *ante*, p. 81), shall be null and void. The meaning cannot be that which the words taken literally would possibly warrant, that the booking administration is to be

liable to a suit for a loss occurring on another railway, no matter what agreement it may make. If the agreement were one complying with the requirements of section 72, and in the terms of the risk note in *Moheswar Das v. Carter*, I. L. R. 10 Calc. 210 (*ante*, p. 99), holding the booking administration harmless and free from all responsibility in regard to any loss or damage from any cause whatever, "before, during and after transit over the said railway, or other railway lines working in connection therewith," it is conceived that such an agreement would still be held perfectly valid, as it was in that case, and would protect the booking administration in a suit for compensation for injury to through-booked traffic while on the railway of another administration, as well as while on its own.

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Again, if the consignor elects to sue the administration on whose line the loss occurred, not being the booking administration, his suit will be subject to any agreement under section 72 (2), which he may have entered into with that administration limiting the latter's responsibility.

In case of injury to booked-through passengers, the right of suit is the same.

81. Where a railway administration under contract to carry animals or goods by any inland water procures the same to be carried in a vessel which is not a railway as defined in this Act, the responsibility of the railway administration for the loss, destruction or deterioration of the animals or goods during their carriage in the vessel shall be the same as if the vessel were such a railway.

Limitation of liability of railway administration in respect of traffic on inland waters by vessel not being part of railway.

It is not clear whether the responsibility of a railway administration under this section can be limited only by an agreement in accordance with the provisions of section 72 (2). The responsibility is to be the same as if the vessel were a

PART III. railway. Is the mode of limiting that responsibility to be the same also? The Act certainly does not expressly say so.

Limitation
of liability
of railway
administra-
tion in respect
of accidents
at sea.

[31 & 32 Vict.
c. 119, s. 14.
34 & 35 Vict.
c. 78, s. 12.]

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

17 & 18 Vict.
c. 104.
25 & 26 Vict.
c. 63.

(2) The burden of proving that any such loss, injury or damage as is mentioned in sub-sec-

tion (1) happened during the carriage by sea shall PART III.
lie on the railway administration.

See *ante*, pp. 64—67.

It is obvious that the provisions of section 72 (2), which apply to carriage by railway, do not extend to carriage by sea under this section.

CHAPTER VIII.

ACCIDENTS.

83. When any of the following accidents occurs in the course of working a railway, namely:—

*Report of
railway
accidents.
[34 & 35 Vict.
c. 78, s. 6.]*

- (a) any accident attended with loss of human life, or with grievous hurt as defined in the Indian Penal Code, or with serious injury to property; XLV. of 1860.
- (b) any collision between trains of which one is a train carrying passengers;
- (c) the derailment of any train carrying passengers, or of any part of such a train;
- (d) any accident of a description usually attended with loss of human life or with such grievous hurt as aforesaid or with serious injury to property;
- (e) any accident of any other description which the Governor-General in Council may notify in this behalf in the Gazette of India;

the railway administration working the railway

PART III. and, if the accident happens to a train belonging
 [Act IV. 1879, to any other railway administration, the other
 s. 6.] railway administration also shall, without unnecessary delay, send notice of the accident to the Local Government and to the Inspector appointed for the railway; and the station-master nearest to the place at which the accident occurred or, where there is no station-master, the railway servant in charge of the section of the railway on which the accident occurred shall, without unnecessary delay, give notice of the accident to the Magistrate of the district in which the accident occurred, and to the officer in charge of the police-station within the local limits of which it occurred, or to such other Magistrate and police-officer as the Governor-General in Council appoints in this behalf.

By the General Clauses Act I. of 1868, s. 2 (10), "Local Government" means the person authorized by law to administer executive government in the part of British India in which the Act containing such expression shall operate, and includes a Chief Commissioner. Sect. 144 of this Act empowers the Governor-General in Council to delegate any of his powers with respect to a railway under this Act to a local Government, and to declare what local Government shall be deemed to be for the purposes of the exercise of such powers the local Government in respect of the railway. See Act IV. 1879, s. 53.

Power to
make rules
regarding

84. The Governor-General in Council may make rules, consistent with this Act and any

other enactment for the time being in force, for all or any of the following purposes, namely :—

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notices of
and inquiries
into accidents.

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

85. Every railway administration shall send to the Governor-General in Council a return of accidents occurring upon its railway, whether attended with personal injury or not, in such form and manner and at such intervals of time as the Governor-General in Council directs.

Submission
of return of
accidents.

[Act IV. 1879,
s. 7.]

86. Whenever any person injured by an accident on a railway claims compensation on account of the injury, any Court or person having by law or consent of parties authority to determine the claim may order that the person injured be examined by some duly qualified medical practitioner named in the order and not being a witness on either side, and may make such order with

Provision for
compulsory
medical
examination
of person in-
jured in rail-
way accident.

[31 & 32 Vict.
c. 119, s. 26.]

PART III. respect to the costs of the examination as it or he thinks fit.

CHAPTER IX.

PENALTIES AND OFFENCES.

This chapter includes the more important breaches of the law which have hitherto been dealt with under bye-laws only.

Forfeitures by Railway Companies.

Penalty for default in compliance with requisition under sect. 13.

[Act IV. 1879, s. 52.]

87. If a railway company fails to comply with any requisition made under section 13, it shall forfeit to the Government the sum of two hundred rupees for the default and a further sum of fifty rupees for every day after the first during which the default continues.

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

[Act IV. 1883, s. 4.]

88. If a railway company moves any rolling-stock upon a railway by steam or other motive power in contravention of section 16, sub-section (2), or opens or uses any railway or work in contravention of section 18, section 19, section 20 or section 21, or reopens any railway or uses any rolling-stock in contravention of section 24, it shall forfeit to the Government the sum of two hundred rupees for every day during which the motive power, railway, work or rolling-stock is used in contravention of any of those sections.

Penalty for not having certain docu-

89. If a railway company fails to comply with the provisions of section 47, sub-section (6),

section 54, sub-section (2), or section 65, with respect to the book or other documents to be kept open to inspection or conspicuously posted at stations on its railway, it shall forfeit to the Government the sum of fifty rupees for every day during which the default continues.

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ments kept or exhibited at stations under sects. 47, 54, or 65.

90. If a railway company fails to comply with the provisions of section 47 with respect to the making of general rules, it shall forfeit to the Government the sum of fifty rupees for every day during which the default continues.

Penalty for not making rules as required by sect. 47. [Act IV. 1879, s. 23.]

91. If a railway company refuses or neglects to comply with any decision of the Governor-General in Council under section 48, it shall forfeit to the Government the sum of two hundred rupees for every day during which the refusal or neglect continues.

Penalty for failure to comply with decision under sect. 48.

92. If a railway company fails to comply with the provisions of section 52 or section 85 with respect to the submission of any return, it shall forfeit to the Government the sum of fifty rupees for every day during which the default continues after the fourteenth day from the date prescribed for the submission of the return.

Penalty for delay in submitting returns under sects. 52 or 85. [Act IV. 1879, s. 23.]

93. If a railway company contravenes the provisions of section 53 or section 63 with respect to the maximum load to be carried in any wagon

Penalty for neglect of provisions of sects. 53 or 63 with respect

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PART III.
to carrying
capacity of
rolling-stock.

or truck, or the maximum number of passengers to be carried in any compartment, or the exhibition of such load on the wagon or truck or of such number in or on the compartment, or knowingly suffers any person owning a wagon or truck passing over its railway to contravene the provisions of the former of those sections, it shall forfeit to the Government the sum of twenty rupees for every day during which either section is contravened.

Penalty for failure to comply with requisition under sect. 62 for maintenance of means of communication between passengers and railway servants.

[31 & 32 Vict. c. 119, s. 22.]

94. If a railway company fails to comply with any requisition of the Governor-General in Council under section 62 for the provision and maintenance in proper order, in any train worked by it, which carries passengers, of such efficient means of communication as the Governor-General in Council has approved, it shall forfeit to the Government the sum of twenty rupees for each train run in disregard of the requisition.

Penalty for failure to reserve compartments for females under sect. 64.

95. If a railway company fails to comply with the requirements of section 64 with respect to the reservation of compartments for females or the provision of closets therein, it shall forfeit to the Government the sum of twenty rupees for every train in respect of which the default occurs.

Penalty for omitting to give the notices of accidents required by sect. 83 and under sect. 84.

96. If a railway company omits to give such notice of an accident as is required by section 83 and the rules for the time being in force under

section 84, it shall forfeit to the Government the sum of one hundred rupees for every day during which the omission continues. [Act IV. 1879, s. 22. 34 & 35 Vict. c. 78, s. 6.]

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

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

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

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

Offences by Railway Servants.

99. If a railway servant whose duty it is to comply with the provisions of section 60 negligently or intentionally breaches his duty, he shall be liable to a fine not exceeding one hundred rupees. Breach of duty imposed by sect. 60.

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gently or wilfully omits to comply therewith, he shall be punished with fine which may extend to twenty rupees.

Drunkenness.

[Act IV. 1879,
s. 25.
5 & 6 Vict.
c. 55, s. 17.]

100. If a railway servant is in a state of intoxication while on duty, he shall be punished with fine which may extend to fifty rupees, or, where the improper performance of the duty would be likely to endanger the safety of any person travelling or being upon a railway, with imprisonment for a term which may extend to one year, or with fine, or with both.

Endangering the safety of persons.

[Act IV. 1879,
s. 26.
3 & 4 Vict.
c. 97, ss. 13, 14.
5 & 6 Vict.
c. 55, s. 17.]

101. If a railway servant, when on duty, endangers the safety of any person—

(a) by disobeying any general rule made, sanctioned, published and notified under this Act, or

(b) by disobeying any rule or order which is not inconsistent with any such general rule, and which such servant was bound by the terms of his employment to obey, and of which he had notice, or

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

Liability to conviction under the corresponding section (26) of Act IV. of 1879 arises not from the consequences directly

referable to the breach of the rule, but because of the danger which the breach of the rule entails. (*Snell v. The Queen*, I. L. R. 6 Mad. 201.) The maximum term of imprisonment for this offence was three years under Act IV. of 1879.

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

Compelling passengers to enter carriages already full.
[Act IV. 1879, s. 28.]

The maximum penalty for this offence under Act IV. of 1879 was 100 rupees.

103. If a station-master or a railway servant in charge of a section of a railway omits to give such notice of an accident as is required by section 83 and the rules for the time being in force under section 84, he shall be punished with fine which may extend to fifty rupees.

Omission to give notice of accident.
[Act IV. 1879, s. 24.]

104. If a railway servant unnecessarily—

(a) allows any rolling-stock to stand across a place where the railway crosses a public road on the level, or

(b) keeps a level-crossing closed against the public,

he shall be punished with fine which may extend to twenty rupees.

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

105. If any return which is required by this Act is false in any particular to the knowledge of

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

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any person who signs it, that person shall be punished with fine which may extend to five hundred rupees, or with imprisonment which may extend to one year, or with both.

Other Offences.

Giving false account of goods.

[Act IV. 1879, s. 29, 8 Vict. c. 20, s. 99.]

106. If a person requested under section 58 to give an account with respect to any goods gives an account which is materially false, he and, if he is not the owner of the goods, the owner also shall be punished with fine which may extend to ten rupees for every maund or part of a maund of the goods, and the fine shall be in addition to any rate or other charge to which the goods may be liable.

Unlawfully bringing dangerous or offensive goods upon a railway.

[Act IV. 1879, s. 30, 8 Vict. c. 20, s. 152.]

107. If in contravention of section 59 a person takes with him any dangerous or offensive goods upon a railway, or tenders or delivers any such goods for carriage upon a railway, he shall be punished with fine which may extend to five hundred rupees, and shall also be responsible for any loss, injury or damage which may be caused by reason of such goods having been so brought upon the railway.

See *Lyell v. Ganga Dai*, I. L. R. 1 All. 60, and *ante*, p. 84.

Needlessly interfering with means

108. If a passenger, without reasonable and sufficient cause, makes use of or interferes with

any means provided by a railway administration for communication between passengers and the railway servants in charge of a train, he shall be punished with fine which may extend to fifty rupees.

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of communication in a train.

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

Under Act IV. of 1879, the maximum penalty for this offence was 100 rupees.

109. (1) If a passenger, having entered a compartment which is reserved by a railway administration for the use of another passenger, or which already contains the maximum number of passengers exhibited therein or thereon under section 63, refuses to leave it when required to do so by any railway servant, he shall be punished with fine which may extend to twenty rupees.

Entering compartment reserved or already full or resisting entry into a compartment not full. [Act IV. 1879, s. 39.]

(2) If a passenger resists the lawful entry of another passenger into a compartment not reserved by the railway administration for the use of the passenger resisting or not already containing the maximum number of passengers exhibited therein or thereon under section 63, he shall be punished with fine which may extend to twenty rupees.

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

Smoking. [Act IV. 1879, s. 35.]

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

Defacing
public
notices.

[8 Vict. c. 16,
s. 146.]

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

Fraudulently
travelling or
attempting to
travel without
proper pass
or ticket.

[Act IV. 1879,
s. 32.]

112. If a person, with intent to defraud a railway administration,—

(a) enters in contravention of section 68 any carriage on a railway, or

A person who buys half of a return ticket, marked “not transferable,” issued to another and travels with it, travels without having previously paid his fare, with intent to avoid payment thereof, within the meaning of sect. 103 of the Railways Clauses Act, 1845. [“If any person travel or attempt to travel in any carriage of the company, or of any other company or party using the railway, without having previously paid his fare, and with intent to avoid payment thereof, &c.”] (*Langdon v. Howells*, 4 Q. B. D. 337.)

Sub-sect. (a) applies to any person who, with intent to defraud, enters a carriage, without the permission of a railway servant, for the purpose of travelling therein, without having with him a proper pass or ticket. Therefore, a person

travelling with the unused half of a return ticket issued to another, and marked not transferable, would appear, on the authority of the case cited, to be punishable under this subsection, though he would also be liable to a penalty under sect. 113, and, if himself the purchaser of such half return ticket, to a penalty under sect. 114.

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(b) uses or attempts to use a single pass or single ticket which has already been used on a previous journey or, in the case of a return ticket, a half thereof which has already been so used,

he shall be punished with fine which may extend to one hundred rupees in addition to the amount of the single fare for any distance which he may have travelled.

113. (1) If a passenger travels in a train without having a proper pass or a proper ticket with him, or, being in or having alighted from a train, fails or refuses to present for examination or to deliver up his pass or ticket immediately on requisition being made therefor under section 69, he shall be liable to pay, on the demand of any railway servant appointed by the railway administration in this behalf, the excess charge hereinafter in this section mentioned, in addition to the ordinary single fare for the distance which he has travelled or, where there is any doubt as to the station from which he started, the ordinary single fare from the station from which the train origin-

Travelling without pass or ticket or with insufficient pass or ticket or beyond authorized distance.
[Act IV. 1879, ss. 31, 32.]

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ally started, or, if the tickets of passengers travelling in the train have been examined since the original starting of the train, the ordinary single fare from the place where the tickets were examined or, in case of their having been examined more than once, were last examined.

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

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

- (a) where the passenger has immediately after incurring the charge and before being detected by a railway servant notified to the railway servant on duty with the train the fact of the charge having been incurred, be one rupee, two annas or eight annas, and
- (b) in any other case, be six rupees, one rupee or three rupees,

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

Provided that such excess charge shall in no case exceed,—

- (a) where the liability to pay it arises under sub-section (1), the amount of the ordinary single fare which the passenger incurring the charge is liable to pay under that sub-section, or
- (b) where such liability arises under sub-section (2), the amount of the difference between the fare paid by the passenger incurring the charge and the fare payable in respect of such journey as he has made.

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

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By sect. 31 of Act IV. 1879, a passenger travelling without a proper ticket, or having one and not showing it or delivering it up when lawfully required, is liable to pay the fare of the class in which he is found travelling, from the place whence the train originally started, or, if he can prove that he has travelled a less distance, then from the place whence he has travelled; and such fare is recoverable as if it were a fine.

Hart v. Buskin (I. L. R. 12 Calc. 192) decided that a passenger who has a monthly ticket which is still in force and in his possession, cannot be said to be travelling without a ticket within the meaning of sect. 31 of Act IV. 1879, merely because he does not happen to have the ticket with him, and therefore cannot produce it when called upon to do so. If he does not produce it, however, he is liable to pay the fare under sect. 31. But sect. 31, dealing with innocent persons, has nothing to do with punishment or penalty or fine. It simply makes a fare recoverable, and recoverable in a summary way. The order in such a case should merely order payment of the fare, and of the fare only; any arbitrary fine is unauthorized.

So, in *Chilton v. London and Croydon Rail. Co.*, 16 M. & W. 212, it was held (though this was not necessary for the point decided) that a bye-law similar to the first part of sect. 31 of Act IV. 1879, "did not impose a penalty or forfeiture." On the other hand, from *Brown v. G. E. Rail. Co.*, 2 Q. B. D. 406, *semble*, that such a sum is a penalty or forfeiture within sect. 145 of the Railways Clauses Act. Mellor, J., says (p. 409), "I am inclined to think, notwithstanding the great weight which must be attached to the opinion expressed by Lord Wensleydale in *Chilton v. London and Croydon Rail. Co.*, which, however, was not necessary to the decision of the case, that this is a case of a penalty or forfeiture. It is, however, unnecessary to decide the point." And Lush, J., says that "the imposition of a fare, which would generally be larger than the fare for the journey on which the person

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in default had travelled, is in the nature of a penalty or forfeiture." And in *London and Brighton Rail. Co. v. Watson*, 4 C. P. Div. 119, in which case a bye-law of a railway company, made in pursuance of sect. 109 of the Railway Clauses Consolidation Act, 1845 (by sect. 145 of which Act penalties for forfeitures imposed by bye-laws are recoverable before justices), provided that "any passenger travelling without a ticket, or failing or refusing to show or deliver up his ticket" to any duly authorized servant of the company when required to do so "shall be required to pay the fare from the station whence the train originally started to the end of his journey"; and an action was brought by the company to recover a sum so payable in the County Court: it was held that the above bye-law did not create a debt recoverable in a Court of civil jurisdiction. In delivering the judgment of the Court, Bramwell, L. J., said, "If the sum claimed in this case is a penalty, it is not recoverable in the County Court, nor elsewhere than before justices, as provided by 8 & 9 Vict. c. 20, s. 145. . . . Accordingly, it was argued for the plaintiffs that it was a fare, and not a penalty, and therefore recoverable, not before justices as a penalty, but as a debt in the County Court. I am of opinion that it is not a debt, that the plaintiffs have no power to create such a debt. The statute (see sect. 109) gives power to enforce bye-laws only by a penalty against the offender. We have no doubt that a railway company may demand and insist on payment before taking a passenger, and that if they give him credit for his fare, they may insist on any sum they think fit, and if he agrees to it, that would be a valid debt, and recoverable as such. But if the passenger does not agree to it, he may indeed be a trespasser in getting into the carriage, and liable to damages as such, or they may waive the tort and recover the fare on the *quantum meruit* scale, but they cannot fix and insist on a fare at their pleasure."

And in *Mellor v. Denham*, 5 Q. B. D. 469, Bramwell, L. J., says, "It is clear to my mind that the matter complained of is in truth a criminal offence, for it is disobedience to bye-laws, which are enforceable as part of the law of the land,

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and a person guilty of disobedience to them is liable to a penalty. This is sufficient to constitute a criminal matter." This case was followed by the Court of Appeal in *Reg. v. Whitchurch*, 7 Q. B. Div. 534. It would appear, therefore, that the dictum in *Hart v. Buskin*, that sect. 31 does not impose a penalty, is against the weight of English authority; for to compel a season-ticket holder to pay over again a fare which he has already paid is not less in the nature of a penalty than to make a passenger pay the fare of a longer distance than that which he has actually travelled.

There can be no question that the excess charge mentioned in sect. 113 is a penalty, and it should be observed that the passenger becomes liable to it for travelling without having a proper ticket *with him*, not for travelling without a proper ticket, as under sect. 31 of Act IV. of 1879. (See *ante*, sect. 68.)

In *Woodward v. Eastern Counties Rail. Co.*, 30 L. J. (N. S.) M. C. 196, under a bye-law subjecting a passenger "not producing or delivering up his ticket when required to a penalty not exceeding forty shillings," the holder of a season ticket, who refused to produce it, was convicted in ten shillings and costs, although on receiving the ticket, he had signed a memorandum that he would produce the ticket when required, or in default thereof pay the ordinary fare. It was held that this contract did not exclude the application of the bye-law, and the conviction was affirmed.

But under sect. 31 of Act IV. of 1879, and sect. 113 of this Act, the sum recoverable from the passenger is the sum specified in the section, as decided in *Hart v. Buskin*, not an arbitrary fine.

The question whether or not a ticket is "proper" within the meaning of sect. 113 sometimes raises a question as to the construction of the contract of carriage, evidenced by the ticket. Is a ticket from A. to B. a proper ticket from A. to any intermediate station? and that, though the fare to the intermediate station is greater than from A. to B.? The question is one which does not admit of a general answer. In England, it has been decided that a person who has taken

a ticket to a station beyond that at which he intends to, and does, alight, the fare for the longer distance being less than that for the shorter, cannot be convicted of a breach of a bye-law providing that "every passenger shall pay his fare previously to entering any of the carriages of the company." (*Reg. v. Frere*, 24 L. J. M. C. 68; 4 Ell. & Bl. 598.)

In that case, the facts were as follows:—F. took a ticket from Colchester to Norwich, intending to travel as far as Diss only, which was nineteen miles nearer than Norwich. The proper fare to Diss was seven shillings; the fare to Norwich, owing to competition, was only five shillings. On arriving at Diss, F. got out and delivered his ticket to the collector, and refused to pay the difference of two shillings, though demanded. By one of the company's bye-laws, it was provided that every passenger should pay his fare previously to entering a carriage of the company, upon payment of which he would be furnished with a ticket specifying the class of carriage and distance for which the fare was paid, which ticket he was required to show when requested, and to deliver up before leaving the carriage; and any passenger who should enter a carriage without having paid his fare, or who should refuse to show or deliver up his ticket when required, was thereby subjected to a penalty not exceeding forty shillings.

On the ticket was printed "Colchester to Norwich. Second class." with the date and number, and nothing more. F. having been convicted by the magistrates of an offence against the bye-law, the conviction was quashed on appeal. It was held by Campbell, C. J., that F. could not be said to have been a person who had entered the company's carriage without payment of the fare, because before entering he had paid the full fare from Colchester to Norwich, all that was required of him, and all that the company, at the time the ticket was obtained, had a right to demand. Wightman, J., said: "I am of the same opinion. A fare may be paid for going to Norwich; and yet the person paying it may afterwards choose to stop at any previous place where the train stops. That is hardly disputed. But then it is said that, because the appel-

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lant intended, when he took the ticket for Norwich, to stop at Diss, he obtained the ticket fraudulently, although, if he had originally meant to go to Norwich, he might lawfully change his mind on arriving at Diss. We need not inquire how this is. The bye-law, at any rate, does not meet the question. The appellant had paid the fare to Norwich, and I think he cannot, merely because he got out at an intermediate station, be said to have entered the carriage without previously paying his fare."

It would also seem that the passenger in *Reg. v. Frere* could not have been convicted of travelling without having paid his fare, and with intent to avoid payment, under sect. 103 of 8 & 9 Vict. c. 20. (Hodges on Railways, 5th edit. p. 524.)

Again, it appears from *Moore v. Metropolitan Rail. Co.*, L. R. 8 Q. B. 36 (though the actual point was not decided), that where a passenger was travelling with a return ticket from Moorgate Street to Notting Hill, and on the way to Notting Hill, got out at an intermediate station—Edgware Road—he had not committed an offence under 8 & 9 Vict. c. 20, s. 103.

But in a case in Scotland, where a return ticket was issued subject to the following regulation: "These tickets are not transferable, and are only available for the stations the names of which are printed thereon, and for no other, either short of or beyond those stations," the opinion of two at least of the three judges was, that such a ticket would not entitle the holder to return to a station short of the station of issue, on the ground that railway authorities are under no obligation to give return tickets at all, and if they do so, may annex to such tickets any reasonable conditions they please. (*Menzies v. Highland Rail. Co.*, 15 Scottish Law Reporter, 608.)

To apply the inferences to be derived from these cases to India, it would seem that a ticket in the form of that in *R. v. Frere*, or merely fulfilling the requirements of sect. 66 of this Act, is *per se* evidence of a simple contract to carry from A. to B., and that, under such a contract, a passenger is entitled to alight at any intermediate station at which a train, going

from A. to B., regularly stops. If he knows the fare to the intermediate station to be greater than the fare to B., the difference may perhaps be recoverable from him in a civil suit; but this is doubtful, and the tendency of the dicta in *R. v. Frere* is to the contrary.

A railway administration, however, may, by a general rule under the provisions of sect. 47, annex to the contract any reasonable conditions, including a condition that the ticket shall not be available for an intermediate station, and the passenger, if he has notice, actual or constructive (*Watkins v. Rymill, ante*, p. 122), of such conditions, is bound by them. He has no abstract right to be carried a shorter distance for the same fare as the administration charges for a longer one. His rights depend on the contract of carriage, and what that is must be determined in each particular instance by all the circumstances of the case, among which must be taken into consideration the practice of the railway authorities as to enforcing or not enforcing the conditions. It does not follow, however, if the passenger, by infringing the conditions of the contract, renders himself liable to a civil suit, that he also becomes liable to a penalty. A passenger alighting at a station for which his ticket is not available, but short of that to which he has paid his fare, does not, it is conceived, travel in a train without having a proper ticket with him within the meaning of sect. 113 so as to render himself liable to an excess fare, because so long as he travels in the train, his ticket is a proper one. He has paid all that the railway administration is entitled to demand until the moment that he alights. (*R. v. Frere, ubi supra.*)

A railway company is not justified in forcibly removing from a carriage a passenger who has taken a ticket, but fails to produce it: *Butler v. Manchester, Sheffield and Lincolnshire Rail. Co.*, 21 Q. B. Div. 207; in which case the plaintiff had a ticket issued to him, which incorporated by reference a condition in the company's time-tables that every passenger should show and deliver up his ticket to any duly authorized servant of the company when required to do so, and any passenger travelling without a ticket, or failing or refusing to show or deliver up

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such ticket as aforesaid, should be required to pay the fare from the station whence the train originally started. Having lost the ticket, he could not produce it when required to do so, and, refusing to pay the fare from the station whence the train had started, was forcibly removed from the carriage by the company's servants, but without unnecessary force. He thereupon sued the company for assault, and it was held by the Court of Appeal that the relation between the parties was a contractual one, that the plaintiff was not unlawfully on the defendants' premises, and that therefore the company were not justified in forcibly removing him, but that their remedy was to proceed against him for the amount of the fare he refused to pay. Such would also seem to be the law under sect. 113 of this Act, as well as under sect. 31 of Act IV. of 1879, in regard to a passenger who had with him on entering the train a proper ticket. He can only be dealt with under sect. 113. But a person who commits a breach of sect. 68 is in a different position.

The case of *Pratab Daji v. Bombay Baroda and C. I. Rail. Co.*, I. L. R. 1 Bom. 52, which decided that a railway company had a right to forcibly eject, as a trespasser, a person innocently travelling without having taken a ticket, turned upon the construction of Act XXV. of 1871 (a), sect. 2, the words in which, similar to those in sect. 113 (1) of this Act, providing for payments to be made by persons failing to produce their tickets on demand, were held to apply only to the case of a person who has taken a ticket, and will not or cannot produce it, not to the case of a person who has taken no ticket at all. Had they been equally applicable to both, the Court intimated that the contention that the company was entitled to enforce the provisions of the section, but not to treat the plaintiff as a trespasser, was supported by the observations of Coleridge, J., in *G. N. Rail. Co. v. Harrison*, 23 L. J. Ex. 308, at p. 310.

The Court said the important question for determination was whether the plaintiff was in the train under circumstances which constituted him a trespasser. If the company were

(a) An Act to amend the Railway Act XVIII. of 1854.

entitled to regard him as such, then, whether under the express provisions of sect. 17 of Act XVIII. of 1854 (corresponding to sect. 122 of the present Act), or in exercise of the right which the law accords to every proprietor to remove a trespasser, using only such force as may be necessary for the purpose, the defendants were justified in removing him from the train. It was contended, however, for the plaintiff that, although sect. 2 of Act XXV. of 1871 (like sect. 68 of the present Act) makes it unlawful for a passenger to enter a carriage without having first paid his fare and obtained a ticket, still that such a prohibition must be read in connection with the rest of the section, and that, as it expressly provides that in case the traveller does not produce his ticket, he is to pay the fare or increased fare, the company might enforce that provision, but could not treat the plaintiff as a trespasser. This argument, the Court said, assuming that the section was to be read as a whole, derived some support from the remarks of Coleridge, J., at the conclusion of the judgment in the *G. N. Rail. Co. v. Harrison*, 23 L. J. Ex. 308, at p. 310, but it was not necessary for them to express an opinion on the point, as they thought that the latter part of the section applied only to the case of a person who has received a ticket, and will not or cannot produce it, and not to a person travelling without having paid for and obtained a ticket with no intention to defraud. The Court further held that the absence of fraudulent intention does not make the entry into the carriage less unlawful, or of itself afford any ground for depriving the company of the right of putting an end to such unlawful occupation.

The provisions of sect. 113 no doubt extend to the case of a person who has taken no ticket, as well as to that of a person who has taken a ticket, but cannot or will not produce it; and consequently, the ground on which the Court in the case cited relied with reference to sect. 2 of Act XXV. of 1871 does not apply to sect. 113. Neither, however, could the argument which was founded on the former section arise on the latter. The rule is, that where a statute imposes an obligation, whether private or public, and provides *in the same section* a specific

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means for enforcing it, no other course than that thus provided can be resorted to for the purpose. But where the statute creates the duty, whether public or private, in one section, and provides a procedure for the enforcement of it, or the punishment for its breach, in a *separate section*, the offence is usually subject to the common law procedure and punishment, as well as to the special procedure so given. (Maxwell Interpr. Stat. ch. xiii. s. 2.) In the present case, the offence of unlawful entry is created by sect. 68: the special procedure is provided by sect. 113: and further penalties (one of which coincides with the common law procedure—ejection), are created by sect. 122. It would appear then that in the case of a person entering a railway carriage under such circumstances as amount to unlawful entry, the procedure provided by sect. 113 is cumulative not substitutional for the remedy of ejection whether given by sect. 122, or by the common law. The fine of twenty rupees recoverable under sect. 122 (1) for unlawful entry appears to conflict with the provisions of sect. 113, the intention of which seems to be that the maximum sum recoverable for travelling without a proper ticket over and above the right fare shall be the excess charge therein specified; and to this extent, sect. 113 must be taken to be substituted for sect. 122 (1); but the fine of fifty rupees for refusal to leave the railway on request imposed by sect. 122 (2) is compatible with sect. 113, and the two may exist together.

It is worthy of notice, that in the draft of this Act as it stood in 1888, there were inserted in sect. 113 (4) after the words "as may be" the words "he may, if in the train, be removed therefrom and." These have been advisedly omitted, but with what object is not clear. Possibly because they were deemed unnecessary.

So, in the Irish case of *McCarthy v. Dublin, Wicklow, and Wexford Rail. Co.* (I. R. 5 C. L. 244), it was decided that under a bye-law prohibiting a person from travelling without first paying his fare and obtaining a ticket, the company are justified in removing from the carriage a person without a ticket though he offers to pay the fare.

And in the Scotch case of *Scottish N. E. Rail. Co. v. Mathews*,

5 Irvine, 237, where the defendant had arrived too late to take a ticket, and got into the train without one, it was held that he was rightfully ejected. However, in *Menzies v. Highland Rail. Co.*, 15 Scottish Law Reporter, 608, where the passenger having a return ticket which in his *bond fide* belief entitled him to return by a particular train on a particular day, but which in point of fact did not, refused to leave that train and was ejected by the company's servants, though two of the judges (Lords Ormisdale and Gifford) held that a passenger with a ticket which does not entitle him to a seat in the carriage in which he is found, may be justifiably treated as if he had no ticket at all, and removed: yet the Lord Justice Clerk was of opinion that a passenger ought not to be summarily expelled from a train if he has a *prima facie* right to be there, such as in this case he inclined to think the passenger had.

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

Transferring
return half
of return
ticket.

115. That portion of any fine imposed under section 112 or the last foregoing section which represents the single fare therein mentioned shall,

Disposal of
fines under
the two last
foregoing
sections.

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 [Act IV. 1879, administration before any portion of the fine is
 s. 32.] credited to the Government.

Altering or
 defacing pass
 or ticket.
 [Act IV. 1879,
 s. 32.]

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

Being or
 suffering
 person to
 travel on
 railway with
 infectious or
 contagious
 disorder.

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

(2) If any such railway servant as is referred to in section 71, sub-section (2), knowing that a person is suffering from any infectious or contagious disorder, wilfully permits the person to travel upon a railway without arranging for his separation from other passengers, he shall be punished with fine which may extend to one hundred rupees.

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

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Entering carriage in motion, or otherwise improperly travelling on a railway.

[Act IV. 1879, s. 33.]

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

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

Entering carriage or other place reserved for females.

[Act IV. 1879, s. 37.]

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Drunkness
or nuisance
on a railway.

[Act IV. 1879,
s. 36.]

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

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

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

Obstructing
railway ser-
vant in his
duty.

[Act IV. 1879,
s. 38.
3 & 4 Vict.
c. 97, s. 16.]

Trespass and
refusal to
desist from
trespass.

[Act IV. 1879,
s. 41.
3 & 4 Vict.
c. 97, s. 16.]

121. If a person wilfully obstructs or impedes any railway servant in the discharge of his duty, he shall be punished with fine which may extend to one hundred rupees.

122. (1) If a person unlawfully enters upon a railway, he shall be punished with fine which may extend to twenty rupees.

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

See *ante*, note to sect. 113. For the purposes of this section

a railway includes a railway carriage. See I. L. R. 1 Bom. at p. 56. PART III.

123. If a driver or conductor of a tramcar, omnibus, carriage or other vehicle while upon the premises of a railway disobeys the reasonable directions of any railway servant or police-officer, he shall be punished with fine which may extend to twenty rupees.

Disobedience of omnibus drivers to directions of railway servants.
[Act IV. 1879, s. 47.]

A cab-driver who refuses to leave the company's premises when requested to do so may be convicted under sect. 16 of the Railway Regulation Act, 1840 ("if any person shall wilfully trespass upon any railway or any of the stations or other works or premises connected therewith, and shall refuse to quit the same upon request to him made by any officer or agent of the said company"), of wilful trespass, although he fancies that he is entitled to remain because other drivers are allowed to put their cabs upon the stand, pursuant to certain terms which he has not complied with. If there is a *bond fide* claim of a right, which, upon the evidence adduced, could exist at law, the magistrate should dismiss the charge. (*Foulger v. Steadman*, L. R. 8 Q. B. 65.)

124. In either of the following cases, namely:—

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

Opening or not properly shutting gates.
[Act IV. 1879, s. 43.
8 Vict. c. 20, s. 76.]

- (b) if, in the absence of a gatekeeper, a person

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omits to shut and fasten such a gate as aforesaid as soon as he and any animal, vehicle or other thing under his charge have passed through the gate,

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

Cattle trespass.

[Act IV. 1879,
s. 42.]

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

I. of 1871.

(2) If any cattle are 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.

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

(4) The expression "public road" in sections

11 and 26 of the Cattle-trespass Act, 1871, shall be deemed to include a railway, and any railway servant may exercise the powers conferred on officers of police by the former of those sections.

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(5) The word "cattle" has the same meaning in this section as in the Cattle-trespass Act, 1871.

See *ante*, sect. 13 (a).

On the 10th April, 1874, *before* rules determining what kind of fences should be deemed suitable for exclusion of cattle had been published by Government under the 21st section of the Railway Act XVIII. of 1854, as amended by Act XXV. of 1871, a person was convicted of being the owner of a cow which strayed on a railway provided with fences suitable for the exclusion of cattle (an offence punishable under that Act), without evidence being offered of the state of the fences. It was held by the High Court of Madras that the state of the fences in this case required specific proof, and the conviction was quashed. (8 Mad. H. C. R. p. 1.) It is presumed that there being no provision in this Act for the issue of general rules determining what kind of fences are to be deemed suitable for exclusion of cattle, the state of the fences will in every case require specific proof.

By sect. 3 of the Cattle-trespass Act, 1871, "cattle" includes also elephants, camels, buffalos, horses, mares, geldings, ponies, colts, fillies, mules, asses, pigs, rams, ewes, sheep, lambs, goats and kids. By sect. 11, persons in charge of public roads, pleasure-grounds, plantations, canals, drainage-works, embankments, and the like, and officers of police may seize, or cause to be seized, any cattle doing damage to such roads, &c., or the sides or slopes of such roads, &c., or found straying thereon, and shall take them without unnecessary delay to the nearest pound; and by sect. 12, for every head of cattle impounded as aforesaid, the pound keeper shall levy a fine according to the following scale:—elephant, two

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rupees; camel or buffalo, eight annas; horse, mare, gelding, pony, colt, filly, mule, bull, bullock, cow, or heifer, four annas; calf, ass, or pig, two annas; ram, ewe, sheep, lamb, goat, or kid, one anna.

By sect. 25, any fine imposed for the offence of mischief by causing cattle to trespass on any land may be recovered by sale of all or any of the cattle by which the trespass was committed, whether they were seized in the act of trespassing or not, and whether they are the property of the person convicted of the offence, or were only in his charge when the trespass was committed.

Sect 26 imposes an extra penalty for damage caused by pigs. "Any owner or keeper of pigs who, through neglect or otherwise, damages, or causes or permits to be damaged, any land, or any crop or produce of land, or any public road, by allowing such pigs to trespass thereon, shall, on conviction before a magistrate, be punished with fine not exceeding ten rupees."

A bill to amend the Cattle-trespass Act, 1871, in the following respects, is now before the Council of the Governor-General:

- (1) by enabling Local Governments in special cases to raise the fines on impounded cattle to double the scale prescribed by the Act;
- (2) by enabling Local Governments in special cases to extend to other cattle sect. 26 which now applies only to pigs, and at the same time to raise the penalty from ten to twenty-five rupees;
- (3) by making any fine imposed under sect. 26 recoverable in manner prescribed by sect. 25.

Maliciously
wrecking or
attempting to
wreck a train.
[24 & 25 Vict.
c. 100, s. 32.]

126. If a person unlawfully—

- (a) puts or throws upon or across any railway any wood, stone or other matter or thing,
or
- (b) takes up, removes, loosens or displaces any

rail, sleeper or other matter or thing belonging to any railway, or

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(c) turns, moves, unlocks or diverts any points or other machinery belonging to any railway, or

(d) makes or shows, or hides or removes, any signal or light upon or near to any railway, or

(e) does or causes to be done or attempts to do any other act or thing in relation to any railway,

with intent, or with knowledge that he is likely, to endanger the safety of any person travelling or being upon the railway, he shall be punished with transportation for life, or with imprisonment for a term which may extend to ten years.

127. If a person unlawfully throws or causes to fall or strike at, against, into or upon any rolling-stock forming part of a train any wood, stone or other matter or thing with intent, or with knowledge that he is likely, to endanger the safety of any person being in or upon such rolling-stock or in or upon any other rolling-stock forming part of the same train, he shall be punished with transportation for life or with imprisonment for a term which may extend to ten years.

Maliciously
hurting or
attempting to
hurt persons
travelling by
railway.
[24 & 25 Vict.
c. 100, s. 33.]

128. If a person, by any unlawful act or by any wilful omission or neglect, endangers or

Endangering
safety of per-
sonstravelling

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by railway by wilful act or omission.

[24 & 25 Vict. c. 100, s. 34.
24 & 25 Vict. c. 97, s. 36.
Act IV. 1879, s. 15.]

causes to be endangered the safety of any person travelling or being upon any railway, or obstructs or causes to be obstructed or attempts to obstruct any rolling-stock upon any railway, he shall be punished with imprisonment for a term which may extend to two years.

Endangering safety of persons travelling by railway by rash or negligent act or omission.

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

Special provision with respect to the commission by children of acts endangering safety of persons travelling by railway.
[Act IV. 1879, s. 44.]

XLV. of 1860.

130. (1) If a minor under the age of twelve years is with respect to any railway guilty of any of the acts or omissions mentioned or referred to in any of the four last foregoing sections, he shall be deemed, notwithstanding anything in section 82 or section 83 of the Indian Penal Code, to have committed an offence, and the Court convicting him may, if it thinks fit, direct that the minor, if a male, shall be punished with whipping, or may require the father or guardian of the minor to execute, within such time as the Court may fix, a bond binding himself, in such penalty as the Court directs, to prevent the minor from being again guilty of any of those acts or omissions.

(2) The amount of the bond, if forfeited, shall

be recoverable by the Court as if it were a fine imposed by itself. PART III.

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

Procedure.

131. (1) If a person commits any offence mentioned in sections 100, 101, 119, 120, 121, 126, 127, 128 or 129 or in section 130, sub-section (1), he may be arrested without warrant or other written authority by any railway servant or police officer, or by any other person whom such servant or officer may call to his aid.

Arrest for offences against certain sections. [Act IV. 1879, s. 49.]

(2) A person so arrested shall, with the least possible delay, be taken before a Magistrate having authority to try him or commit him for trial.

132. (1) If a person commits any offence under this Act other than an offence mentioned in the last foregoing section, or fails or refuses to pay any excess charge or other sum demanded under section 113, and there is reason to believe that he will abscond, or his name and address are unknown, and he refuses on demand to give his name and address, or there is reason to believe

Arrest of persons likely to abscond or unknown. [Act IV. 1879, s. 48. 8 Vict. c. 16, s. 156.]

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that the name or address given by him is incorrect, any railway servant or police officer, or any other person whom such railway servant or police officer may call to his aid, may, without warrant or other written authority, arrest him.

(2) The person arrested shall be released on his giving bail, or, if his true name and address are ascertained, on his executing a bond without sureties, for his appearance before a Magistrate when required.

(3) If the person cannot give bail and his true name and address are not ascertained, he shall with the least possible delay be taken before the nearest Magistrate having jurisdiction.

X. of 1882.

(4) The provisions of Chapters XXXIX. and XLII. of the Code of Criminal Procedure, 1882, shall, so far as may be, apply to bail given and bonds executed under this section.

For wrongful arrest by one of their servants, a railway company may be liable to an action of false imprisonment. That will depend on the question whether the servant has the company's authority to make arrests. In *Goff v. G. N. Rail. Co.*, 3 E. & E. 672, decided on sect. 104 of the Railways Clauses Act, 1845, the Court held that there was evidence for the jury to infer that the superintendent of the company's police in supreme authority at the station had such authority. The cases are collected and examined in the judgment of the Judicial Committee of the Privy Council in *Bank of New South Wales v. Owston*, 4 App. Cas. 270, where the result is stated to be that the authority to arrest offenders was only implied where the duties which the officer was employed to discharge could not be efficiently performed for the benefit of his employer

unless he had the power to apprehend offenders promptly on the spot (p. 288). An authority to arrest may be general, or it may be special and limited to cases of emergency. In the former case, it is commonly enough to show that the agent is acting on behalf of the principal; in the latter, it must be proved that the emergency exists, or might reasonably be supposed to exist (pp. 290, 291).

The fact that power to arrest is given by the Act to "any railway servant or police officer," will not render the railway administration liable to an action for false imprisonment, unless such servant or officer has their authority also, express or implied: in other words, unless he is acting within the scope of his employment. If he is so acting, then, however much he may have abused his authority, however improperly and blunderingly he may have acted, his employers are liable. (*Bayley v. Manchester, Sheffield and Lincolnshire Rail. Co.*, L. R. 8 C. P. 148, at p. 154, *per* Blackburn, J.)

So, in the recent case of *Charleston v. London Tramways Co.*, 36 W. R. 367, it was held that sect. 52 of the Tramways Act, 1870, enacting that "it shall be lawful for any officer or servant of the promoters or lessees of any tramway to detain any person" defrauding the company of his fare, must be construed as limited to any officer or servant appointed for that purpose. Therefore, where, by the company's printed instructions, conductors were ordered not to give passengers into custody without an inspector's authority (except for assault), the company was held not liable in an action for false imprisonment for a conductor's giving a person into custody on a charge of passing bad money, without such authority, as not being within the scope of his employment.

Whether it can be inferred that a servant is acting within the scope of his employment is a question of evidence in each particular case. Where a railway company have upon the spot a person acting as their agent, that is evidence to go to the jury that that person has authority from them to do all those things on their behalf which are right and proper in the exigencies of their business,—all such things as somebody must make up his mind, on behalf of the company, whether

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they should be done or not. (*Per Blackburn, J., Poulton v. L. & S. W. Rail. Co.*, L. R. 2 Q. B. at p. 538.) And where a porter, who had a general authority to prevent passengers from going by the wrong trains so far as he was able to do so, violently pulled a passenger out of a train after it had started, under the erroneous impression that he was in the wrong carriage, though it was not his duty to remove a person from the wrong carriage, and he was, in fact, strictly prohibited, by the rules of the company, from suffering passengers to get into or out of the trains when in motion, it was held by the Court of Exchequer Chamber that there was evidence on which the jury might find that the act of the porter, in pulling the passenger out of the carriage, was an act done within the course of his employment as the company's servant. (*Bayley v. Manchester, Sheffield and Lincolnshire Rail. Co.*, L. R. 8 C. P. 148.)

But an authority cannot be implied to have been given to a servant to do an act which, if his master were on the spot, the master would not be justified in doing, on the assumption of a particular state of facts. Thus, where a station-master had arrested a passenger on the allegation that he had not paid the carriage of his horse, the company having no power under the statute 8 Vict. c. 20, s. 103, to arrest for that cause, it was held that it could not be implied that the company had authorized the station-master to do that which they had no authority to do themselves. Had the station-master arrested the passenger on a charge of non-payment of his own fare, the case would have been different, because that is an offence for which the Act gives the company power to arrest. (*Poulton v. L. & S. W. Rail. Co.*, L. R. 2 Q. B. 534.)

Magistrates
having juris-
diction under
Act.

[Act IV. 1879,
s. 50.]

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

Place of trial.

134. (1) Any person committing any offence

against this Act or any rule thereunder shall be triable for such offence in any place in which he may be or which the Local Government may notify in this behalf, as well as in any other place in which he might be tried under any law for the time being in force. PART III.
[Act IV. 1879,
s. 60.]

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

See *ante*, sect. 1 (2), note.

CHAPTER X.

SUPPLEMENTAL PROVISIONS.

135. Notwithstanding anything to the contrary in any enactment, or in any agreement or award based on any enactment, the following rules shall regulate the levy of taxes in respect of railways and from railway administrations in aid of the funds of local authorities, namely :— Taxation of
railways by
local authorities.
[Act XI. 1881.
Bengal Act,
IX. 1880,
s. 8.]

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

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(2) While a notification of the Governor-General in Council under clause (1) of this section is in force, the railway administration shall be liable to pay to the local authority either the tax mentioned in the notification or, in lieu thereof, such sum, if any, as an officer appointed in this behalf by the Governor-General in Council may, having regard to all the circumstances of the case, from time to time determine to be fair and reasonable.

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

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

I. of 1887. (5) "Local authority" in this section means a local authority as defined in the General Clauses Act, 1887, and includes any authority legally entitled to or entrusted with the control or management of any fund for the maintenance of watchmen or for the conservancy of a river.

This section follows the lines of Act XI. of 1881 (The Municipal Taxation Act of 1881), which empowered the Governor-

General in Council to prohibit the levy of municipal taxes payable by persons in military service and by the Secretary of State of India. (See also Bengal Act IX. of 1880, s. 8.)

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Under the law as it stood previously, it was decided in the case of *Justices of the Peace for Bombay v. G. I. P. Rail. Co.*, 9 Bomb. H. C. R. 217, that the G. I. P. Rail. Co. were not liable to be rated as *owners* in respect of the land which they hold from Government for ninety-nine years, but as "*occupiers*"; and as such were rateable on the gross earnings of the portion of the line within the city, after deducting—

- (1) The working expenses of such portion of line.
- (2) Repairs of rolling-stock, &c., of the same.
- (3) Allowance for renewal of the same.
- (4) Allowance for compensation fund in respect of the same.
- (5) Interest on capital necessary for working the same.
- (6) Tenant's profit on such capital, but not a deduction in respect of income-tax. (*Reg. v. Southampton Dock Co.*, 14 Q. B. 587, 611.)

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

Restriction on execution against railway property. [30 & 31 Vict. c. 127, s. 4.]

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

This section, following sect. 4 of the Railway Companies Act, 1867 (30 & 31 Vict. c. 127), which was passed to give the

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judgment creditor a remedy which would not of necessity stop the railway and strangle the undertaking (*per* Kay, J., W. N. 1890, p. 148), exempts the moveable property of a railway administration from being taken in execution without the previous sanction of the Governor-General in Council. It does not apply to its immoveable property, nor does it prevent the appointment of a receiver of its earnings, under Chapter 36 of the Civil Procedure Code, to whom the Court may grant all such powers with regard to the property, including its management, "as the owner himself has, or such of those powers as the Court thinks fit." So in England, under sect. 4 of the Act above referred to, a judgment creditor may obtain the appointment of a receiver, and, if necessary, of a manager—a receiver in England not having, as he may have in India (see, for instance, *Short v. Pickering*, I. L. R. 6 Mad. 138), powers of management—and all money received by such receiver or manager is, after due provision for the working expenses of the railway and other proper outgoings in respect of the undertaking, to be applied and distributed under the direction of the Court in payment of the debts of the company, and otherwise according to the rights and priorities of the persons for the time being interested therein. It has been decided that where the debtor company is carrying on business in the ordinary way, the appointment of a manager is "necessary" within the meaning of the 4th section of the Act of 1867, and that, as a general rule, the directors or secretary, or some of them, will be appointed by the Court managers where they are acting fairly. (*In re Manchester & Milford Rail. Co., Ex parte Cambrian Rail. Co.*, 14 Ch. D. 645.)

The Transfer of Property Act, 1882, does not authorize the mortgagee of a railway, canal, or other work in the maintenance of which the public are interested, to institute a suit for foreclosure or sale. (Act IV. of 1882, s. 67 (c).) The remedy of such a mortgagee will be, as Mr. Whitley Stokes points out, to obtain, under the Code of Civil Procedure, Chapter 36, a receiver of the profits of the undertaking.

The right of a creditor to present a petition for winding up a railway company which is unable to pay its debts, in cases

where such right exists, is not affected by sect. 136 of this Act. PART III.

A railway company incorporated by Act of Parliament or Indian Act, and unregistered, cannot be wound up under the Indian Companies Act. (Act VI. of 1882, s. 243.)

And a railway company incorporated by Act of Parliament, and unregistered, cannot be wound up under the Companies Act, 1862 (25 & 26 Vict. c. 89, s. 199), unless the company has obtained a warrant for the abandonment of its railway. (32 & 33 Vict. c. 114, s. 4.)

In England it is doubtful whether a railway company incorporated by special Act of Parliament can be registered under the Companies Act, 1862, and then wound up under it without a warrant for abandonment. (Lindley on Companies, b. iv. c. 3, d. i. s. 2.)

But in Ireland it has been held that in such a case a winding-up order can be made. (*In re Ennis & W. Clare Rail. Co.*, L. R. Ir. 3 Ch. 94.)

By the Companies Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 16), ss. 36, 37, a judgment recovered against a company to which those sections apply (as they do to the Great India Peninsula, and the Bombay Baroda and Central India Railway Companies), may, if execution has been issued and cannot be satisfied against the company, be executed against any of the shareholders. But no shareholder is liable to a greater extent than the amount unpaid of his shares in the company; and if, by means of such execution, any shareholder has paid more than such amount he is entitled to be reimbursed by the company. [The incorporating Act of the Great India Peninsula Railway Company (12 & 13 Vict. ch. lxxxiii., s. 4), expressly provides that, as to the clauses in the Companies Clauses Consolidation Act with respect to the remedies of creditors against shareholders, the Supreme Courts of Judicature in India shall have power to order execution to be issued against shareholders residing in India. See also the Bombay Baroda and Central India Railway Act, 1859 (22 & 23 Vict. ch. cii. s. 3.)] The creditors, however, must have recourse to the assets of the company before they can have recourse to the shareholders individually.

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Shareholders in companies governed by the Companies Acts, English and Indian, are not liable to execution on judgments against the company, but must be proceeded against under the winding-up clauses.

Railway servants to be public servants for the purposes of Chapter IX. of the Indian Penal Code.

[Act IV. 1879, s. 27.]

XLV. of 1860.

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

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

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

(3) A railway servant shall not—

(a) purchase or bid for, either in person or by agent, in his own name or in that of another, or jointly or in shares with others, any property put up to auction under section 55 or section 56, or,

(b) in contravention of any direction of the railway administration in this behalf, engage in trade.

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

Procedure for summary delivery to

138. If a railway servant is discharged or suspended from his office, or dies, absconds or

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

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railway administration of property detained by a railway servant.

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

139. Any notice, determination, direction, requisition, appointment, expression of opinion, approval or sanction to be given or signified on the part of the Governor-General in Council, for any of the purposes of, or in relation to, this Act, or any of the powers or provisions therein contained, shall be sufficient and binding if in writing signed by a Secretary, Deputy-Secretary, Under-

Mode of signifying communications from the Governor-General in Council.

[51 & 52 Vict. c. 25, s. 53.]

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Secretary or Assistant-Secretary to the Government of India, or by any other officer or servant authorised to act on behalf of the Governor-General in Council in respect of the matters to which the same may relate, and the Governor-General in Council shall not in any case be bound in respect of any of the matters aforesaid unless by some writing signed in manner aforesaid.

Service of
notices on
railway ad-
ministrations.

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

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

XIV. of 1866.

Service of
notices by
railway ad-
ministrations.

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

- (a) by delivering it to the person, or
- (b) by leaving it at the usual or last known place of abode of the person, or

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

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XIV. of 1866.

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

Presumption where notice is served by post.
[Act II. 1886, s. 46.]

143. (1) A rule under section 22, section 34 or section 84, or the cancellation, rescission or variation of a rule under any of those sections or under section 47, sub-section (4), shall not take effect until it has been published in the Gazette of India.

Provisions with respect to rules.
[Act IV. 1879, s. 8.]

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

(3) The Governor-General in Council may

PART III. cancel or vary any rule made by him under this Act.

Delegation
of powers of
Governor-
General in
Council.

[Act IV. 1879,
s. 53.]

144. (1) The Governor-General in Council may, by notification in the Gazette of India, invest, absolutely or subject to conditions, any Local Government with any of the powers or functions of the Governor-General in Council under this Act with respect to any railway, and may, by that or a like notification, declare what Local Government shall, for the purposes of the exercise of powers or functions so conferred, be deemed to be the Local Government in respect of the railway.

(2) The provisions of section 139 with respect to proceedings of the Governor-General in Council shall, so far as they can be made applicable, apply to proceedings of a Local Government exercising the powers or discharging the functions of the Governor-General in Council in pursuance of a notification under sub-section (1).

Representa-
tion of Man-
agers and
Agents of
Railways in
Courts.

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

(2) A person authorised by a Manager or Agent

to conduct prosecutions on behalf of a railway administration shall, notwithstanding anything in section 495 of the Code of Criminal Procedure, 1882, be entitled to conduct such prosecutions without the permission of the Magistrate.

PART III

X. of 1882.

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

Power to extend Act to steam tramways.
[Act IV. 1879, s. 54.
Act XI. 1886, s. 49.]

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

Power to exempt railways from Act.
[Act XI. 1887.]

148. (1) For the purposes of section 3, clauses (5), (6) and (7), and sections 4 to 19 (both inclusive), 47 to 52 (both inclusive), 59, 79, 83 to 92 (both inclusive), 96, 97, 98, 100, 101, 103, 104, 107, 111, 122, 124 to 132 (both inclusive), 134 to 138 (both inclusive), 140, 141, 144, 145 and 147, the word "railway," whether it occurs alone or as a prefix to another word, has reference to a railway or portion of a railway under construction and to a railway or portion of a railway not used for the public carriage of passengers, animals or goods as well as to a railway falling within the definition of that word in section 3, clause (4).

Matters supplemental to the definitions of "railway" and "railway servant."
[Act IV. 1879, s. 3.]

(2) For the purposes of sections 5, 21, 83, 100, 101, 103, 104, 121, 122, 125 and 137, sub-sections (1), (2) and (4), and section 138, the expression

PART III. “railway servant” includes a person employed upon a railway in connection with the service thereof by a person fulfilling a contract with the railway administration.

Amendment
of the Indian
Penal Code.
XLV. of 1860.

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

Amendment
of the Sindh-
Pishin Rail-
way Act,
1887.
XI. of 1887.

150. For that portion of the preamble to the Sindh-Pishin Railway Act, 1887, which begins with the words “so far as it applies” and ends with the words “in its entirety,” the words “should apply in its entirety to that part of the Sindh-Pishin section of the North-Western Railway which lies beyond the Province of Sindh” shall be substituted.

THE FIRST SCHEDULE.

PART III.

ENACTMENTS REPEALED.

(See section 2.)

Number and Year.	Title.	Extent of Repeal.
<i>Acts of the Governor-General in Council.</i>		
III. of 1865..	Carriers Act, 1865	Section 7 (so far as it relates to railways*) and section 10.
IV. of 1879 ..	Indian Railway Act, 1879.	The whole.
IV. of 1883 ..	Indian Railway Act, 1883.	The whole.
XI. of 1886 ..	Indian Tramways Act, 1886.	Section 49.
XX. of 1886 .	Upper Burma Laws Act, 1886.	So much as relates to Acts IV. of 1879 and IV. of 1883.

Act of the Lieutenant-Governor of Bengal in Council.

II. of 1882 ..	Bengal Embankment Act, 1882.	Section 16, and in section 17 the proviso to the first paragraph of that section, the words "or under the section last preceding" and the words "or railroad" wherever they occur.
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THE SECOND SCHEDULE.

ARTICLES TO BE DECLARED AND INSURED.

(See section 75.)

- (a) gold and silver, coined or uncoined, manufactured or unmanufactured ;
- (b) plated articles ;
- (c) cloths and tissue and lace of which gold or silver forms part, *not being the uniform or part of the uniform of an officer, soldier, sailor, police-officer or person enrolled as a volunteer under the Indian Volunteers Act, XX. of 1869.*

PART III.

1869, or of any public officer, British or foreign, entitled to wear uniform ;

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

NOTE.—The words in italics are not to be found in the corresponding schedule to Act IV. of 1879.

APPENDIX.

SPECIAL ACTS.

LOCAL AND PERSONAL ACT (12 & 13 Vict. ch. lxxxiii.).

An Act to incorporate the Great Indian Peninsula Railway Company, and for other purposes connected therewith.

[1st August, 1849.

Sect. 1 (*after preamble*) enacts that the company shall be incorporated under the name of the Great Indian Peninsula Railway Company "for the purpose of making and constructing, working and maintaining such railway or railways in the East Indies, including all necessary, convenient or accessory extensions, branches, stocks and works as may be agreed upon by the said railway company and the East India Company, and also of doing and performing all such matters and things necessary or convenient for carrying into effect the objects and purposes aforesaid as may also be agreed upon by the said railway company and the East India Company; and the company hereby incorporated by the name aforesaid shall have perpetual succession and a common seal, and by the name aforesaid shall and may sue and be sued, and shall have power to purchase, take and hold lands for the purposes aforesaid (including lands in Great Britain for the purpose of the business of the same company) without incurring any penalties or forfeitures, and shall have such other powers as hereinafter mentioned."

Sect. 2 provides for the interpretation of terms in the Act; and sect. 3 for the vesting of the property of the company in the corporation.

Sect. 4 enacts that the provisions of the Joint Stock Companies Act of 1844, and of the Act for amending the same, and of the clauses in the deed of settlement (1 to 97 inclusive),

shall cease to govern the company, and that in lieu thereof "the company shall be subject to the clauses and provisions of the Companies Clauses Consolidation Act, 1845, as if the same Act had been expressly made applicable to such a case as is intended to be provided for by this Act with respect to the matters following; (that is to say,) the distribution of the capital of the company into shares, the transfer or transmission of shares, the payment of subscriptions and the means of enforcing the payment of calls, the forfeiture of shares for non-payment of calls, the remedies of creditors of the company against the shareholders, the conversion of the borrowed money into capital, the consolidation of the shares into stock, the general meetings of the company and the exercise of the right of voting by the shareholders, the appointment and rotation of directors, the powers of the directors and the powers of the company to be exercised only in general meetings, the proceedings and liabilities of the directors, the appointment and duties of the auditors, the accountability of the officers of the company, the keeping of accounts and the right of inspection thereof by the shareholders, the making of dividends, the making of bye-laws, the giving of notices, and the provision to be made for affording access to the special Act by all parties interested, save so far as the same provisions are expressly varied by the provisions herein contained; and that as to the said clauses with respect to the distribution of the capital of the company into shares, the certificate of the proprietorship of shares shall be admissible in the Supreme Courts of Judicature in India as *prima facie* evidence of title as in the Courts mentioned in the same clauses; and that as to the said clauses with respect to the payment of subscriptions and the means of enforcing the payment of calls, the Supreme Courts of Judicature in India shall have jurisdiction in cases where the company shall sue shareholders in India for the amount of calls, and the same course of procedure shall be adopted in all actions and suits in the said Supreme Courts as in actions and suits in England in the like matters under the last-mentioned clauses; and that as to the said clauses with respect to the remedies of creditors against the shareholders, the Supreme Courts of Judicature in India shall have power to order execution to be issued against shareholders residing in India, such shareholders being entitled to such reimbursement as in the said last-mentioned clauses is provided; and that as the said clauses with respect to the proceedings and liabilities of the directors, every entry signed by the chairman of a meeting as in the same clauses mentioned shall be admissible as evidence in the Supreme Courts of

Judicature in India as well as the Courts mentioned in the same clauses ; and that as to the said clauses with respect to the accountability of the officers of the company, justices of the peace or magistrates in India shall, in all matters occurring in India, have the same powers as under the same clauses are exerciseable by Justices in England in matters occurring there ; and that as to the said clauses with respect to the making of bye-laws, bye-laws to have effect in India shall be not repugnant to the laws of India ; and that as to the said clauses with respect to the giving of notices, the reference in the same clauses to any Act for the relief of insolvent debtors shall be construed to include the Act or Acts of Parliament for the time being in force relating to insolvent debtors in India ; and the secretary or treasurer of the company shall have power to authorize by letter of attorney some other officer in India of the company to represent the company in all cases of bankruptcy and insolvency in India, and to act therein in like manner as it shall be lawful for the secretary or treasurer of the company to act under the last-mentioned clauses in like cases in England ; and the provision made by the same clauses for the tender of amends shall be held to apply to tender of amends in India ; and that as to the said clauses with respect to the provision to be made for affording access to the special Act by all parties interested, a copy of the special Act shall be kept in the principal place of business in India of the company, as well as in their principal place of business in England ; and that any declarations which by the Consolidation Act are authorized to be made before a justice or before a master in chancery shall be of the same force and effect if made before a justice of the peace or magistrate in India, or before any officer authorized to take an affidavit or declaration in any of the Supreme Courts of Judicature in India."

Sect. 5. "And be it enacted, that it shall and may be lawful for the company from time to time to enter into and conclude with the East India Company on account of the government of India such contracts, agreements, and arrangements as the respective parties may think fit and agree upon for making any railway or railways in India and any telegraphs connected therewith, and for maintaining and working the same, and for the other objects and purposes aforesaid, including, so far as the said respective parties may agree thereto, all or any of the provisions following ; (that is to say,) any provisions for securing to the East India Company any facilities, rights, and advantages in relation to the said railways and premises respectively ; and any provision as to

the tolls, receipts, and profits thereof, and the application of such tolls, receipts, and profits; and any provisions for giving to the East India Company, and to any of their officers, servants, or agents, any absolute or other rights of supervising, controlling, directing, regulating, and ordering the company, and the works, contracts, accounts, bye-laws, Acts, proceedings, transactions, and affairs of the company as well in England as elsewhere; and any provisions for enabling the East India Company to appoint an *ex officio* director of the company, whether qualified by holding shares or not, in the place of any one of the ordinary directors of the company, or otherwise; and any provisions for regulating the powers, including a right of veto at the board of the directors, and the duties and proceedings and the liabilities of any such official director; and any provisions for binding the company to conform to and fulfil all or any directions which may be given by the East India Company or their authorized officers and agents touching all or any of the matters aforesaid; and any provisions for the appointment of agents of the company in India or elsewhere, and for determining and regulating the powers and duties of such agents as aforesaid; and any provisions for depositing with or paying to the East India Company all or any part of the subscribed capital of the company upon any terms (as to interest or otherwise) to be agreed upon; and any provisions with regard to any land which may be granted or leased to the company by the East India Company or otherwise; and any provisions for charging all or any part of the property of the company with any sum or sums of money upon any terms to be agreed upon; and any provisions for the surrender or sale to the East India Company or to any other person or persons of the said railway or railways, or any part thereof, and of all or any part of the property of the company, at any future period; and any provisions for referring disputes to arbitration; and any provisions intended to enforce or secure the due performance of any contract or engagement to be made by the company; and generally all such provisions and stipulations in relation to the matters aforesaid and any of them, and in relation to the undertakings of the company and the encouragement and promotion thereof, and the eventual or contingent transfer of the same or any part thereof to the East India Company, as the said respective parties shall think fit and agree upon, and from time to time to vary and alter such contracts, agreements, and arrangements, and to enter into new or other contracts, agreements, and arrangements in relation to the premises; all which contracts, agreements, and arrangements (whether the same shall or not be

within the objects originally contemplated by the said company, or in accordance with the provisions and clauses by which the company would otherwise be governed) shall be valid and effectual and binding to all intents and purposes whatsoever, and full effect shall be given to the same accordingly."

The remaining sections (6—20) regulate the financial affairs and the internal government of the company.

LOCAL AND PERSONAL ACT (16 Vict. ch. xlv.).

An Act for incorporating the Madras Railway Company, and for other purposes connected therewith. [14th June, 1853.

(*Preamble.*)

Sect. 1 is the same, *mutatis mutandis*, as sect. 1 of the Act incorporating the G. I. P. Rail. Co. (12 & 13 Vict. ch. lxxxiii.).

Sect. 2 is the same as sect. 3 of 12 & 13 Vict. ch. lxxxiii.

Sect. 3 enacts "That the said company incorporated by this Act shall be and continue to be regulated by the said indenture of settlement bearing date the twenty-sixth day of July One thousand eight hundred and fifty-two, save and except so far as the same is altered or varied by this Act, or may be altered, varied, or affected by any agreement, contract, or arrangement made under the powers and provisions of this Act; and the clauses of 'The Companies Clauses Consolidation Act, 1845,' with respect to the matters following, (that is to say,)

With respect to the construction of the said Act and of this Act,

With respect to the making of byelaws, and the recovery of penalties imposed by any byelaws,

With respect to the consolidation of shares into stock,

With respect to the payment of subscriptions and the means of enforcing the payment of calls otherwise than by forfeiture,

shall be incorporated with this Act: provided always, that from and after the passing of this Act the said railway company shall cease to be subject to any of the provisions or enactments of the said Act for the registration, incorporation, and regulation of joint stock companies, except only the several provisions in the said Act relating respectively to the making and accepting and endorsing of promissory notes and bills of exchange, and to the balancing and auditing of the

company's accounts, which are particularly referred to in and by the said deed of settlement of the said company; and that the last-mentioned provisions of the said Act so referred to in and by the said deed of settlement shall be deemed to be part of the said deed of settlement, and shall have no further or higher authority than they would have had if they had been expressed and contained in the said deed of settlement only; and that such provisions, and also any other provisions contained in the said deed of settlement, may be from time to time varied or repealed by two extraordinary general meetings of proprietors of the said railway company; provided that two thirds of the votes at each such meeting be in favour of the same; and provided that it shall not be lawful for any meeting to vary the proportion of liabilities and profits of shareholders, to increase the amount payable by any shareholder in respect of any share, or to vary the provisions for the dissolution of the said railway company."

Sect. 4 provides that an extraordinary general meeting may appoint the directors to continue in office for a further period not exceeding five years.

Sect. 5 enacts "That any penalties to be imposed by any bye-law of the said railway company may be recovered in India by summary proceeding before two justices of the peace or magistrates, in the same manner, as nearly as may be, as by the Companies Clauses Consolidation Act is provided for the recovery of penalties in England before two justices, and under and subject to the same or the like limitations and provisions."

Sect. 6 confirms all contracts which at the passing of this Act shall have been entered into between the East India Company, and the said railway company.

Sect. 7 is the same as sect. 5 of 12 & 13 Vict. ch. lxxxiii., with the following addition at the end:—"And in case there shall be included in any such contract, agreement, and arrangement any provisions for referring disputes to arbitration, the arbitrators or their umpire shall, so far as there shall be no provision to the contrary in any such contract, agreement, or arrangement, have all such powers as are given to arbitrators or their umpire by the provisions in that behalf included in the clauses contained in the said Companies Clauses Consolidation Act with respect to the settlement of disputes by arbitration.

Sect. 8 provides for giving notices to the proprietors by advertisement in newspapers.

LOCAL AND PERSONAL ACT (17 Vict. ch. xxix.).

An Act to amend an Act intituled "An Act for incorporating the Madras Railway Company, and for other purposes connected therewith." [2nd June, 1854.]

(Preamble.)

Sect. 1 empowers the company to enter into contracts with the East India Company for the extension of the railway to the western coast of India, and for a branch line to Bangalore, and for any other of the purposes of the incorporating Act, including the making of surveys and other preliminary arrangements for any railway or railways in India, with power to vary such contracts from time to time, "and to enter into such new or other contracts, agreements, and arrangements for or preparatory to the construction and maintenance of any other railway or railways in the East Indies, as shall from time to time be deemed expedient."

Sect. 2 gives power to increase the company's capital by the creation of new shares to carry into effect such contracts.

Sect. 3 enables any persons to become joint proprietors of a share or shares in the company.

Sect. 4 extends the company's powers of borrowing.

Sect. 5 provides that nothing herein contained shall operate to alter any of the provisions of the deed of settlement or of the Act of incorporation.



LOCAL AND PERSONAL ACT (17 Vict. ch. xliv.).

An Act to amend the Act incorporating the Great Indian Peninsula Railway Company, and for other Purposes connected therewith. [2nd June, 1854.]

The purposes of this Act are to provide, in order to facilitate the arrangements of the company for raising capital for the execution of any further contracts between them and the East India Company, that the interest guaranteed by the East India Company on the respective sums raised and to be raised by the company for the execution of the existing and future contracts respectively should be specifically appropriated and attached to such sums respectively, and to the shares by means of which such sums respectively have been or shall

be raised ; and also that, subject thereto, the net receipts of the railways of the company should be made liable to equalise the different rates of interest, and afterwards to be divisible rateably amongst all the shareholders : and further to amend some of the provisions of the incorporating Act (concerning the financial affairs of the company).

The provisions of the Act (sections 1—14) relate wholly to the matters above mentioned.

LOCAL AND PERSONAL ACT (18 Vict. ch. xl.).

An Act to enable the Madras Railway Company to issue and register Shares and Securities in India, and for other purposes in relation to such Company. [15th June, 1855.

(Preamble.)

Sects. 1—6 relate to the issuing and registering of shares and securities in India ; and contain powers and directions substantially the same as those contained in 36 & 37 Vict. c. 43, with reference to other companies. Provision is also made for the delegation of the company's powers.

Sect. 7 authorizes the company to issue debentures, convertible into shares, to such an extent as may be agreed upon between the company and the East India Company, not exceeding the amount for the time being of the unpaid capital of the company.

Sect. 8 dispenses with the necessity of two directors, or any director certifying the annexation of the company's seal.

Sect. 9 provides for the application of the net profits of the company, first in discharge of the interest payable by the East India Company, and then for the rateable benefit of all the shareholders entitled to dividend.

LOCAL AND PERSONAL ACT (18 & 19 Vict. ch. cxiii.).

An Act for incorporating the Bombay, Baroda, and Central India Railway Company ; and for other purposes connected therewith. [2nd July, 1855.

[Repealed by Local and Personal Act, 22 & 23 Vict. ch. cii., s. 5.]

LOCAL AND PERSONAL ACT (22 & 23 Vict. ch. cii.).

An Act for regulating the Bombay, Baroda, and Central India Railway Company, and for making Provision with respect to the Capital of the Company, and for other purposes.

[13th August, 1859.

(Preamble.)

Sect. 1. Short Title: The Bombay, Baroda, and Central India Railway Act, 1859.

Sect. 2. Interpretation clause: "The recited Act" means the Act of Incorporation, 18 & 19 Vict. ch. cxiii.

Sect. 3. "'The Companies Clauses Consolidation Act, 1845,' is incorporated with this Act, and applies, so far as applicable, and subject to the provisions of this Act, to the company in India and elsewhere, as well as in England, and shall be construed and have effect accordingly; and in the construction of that Act for the purposes of this Act the following words and expressions have the following meanings, unless excluded by the subject or context; (to wit,)

"The expression 'Superior Courts' includes Her Majesty's Supreme Courts of Judicature at the several Presidencies in India respectively:

"The word 'justice' and the expression 'Master in Chancery' respectively include a justice of the peace or magistrate in India, or any officer authorized to take an affidavit or declaration in the Supreme Court of any Presidency in India:

"The expression 'two justices' means with respect to India any one justice of the peace or magistrate in India; and whatsoever proceedings or acts for the purposes of this Act, if had or done in England, might be had or done by, under, before, or with respect to two justices, may, if had or done in India, be had or done by, under, before, or with respect to any one justice of the peace or magistrate in India."

Sect. 4. Interpretation of terms in the incorporated Act.

Sect. 5. "On the passing of this Act, but subject to the provisions thereof, the deed of settlement bearing date the twenty-fourth day of April One thousand eight hundred and fifty-five is by this Act annulled, and the recited Act is by this Act repealed."

Sects. 6—18. Notwithstanding the annulling of the deed of settlement and the repeal of the recited Act, the company is to

remain incorporated as from the time of its original incorporation, and entitled to all its property and subject in general to all its liabilities, as if this Act were not passed: contracts between the company and the East India Company or the Secretary of State, and all other contracts made before the passing of this Act are preserved: the issue of debentures to the extent of 300,000*l.* is not to be affected: certificates and transfers of shares prior to this Act are confirmed: actions commenced by or against the company prior to this Act are not to abate or be discontinued: shareholders are to pay the subscriptions, and debtors the debts, and creditors to receive payment of the claims, due at the passing of this Act: resolutions, orders, &c. previously binding are to continue in force: the company's books are to continue to be evidence, and their officers and servants to hold their employments: and all rights of the company's servants in India, and of shareholders registered in India are saved until after the publication of this Act in India.

Sect. 19. "The company from time to time may negotiate for, conclude, and enter into with the Secretary of State in Council of India and carry into effect contracts and agreements with respect to all or any of the following matters; (to wit,)

" 1. The making, maintaining, regulating, working, and using by the company of the railway from Bombay to Baroda and Ahmedabad now in course of construction under the provisions of the agreement bearing date the Twenty-first day of November One thousand eight hundred and fifty-five, and the second agreement respectively, or any other railway or railways in India, either wholly or partly in lieu thereof or otherwise, and any works and conveniences connected therewith comprehending all the works mentioned in section six of this Act:

" 2. The making of provision for keeping any undertaking of the company separate and distinct from any other undertaking as respects the capital to be raised therefor and the revenue therefrom, and that either absolutely or conditionally, or for any particular period of time, and so that any such undertaking may be kept separate and distinct either solely and exclusively as between the company and the Secretary of State in Council of India, and not as between the shareholders in the capital specially raised for such undertaking and other shareholders in the capital of the company or generally, and as well between

the company and the Secretary of State in Council of India as also between the shareholders and the capital specially raised for such undertaking and the shareholders in any other capital of the company, and otherwise, upon the terms agreed on :

- " 3. The making of surveys and other preliminary arrangements for any railway or railways in India :
- " 4. The acquiring by the company of lands in India for the purposes of their undertakings :
- " 5. The obtaining by the company from the Secretary of State in Council of India of any guarantee of interest on the capital of the company, and any other support, countenance, and facilities for the purposes of their undertakings :
- " 6. The securing to the Secretary of State in Council of India of any facilities, rights, and advantages with respect to the railways and other undertakings of the company :
- " 7. The making of provision as to the tolls, charges, revenue, and profits of the company, and the deposit, custody, and application thereof respectively :
- " 8. The giving to the Secretary of State in Council of India, or to any of their officers, servants, or agents, of any absolute or other rights of supervising, controlling, and regulating the company, and the works, contracts, accounts, bye-laws, proceedings, acts, and affairs of the company in England, in India, and elsewhere respectively :
- " 9. The enabling of the Secretary of State in Council of India to appoint one *ex officio* director of the company (whether qualified by holding shares or not), in addition to the directors of the company authorized by this Act, or otherwise :
- " 10. The regulating of the powers (including even a right of veto) at the board of directors, and the duties, proceedings, and liabilities of any such *ex officio* director :
- " 11. The binding of the company to conform to and fulfil any directions given by the Secretary of State in Council of India, or by their officers or agents in that behalf authorized, touching all or any of those matters respectively :
- " 12. The appointing of agents of the company in India or elsewhere, and the determining and regulating of their powers and duties :
- " 13. The depositing with or paying to or to the account of

the Secretary of State in Council of India of all or any part of the subscribed capital or other money of the company upon any terms as to interest or otherwise agreed on :

- " 14. The making of provision with respect to any lands granted or leased to the company by the Secretary of State in Council of India or otherwise :
- " 15. The charging of all or any part of the property of the company with any sum of money on any terms agreed on :
- " 16. The surrendering or selling at any future period to the Secretary of State in Council of India on behalf of her Majesty, or to any other persons, of the railways or any railway of the company, or any part thereof, or of all or any part of the property of the company :
- " 17. The referring of differences to arbitration :
- " 18. The making of provision for enforcing or securing the due performance of any contract or arrangement made by the company :
- " 19. The uniting of all or any part of any railways or railway, or of any other undertaking of the company, or both, with any other railway or undertaking :
- " 20. Generally all such provisions and stipulations with respect to the matters provided for by this Act or any of them, and the purposes of the company, and the encouragement and promotion thereof, and the eventual or contingent transfer of the same, or any part thereof, to the Secretary of State in Council of India on behalf of her Majesty, as the respective parties shall think fit and mutually agree upon."

Sect. 20. "The Secretary of State in Council of India may appoint a person to be a deputy *ex officio* director, who, in case of the absence through illness or other cause of the *ex officio* director at any time or times, but not otherwise, shall have power to act in all respects as and in the place of such *ex officio* director."

Sect. 21. "The company and the Secretary of State in Council of India respectively from time to time may negotiate for, conclude, and enter into any contracts and agreements for the purposes of this Act, in addition to or by way of repeal or modification of the existing indentures of agreement, or of any contracts or agreements theretofore entered into by them for the purposes of this Act."

Sect. 22. "Whenever in either of the existing indentures of agreement, or in any such contract or agreement, any pro-

vision for referring differences between the contracting parties to arbitration occurs, then, except so far as is by the recited indenture or the contract or agreement otherwise provided, the provisions with respect to the settlement of disputes by arbitration of 'The Companies Clauses Consolidation Act, 1845,' extend and apply to every arbitration so provided for."

Sects. 23—30 provide for the amount of the present capital, for the raising of additional capital, for the division of profits generally, for the distinction of shares in case of separate undertakings, for the offer of new shares to existing shareholders, for the keeping of distinct capital accounts and revenue accounts for separate undertakings, and for the division of the profits of separate undertakings.

Sect. 31. "The company may have a seal for use in India in lieu of the common seal of the company, and from time to time may vary and renew it, and make regulations for its use, and, except as is by this Act otherwise expressly provided, every document sealed with such seal in conformity with such regulations, or in pursuance of any order of the directors, or of any authority given by the company under their common seal, shall be as valid and effectual as if the common seal were affixed thereto."

Sects. 32—42 relate to certificates of shares, calls, notices of calls, forfeited shares, approval by the directors of transferees, closing of the transfer books, the power of the company to borrow on bond, the sealing of such bonds, and the claims to which they entitle the obligees; the power of the company to consolidate shares into stock; and the payment of interest or dividend on stock so consolidated.

Sects. 43—49 relate to general meetings, and the procedure and voting thereat.

Sects. 50—54 regulate the number, qualification, quorum, and period of office of the directors.

Sect. 55. "The company from time to time may appoint and remove such committees, persons or person, as the company shall think fit, to act on behalf of the company in India or elsewhere with respect to the making, maintaining, managing, working, and using of the railways and other works of the company, and the disposal of, issue, registration, and transfer of shares and of bonds, and the registration of shareholders, and the control and conduct of any of the affairs in India or elsewhere of the company, and may delegate to any such committee, persons and person respectively, all or any of the powers of the company, and of the directors and officers

thereof, which the company think it expedient that such committee, persons and person respectively, should possess for the purpose of their or his respective appointment."

In the case of an Indian guaranteed railway company, incorporated by a special Act, which incorporated with it the Companies Clauses Act, 1845, and the 18th and 54th sections of which special Act were respectively in the same terms as sections 31 and 55 of the present Act. where E., the agent of the company in India, entered on their behalf into a contract in India for a supply of ironwork of great value, to be manufactured in London, at a time when the directors were themselves supplying ironwork for the company, such contract not being under seal, and the ironwork never having been accepted by the company, it was held that the company were not bound by the contract, even assuming (of which there was no evidence) that E. had been appointed under sect. 54. (*Stewart v. Scinde, Punjab, and Delhi Rail. Co.*, 5 Beng. L. R. 195.)

Sect. 56. "The company may from time to time determine the quorum of any such committee or persons, and may determine and regulate the authority, duties, procedure, liabilities, and remuneration of any such committee, persons or person respectively, and generally may make such provisions and regulations for their and his respective government and conduct, as the company think expedient."

Sect. 57. "All the proceedings and acts of such committees, persons or person respectively, within their and his respective authority, shall (but subject to the regulations of the company requiring such proceedings and acts, or any of them, to be confirmed by the directors,) be as valid and effectual as if they were proceedings and acts of the directors."

Sect. 58. "The committees, persons or person respectively, so from time to time appointed, shall, with respect to all their and his respective lawful proceedings and acts within the limits of the authority conferred on them and him respectively, have the like discretions and indemnities as if they and he respectively were or was directors or a director of the company."

Sects. 59, 60 prescribe the qualification of an auditor, and the period at which the books are to be balanced.

Sects. 61—66 give powers and directions with respect to the issuing and registering of shares and securities in India, substantially the same as those contained with reference to other companies in 36 & 37 Vict. c. 43.

Sect. 67 makes a certified copy of a register or entry in a register, whether kept in England or in India, legal evidence.

Sect. 68 prescribes the newspapers for advertisements in England and in India.

Sect. 69. "All notices by the company which, if given in England, would be published in the London Gazette, shall, if given in India, be sufficient if published in any one of the newspapers published in the Presidency of Bombay in which official notices by the government are usually published."

Sect. 70. "The bye-laws from time to time made by the company to have effect in India shall not be repugnant to the laws of that part of India where they are to have effect, and shall be approved of by such judicial or other authority as the Secretary of State in Council in India think fit."

Sect. 71. "The justice or magistrate by whom any penalty or forfeiture is imposed in India may award to the company such part thereof as he does not award to the informer."

Sect. 72. "The appeal from any determination or adjudication of any justice or magistrate in India may be made to the Court having ordinary jurisdiction over his adjudications, and the Court may hear, proceed on, and determine the appeal accordingly."

Sect. 73 provides for the expenses of the Act.

**EAST INDIAN RAILWAY COMPANY PURCHASE
ACT, 1879 (Local and Personal), (42 & 43 Vict.
ch. cevi.).**

Sect. 27. "From and after the commencement of this Act, the company may enter into and conclude with the Secretary of State any contract or contracts for any of the following purposes ; that is to say—

- (a) The carrying into effect the memorandum of terms come to between the company and the Secretary of State, and any addition thereto or modification thereof, as may be agreed upon between them, not being contrary to or at variance with the provisions of this Act ;
 - (b) The maintenance and management of the East Indian Railway, or any part thereof ;
 - (c) The improving and enlarging the East Indian Railway, or any part thereof, and the constructing deviation or auxiliary railways, and other works in connection therewith ;
 - (d) The use and working of the East Indian Railway, or any part thereof, and the conveyance of traffic thereon ;
 - (e) The granting running powers and other facilities and accommodation of whatever description to other railway companies or to State railways ;
 - (f) The use by the company of running powers and other facilities and accommodation of whatever description that any other railway company or the Secretary of State may at any time have power to grant to the company ;
 - (g) The maintenance and management of railways in connection with but not forming part of the East Indian Railway, and the use and working of such railways, and the conveyance of traffic thereon ;
 - (h) The control and supervision of the Secretary of State in respect of the matters aforesaid, including the appointment of one or more Government directors ;
 - (k) The doing all things necessary or incidental to the matters provided for by this Act, or any of them ;
- and the Secretary of State and the company are hereby authorized and empowered to carry any such contract or contracts into effect."

PUBLIC GENERAL STATUTES.

31 VICT. c. 26.

An Act to enable certain guaranteed Indian Railway Companies to raise Money on Debenture Stock. [29th May, 1868.]

WHEREAS the railway companies severally known as the Great Indian Peninsula Railway Company, the East Indian Railway Company, the Madras Railway Company, the Bombay, Baroda, and Central India Railway Company, the Scinde Railway Company, the Eastern Bengal Railway Company, and the Oude and Rohilcund Railway Company, Limited, were constituted and incorporated by Acts of Parliament, or by certificate under Act of Parliament, for the purpose of constructing, maintaining, and working railways in India; and the said companies have, under powers vested in them by their Acts, or otherwise vested in them, entered into terminable contracts and arrangements with the East India Company, or with the Secretary of State in Council of India, with respect to their undertakings, and they have in exercise of such powers, with the sanction of the East India Company, or the Secretary of State in Council of India, raised capital by the issue of shares or stock, and have borrowed money for their undertakings on the security of mortgages or bonds:

And whereas it is expedient that each of the said companies should be empowered to create, with the sanction of the Secretary of State in Council of India, debenture stock in lieu of borrowing or in substitution for, or for the discharge of, mortgages or bonds:

Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. Each of the said companies may from time to time, with the sanction of the Secretary of State in Council of India, and of three-fifths of the votes of its shareholders and stockholders entitled to vote in that behalf at meetings of the company,

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present in person or by proxy at any extraordinary meeting convened with notice of this purpose, raise all or any part of the money which for the time being the company has raised or is authorized to raise on mortgage or bond by the creation and issue at such times, in such amounts and manner, on such terms, at such price, subject to such conditions, and with such rights and privileges, as the Secretary of State in Council of India shall think fit, of stock to be called debenture stock, instead of and to the same amount as the whole or any part of the money which may for the time being be owing by the company on mortgage or bond, or which the company may from time to time have power to raise on mortgage or bond, and may, with such sanction of its shareholders and stockholders as aforesaid, attach to the stock so created such fixed and perpetual irredeemable, redeemable, variable, or other interest at such rate, payable half-yearly or otherwise, and commencing at once or at any future time or times, when and as the debenture stock shall be issued or otherwise, as the Secretary of State in Council of India shall think fit.

2. All the provisions following shall apply to every case of one of the said companies exercising the power hereinbefore given for raising money by the creation and issue of debenture stock; (that is to say,)

1. The debenture stock, with the interest thereon, shall be a charge upon the undertaking of the company prior to all other stock or shares of the company, and shall be transmissible and transferable in the same manner and according to the same regulations and provisions as other stock of the company, and shall in all other respects have the incidents of personal estate.
2. The interest on debenture stock shall have priority of payment over all dividends or interest on any other stock or shares of the company, and shall rank next to the interest payable on the mortgages or bonds for the time being of the company legally granted before the creation of such stock, but the holders of debenture stock shall not as among themselves be entitled to any preference or priority.
3. The company shall cause entries of the debenture stock from time to time created to be made in a register to be kept for that purpose, wherein they shall enter the names and addresses of the several persons and corporations from time to time entitled to the debenture stock, with the respective amounts of the stock to which they are respectively entitled, and any instalments by

which the price or subscription for any debenture stock may be made payable shall be recoverable as calls are recoverable under "The Companies Clauses Consolidation Act, 1845."

4. The company shall deliver to every holder of debenture stock a certificate stating the amount of debenture held by him, and all regulations or provisions for the time being applicable to certificates of shares in the capital of the company shall apply, *mutatis mutandis*, to certificates of debenture stock.
5. Nothing herein contained shall in any way affect any mortgage or bond at any time legally granted by the company before the creation of such stock, or any power of the company to raise money on mortgage or bond, so far as such power is not by this Act expressly extinguished; but the holders of all such mortgages and bonds shall, during the continuance thereof, respectively be entitled to the same priorities, rights, and privileges in all respects as they would have been entitled to if this Act had not been passed.
6. The debenture stock shall not entitle the holders thereof to be present or vote at any meeting of the company, or confer any qualification with reference to the Government thereof, but shall in all respects, not otherwise by this Act provided for, be considered as entitling the holders to the rights and powers of mortgagees of the undertaking other than the right to require repayment of the principal money paid up in respect of the debenture stock: Provided always, that if on the issue of any such stock the company shall have agreed to repay the principal money at a fixed time, the holders thereof shall be entitled to be repaid their principal money at such fixed time.
7. The money raised by debenture stock shall be applied exclusively either in paying off money due by the company on mortgage or bond, or else for the purposes to which the same money would be applicable if it were raised on mortgage or bond instead of on debenture stock; provided always, that the receipt, disposal, and application of all monies raised by the debenture stock shall be at all times and in all respects subject to the supervision, direction, and control of the Secretary of State in Council of India.
8. Separate and distinct accounts shall be kept by the company showing how much money has been received for or on account of debenture stock, and how much money

borrowed or owing on mortgage or bond for which they have power so to borrow has been paid off by debenture stock or raised thereby instead of being borrowed on mortgage or bond.

9. The powers of borrowing and reborrowing by the company shall, to the extent of the nominal amount of the debenture stock for the time being issued, be extinguished.



INDIAN RAILWAYS REGISTRATION

(36 & 37 VICT. c. 43).

An Act to enable Indian Railway Companies to issue and register Shares and Securities in India. [21st July, 1873.

BE it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows; (that is to say,)

1. Every company now formed, or which shall hereafter be formed, whether by amalgamation or otherwise, for constructing, maintaining, and working railways in India, may establish at such places in India as they think fit an office for the issue, registration, and transfer of shares, stock, bonds, and securities of the company, and the registration of transfers of shares, stock, bonds, and securities, and the registration of shareholders, and may from time to time remove or alter the place of any such office, and may make such regulations, consistent with the provisions of this Act, as they think fit, for enabling and facilitating the issue, registration, and transfer of shares, stock, bonds, and securities, and the registration of transfers of shares, stock, bonds, and securities, and the registration of shareholders at such office, and all and every the powers and provisions in relation to the issue, transfer, and registration of shares, stock, bonds, and securities, and the registration of transfers of shares, stock, bonds, and securities, and the registration of shareholders in Great Britain, contained in any deed of settlement or Act of Parliament under or by which the company shall be constituted or governed, shall apply and be in force as to the shares, stock, bonds, and securities, and the registration of transfers thereof, and the registration of shareholders, to be issued, transferred, registered and made at such office in India, except so far as the same are inconsistent with the provisions of this Act.

2. Every such company may keep at their office in India books to be called respectively "the India register of shareholders," "the India register of holders of consolidated stock," "the India shareholders address book," "the India register of transfers," and also books for the registration of bonds, debentures, mortgages, and the debenture stock, and the transfers thereof respectively, and the books so kept shall be of the like validity and effect as the books kept for the like purposes by the company in England, and accounts of all entries and alterations made in the books of the company in India shall be transmitted to the principal office of the same company in England.

3. Provided always, that if and when the company have offices in India at more places than one, then the company shall substitute for or add to the word "India" in the titles of the register kept at every such office, the name of the place at which the particular office is established.

4. All transfers of any such shares, stock, bonds, and securities as aforesaid shall be made at the office at which the same respectively shall for the time being be registered, and no share, stock, bond, or security shall be on the registry of more than one office at one and the same time: provided always, that the company may keep in England duplicates of any of its books of register kept in India, but no such duplicate book shall be deemed a register.

5. Subject to the regulations from time to time made by such companies respectively, with respect to the issue, registration, and transfer of shares, stock, bonds, and securities respectively, and the registration of transfers of shares, stock, bonds, and securities respectively, every such company may and shall, on notice in writing by the holder of any share, stock, bond, or security to the person for the time being acting as secretary, managing director, or principal clerk at the office in England or in India where such share, stock, bond, or security shall then be registered, transfer the share, stock, bond, or security from the register thereof at that office to the corresponding register at any other office of the company where for the time being a register shall be kept to be appointed and named in such notice, and as soon as conveniently may be after the receipt of any such notice such secretary, managing director, or principal clerk shall transmit advice thereof to the office to which the transfer is directed to be made.

6. For the purpose of determining any question as to the place or jurisdiction within which any share, stock, bond, or security shall be deemed to be or to have been situate at any given time, the locality, whether in India or in Great Britain, of the register in which such share, stock, bond, or security shall be or have been actually registered for the time being, shall be deemed to be or have been at such time the locality of such share, stock, bond, or security, and so soon as notice shall have been given as aforesaid for the transfer of any share, stock, bond, or security from one register to another, the share, stock, bond, or security shall for the purpose of this section be deemed to be actually registered in the register to which it is so directed to be transferred.

7. Nothing in this Act shall interfere with or affect any powers which are now vested in any Indian railway company by any Acts of Parliament by which the company is governed (a).

INDIAN GUARANTEED RAILWAYS ACT, 1879
(42 & 43 VICT. c. 41).

An Act to enable Guaranteed Railway Companies in India and the Secretary of State for India in Council to enter into Agreements with respect to the working of Railways, and with respect to Telegraphs, and to confer upon those Companies additional powers with respect to their undertakings.

[11th August, 1879.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. In and for the purposes of this Act, —

The term “guaranteed company” means any of the companies specified in the schedule to this Act, and any railway company which for the time being constructs, maintains, or works a railway under any guarantee from or arrangement with the Secretary of State for India in Council.

The term “railway company” includes any person or body of persons being the owner or lessee of or working a railway,

(a) Local and Personal Act, 18 Vict. ch. xl (Madras Railway Company); Local and Personal Act, 22 & 23 Vict. ch. cii (Bombay Baroda and Central India Railway Company), ss. 61—66.

except the East Indian Railway Company, and except any railway company of which the undertaking is after the passing of this Act purchased by the Secretary of State for India in Council.

The term "railway" means a railway constructed before or after the passing of this Act, and belonging to the Secretary of State for India in Council, or situate in her Majesty's territories in India, or in any territory in the East Indies belonging to any native prince or state in alliance with her Majesty or to any European power, and includes any tramway so belonging or situate and worked by steam power, and any ferry so belonging or situate and worked or used in connection with a railway.

2. A guaranteed company may from time to time make with the Secretary of State for India in Council, and carry into effect, or, with the sanction of the Secretary of State for India in Council, make with any railway company, and carry into effect, any agreement with respect to any of the following purposes; namely,

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

3. A guaranteed company may from time to time make with the Secretary of State for India in Council, and carry into effect, any agreement with respect to any of the following purposes; namely,

- (a) The surrendering, selling, or letting by the company to the Secretary of State of all or any part of the telegraphs belonging to the company:

- (b) The doing of any thing connected with the working, use, management, or maintenance of or otherwise relating to any telegraphs in India which belong to the Secretary of State in Council or a guaranteed company, or in which the Secretary of State in Council or any such company is for the time being interested, including the application of the revenue to arise from any such telegraphs:
- (c) Generally the giving effect to any such provisions or stipulations with respect to any such telegraphs as the Secretary of State in Council and any such company may think fit and mutually agree on.

4. A guaranteed company may from time to time, with the sanction of the Secretary of State for India in Council, exercise all or any of the following powers:

- (a) They may use, maintain, farm, or work and take tolls in respect of any bridge or ferry used in connection with their railway:
- (b) They may construct, use, maintain, and take tolls in respect of any road in connection with a railway bridge:
- (c) They may provide any means of transport which may be required for the reasonable convenience of persons or goods carried or to be carried on their railway, but not between any places between which any company shall for the time being be carrying on the business of carriers by water:

Provided always, that the capital outlay on the works mentioned in the three preceding sub-sections shall not in the case of any guaranteed company exceed in all ten lacs of rupees:

- (d) They may make and carry into effect agreements with the Secretary of State for India in Council for the construction of rolling stock, plant, or machinery used on or in connection with railways, or for leasing or taking on lease any rolling stock, plant, machinery, or equipments required for use on a railway.

A guaranteed company shall have, for the purpose of recovering any tolls which they are authorized to take under this section, such powers as may be conferred upon them by laws and regulations made by the Governor-General of India in Council.

5. The Secretary of State for India in Council may from time to time, with respect to any case or class of cases, delegate to the Governor-General of India in Council the power to give any sanction required under this Act.

6. The powers conferred by this Act shall be in addition to and not in derogation of any powers existing independently of this Act.

7. Any agreement made before the passing of this Act by a guaranteed company for any of the purposes specified in this Act shall be as valid as if it had been made after the passing of this Act.

8. This Act may be cited as the Indian Guaranteed Railways Act, 1879.

SCHEDULE.

The Great Indian Peninsula Railway Company.
The Madras Railway Company.
The Bombay Baroda and Central India Railway Company.
The Scinde, Punjab, and Delhi Railway Company.
The Eastern Bengal Railway Company.
The South Indian Railway Company.
The Oude and Rohilcund Railway Company (Limited).

ACTS OF THE GOVERNOR-GENERAL IN COUNCIL.

REPEALED ACTS.

The first Railway Act was Act XVIII. of 1854, intituled "An Act relating to Railways in India," which applied to all railways which had then been or should be opened by any railway company under the superintendence and control of the East India Company for the public conveyance of passengers or goods in any part of the territories in the possession and under the government of the said Company. This Act was amended by Act LII. of 1860, so as to enable police magistrates in certain circumstances to try offences punishable under sects. 27 and 28 of the Act with imprisonment.

By Act XIII. of 1870, sects. 1 and 2, it was enacted that the provisions of Act XVIII. of 1854 should apply to all railways then or thereafter belonging to government, but worked by a railway company, in the same manner as if such railways belonged to the company, and had been opened by the company, in manner mentioned in the preamble to the said Act. And that, subject to the modifications thereafter mentioned, the said Act should apply to all railways then or thereafter worked by government, in the same manner as if such railways had been opened by a railway company in manner aforesaid.

Act XVIII. of 1854 was further amended by the Railway Act Amendment Act XXV. of 1871.

Sect. 39 of Act XVIII. of 1854 was repealed by Act XIV. of 1870; sects. 32 and 33 by Act XVI. of 1874, and the remainder of the Act, together with Acts XIII. of 1870 and XXV. of 1871, was repealed by the second Railway Act, IV. of 1879. Act XXXI. of 1867, intituled "An Act to render penal certain Offences committed by Servants of Railway Companies," was also repealed by Act IV. of 1879. Act IV. of 1879, in its turn, after having been amended by Act IV. of 1883, and extended to Upper Burmah by Act XX. of 1886, was repealed, with its amending and extending Acts, by the third and present Railway Act, IX. of 1890.

ACTS IN FORCE.

ACT IX. OF 1860.

(Received Governor-General's assent, 12th March, 1860.)

An Act to make provision for the speedy determination of certain Disputes between Workmen engaged in Railway and other Public Works and their Employers.

WHEREAS it is expedient to make provision for the speedy determination of certain disputes between workmen engaged in railway and other public works and their employers; it is enacted as follows:—

1. It shall be lawful for the executive Government of any presidency or place within the British territories in India to invest any magistrate or other officer exercising the powers of a magistrate with power to inquire into and decide disputes on account of wages, hire of carriage or the price of work, between any workmen employed in the construction of any railway, canal, or other public work, the construction of which is or shall be sanctioned by Parliament or by any such executive Government, and the person or persons by whom such workmen are employed.

2. Magistrates empowered to decide disputes under the preceding section shall have jurisdiction only in case the amount in dispute shall not exceed the sum of two hundred rupees.

3. The executive Government shall fix, and may from time to time alter, the local limits of the jurisdiction of any magistrate invested with jurisdiction under sect. 1 of this Act. A magistrate so invested may hold a court for the investigation of disputes of the nature described in the said section at any place within the local limits of his jurisdiction.

4. The rules for the institution of suits, as provided in the Code of Civil Procedure, shall, as far as circumstances will allow, be followed in the investigation of disputes under the preceding sections, and the procedure adopted shall be that provided for cases in which the suit may be disposed of at the first hearing.

5. There shall be no appeal against any decision passed under this Act.

6. The magistrate, having heard and decided the case, shall make an order for the payment of such sum of money (if any) as shall appear to him to be justly due; and if the person ordered to pay shall make default in the payment of such sum immediately or within such time as the magistrate shall direct, the magistrate shall issue his warrant to levy the money by distress and sale of the goods and chattels of the defaulter.

7. If any question shall arise whether any goods or chattels seized under the warrant of distress belong to the defaulter, or are liable to be distrained and sold as aforesaid, the same shall be determined in the manner provided by the said Code of Civil Procedure for the determination of the like questions arising in the execution of decrees.

8. Any person who shall voluntarily engage for a stipulated period to work on any railway, canal, or other public work, the construction of which is or shall be sanctioned in the manner specified in sect. 1 of this Act, or to execute any specific work in connection with such public work, and who shall wilfully and without lawful or reasonable excuse neglect or refuse to perform the work so stipulated for, shall be liable, on conviction before a magistrate, to a fine not exceeding twenty rupees.

The magistrate may, at the request of the complainant, or of any one authorized to act on his behalf, instead of fining such person, order him to perform or get performed the work according to the terms of his contract or engagement; and if he shall fail to comply with the order, the magistrate may upon proof to his satisfaction of such non-compliance, sentence such person to be imprisoned with or without hard labour for any term not exceeding two months.

9. This Act shall take effect only in those districts or places to which it shall be extended by order of the Governor-General of India in Council or of the executive Government of any presidency or place (a).

[The period of limitation for a suit under Act IX. of 1860, s. 1, is six months from the time when the wages, hire, or price of work claimed accrue or accrues due: Act XV. of 1877, Sched. II. (4).]

(a) This Act has been declared, under the Scheduled Districts Act, 1874, to be in force in the following scheduled districts, viz., the districts of Hazaribagh, Lohardaga, and Manubhum, and Pargana Dhalbhum, and the Kolhan in the district of Singbhum.

It has been declared in force in Upper Burma generally.

It has been extended to the Punjab, to Nadiya, 24-Parganas and Baraset; to the district of Nimar; and in the Bombay Presidency to the districts of Ahmadnagar, Broach, Ahmadabad, Khandesh, Khaira, Poonah, Sholapur, Surat, Tanna, and to the province of Sindh.

ACT No. III. OF 1865.

PASSED BY THE GOVERNOR-GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor-General on the 14th of February, 1865.)

An Act relating to the rights and liabilities of Common Carriers.

WHEREAS it is expedient not only to enable common carriers to limit their liability for loss of or damage to property delivered to them to be carried, but also to declare their liability for loss of or damage to such property occasioned by the negligence or criminal acts of themselves, their servants or agents; it is enacted as follows:—

1. This Act may be cited as “The Carriers’ Act, 1865.”

2. In this Act, unless there be something repugnant in the subject or context—

“Common carrier” denotes a person, other than the government, engaged in the business of transporting for hire property from place to place, by land or inland navigation, for all persons indiscriminately.

“Person” includes any association or body of persons, whether incorporated or not.

Words in the singular number include the plural, and words in the plural include the singular.

3. No common carrier shall be liable for the loss of or damage to property delivered to him to be carried exceeding in value one hundred rupees, and of the description contained in the Schedule to this Act, unless the person delivering such property to be carried, or some person duly authorized in that behalf, shall have expressly declared to such carrier or his agent the value and description thereof.

4. Every such carrier may require payment for the risk undertaken in carrying property exceeding in value one hundred rupees and of the description aforesaid, at such rate of charge as he may fix: provided that, to entitle such carrier to payment at a rate higher than his ordinary rate of charge, he shall have cause to be exhibited in the place where he carries on the business of receiving property to be carried, notice of the higher rate of charge required, printed or written in English and in the vernacular language of the country wherein he carries on such business.

5. In case of the loss of or damage to property exceeding in value one hundred rupees and of the description aforesaid, delivered to such carrier to be carried, when the value and description thereof shall have been declared and payment

shall have been required in manner provided for by this Act, the person entitled to recover in respect of such loss or damage shall also be entitled to recover any money actually paid to such carrier in consideration of such risk as aforesaid.

6. The liability of any common carrier for the loss of or damage to any property delivered to him to be carried, not being of the description contained in the Schedule to this Act, shall not be deemed to be limited or affected by any public notice; but any such carrier, not being the owner of a railroad or tramroad constructed under the provisions of Act XXII. of 1863 (*to provide for taking land for works of public utility to be constructed by private persons or companies, and for regulating the construction and use of works on land so taken*) may, by special contract, signed by the owner of such property so delivered as last aforesaid or by some person duly authorized in that behalf by such owner, limit his liability in respect of the same.

(a) 7. The liability of the owner of any railroad or tramroad constructed under the provisions of the said Act XXII. of 1863, for the loss of or damage to any property delivered to him to be carried, not being of the description contained in the Schedule to this Act, shall not be deemed to be limited or affected by any special contract; but the owner of such railroad or tramroad shall be liable for the loss of or damage to property delivered to him to be carried only when such loss or damage shall have been caused by negligence or a criminal act on his part or on that of his agents or servants.

8. Notwithstanding anything hereinbefore contained, every common carrier shall be liable to the owner for loss of or damage to any property delivered to such carrier to be carried where such loss or damage shall have arisen from the negligence or criminal act of the carrier or any of his agents or servants.

9. In any suit brought against a common carrier for the loss, damage, or non-delivery of goods entrusted to him for carriage, it shall not be necessary for the plaintiff to prove that such loss, damage, or non-delivery was owing to the negligence or criminal act of the carrier, his servants or agents.

(b) 10. Nothing in this Act shall affect the provisions contained in the ninth, tenth, and eleventh sections of Act No. XVIII. of 1854 (*relating to railways in India*).

(a) Repealed (so far as relates to railways) by Act IX. of 1890.

(b) Repealed by Act IX. of 1890.

SCHEDULE.

Gold and silver coin.
 Gold and silver in a manufactured or unmanufactured state.
 Precious stones and pearls.
 Jewellery.
 Time pieces of any description.
 Trinkets.
 Bills and Hundis.
 Currency notes of the Government of India, or notes of any banks, or securities for payment of money, English or foreign.
 Stamps and stamped paper.
 Maps, prints, and works of art.
 Writings.
 Title deeds.
 Gold or silver plate or plated articles.
 Glass.
 China.
 Silk in a manufactured or unmanufactured state, and whether wrought up or not wrought up with other materials.
 Shawls and lace.
 Cloths and tissues embroidered with the precious metals or of which such metals form part.
 Articles of ivory, ebony, or sandal-wood.

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 Act No. X. OF 1870.

PASSED BY THE GOVERNOR-GENERAL OF INDIA IN COUNCIL.

*(Received the assent of the Governor-General on the
 1st April, 1870.)*

*An Act for the Acquisition of Land for Public Purposes and
 for Companies.*

WHEREAS it is expedient to consolidate and amend the law for the acquisition of land needed for public purposes and for companies, and for determining the amount of compensation to be made on account of such acquisition ; It is hereby enacted as follows :—

PART I.

PRELIMINARY.

1. This Act may be called “The Land Acquisition Act, 1870 :”

It extends to the whole of British India ;
 And it shall come into force on the first day of June, 1870.

2. On and from such day Act No. VI. of 1857 (*for the acquisition of land for public purposes*), Act No. II. of 1861 (*to amend Act No. VI. of 1857*), and Act No. XXII. of 1863 (*to provide for taking land for works of public utility to be constructed by private persons or companies, and for regulating the construction and use of works on land so taken*) shall be repealed.

All references made to any of the said Acts in subsequent Acts, orders, or contracts shall be read as if made to this Act.

3. In this Act—

The expression “land” includes benefits to arise out of land, and things attached to the earth or permanently fastened to anything attached to the earth :

The expression “person interested” includes all persons claiming an interest in compensation to be made on account of the acquisition of land under this Act :

The expression “collector” means the collector of a district, and includes a deputy commissioner and any officer specially appointed by the Local Government to perform the functions of a collector under this Act :

The expression “court” means, in the Regulation Provinces, British Burma and Sindh, a principal civil court of original jurisdiction,

and in the Non-regulation Provinces other than British Burma and Sindh, the court of a commissioner of a division,

unless when the Local Government has appointed (as it is hereby empowered to do), either specially for any case, or generally within any specified local limits, a judicial officer to perform the functions of a judge under this Act, and then the expression “court” means the Court of such officer :

The expression “company” means a company registered under the Indian Companies’ Act, 1866, or formed in pursuance of an Act of Parliament, or by Royal charter or letters patent ;

And the following persons shall be deemed persons “entitled to act” as and to the extent hereinafter provided (that is to say)—

Trustees for other persons beneficially interested shall be deemed the persons entitled to act with reference to any such case, and that to the same extent as the persons beneficially interested could have acted if free from disability :

A married woman, in cases to which the English law is applicable, shall be deemed the person so entitled to act,

and, whether of full age or not, to the same extent as if she were unmarried and of full age; and
The guardians of minors and the committees of lunatics or idiots shall be deemed respectively the persons so entitled to act, to the same extent as the minors, lunatics, or idiots themselves, if free from disability, could have acted.

PART II.

ACQUISITION.

Preliminary Investigation.

4. Whenever it appears to the local government that land in any locality is likely to be needed for any public purpose, a notification to that effect shall be published in the local gazette, and the collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality.

Thereupon it shall be lawful for any officer either generally or specially authorized by such government in this behalf, and for his servants and workmen,

To enter upon and survey and take levels of any land in such locality :

To dig or bore into the subsoil :

To do all other acts necessary to ascertain whether the land is adapted for such purpose :

To set out the boundaries of the land proposed to be taken and the intended line of the work (if any) proposed to be made thereon :

To mark such levels, boundaries and line by placing marks and cutting trenches :

And, where otherwise the survey cannot be completed and the levels taken and the boundaries and line marked, to cut down and clear away any part of any standing crop, fence or jungle.

Provided that no person shall enter into any building or upon any enclosed court or garden attached to a dwelling-house (unless with the consent of the occupier thereof) without previously giving such occupier at least seven days' notice in writing of his intention to do so.

5. The officer so authorized shall at the time of such entry pay or tender payment for all necessary damage to be done as aforesaid, and in case of dispute as to the sufficiency of the amount so paid or tendered, he shall at once refer the dispute to the decision of the collector, and such decision shall be final.

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Declaration of intended Acquisition.

6. Subject to the provisions of Part VII. of this Act, whenever it appears to the local government that any particular land is needed for a public purpose, or for a company, a declaration shall be made to that effect under the signature of a secretary to such government or of some officer duly authorized to certify its orders :

Provided that no such declaration shall be made unless the compensation to be awarded for such property is to be paid out of public revenues, or out of some municipal fund, or by a company.

The declaration shall be published in the local official gazette and shall state the district or other territorial division in which the land is situate, the purpose for which it is needed, its approximate area, and, where a plan shall have been made of the land, the place where such plan may be inspected.

The said declaration shall be conclusive evidence that the land is needed for a public purpose or for a company, as the case may be ; and after making such declaration, the local government may acquire the land in manner hereinafter appearing.

7. Whenever any land shall have been so declared to be needed for a public purpose, or for a company, the local government, or some officer authorized by the local government in this behalf, shall direct the collector to take order for the acquisition of the land.

8. The collector shall thereupon cause the land (unless it has been already marked out under section 4) to be marked out. He shall also cause it to be measured, and (if no plan has been made thereof) a plan to be made of the same.

9. The collector shall then cause public notice to be given at convenient places on or near the land to be taken, stating that the Government intends to take possession of the land, and that claims to compensation for all interests in such land may be made to him.

Such notice shall state the particulars of the land so needed and shall require all persons interested in the land to appear personally or by agent before the collector at a time and place therein mentioned (such time not being earlier than fifteen days after the date of publication of the notice) and to state the nature of their respective interests in the land and the amount and particulars of their claims to compensation for such interests.

The collector shall also serve notice to the same effect on the occupier (if any) of such land and on all such persons known or believed to be interested therein, or to be entitled to act for persons so interested, as reside, or have agents authorized to receive service on their behalf, within the Revenue District in which the land is situate.

In case any person so interested resides elsewhere, and has no such agent, the notice shall be sent to him by post.

10. The collector may also require any such person to deliver to him a statement containing, so far as may be practicable, the name of every other person possessing any interest in the land or any part thereof as co-proprietor, sub-proprietor, mortgagee, tenant or otherwise, and of the nature of such interest, and of the rents and profits (if any) received or receivable on account thereof for the year next preceding the date of the statement.

Every person required to make or deliver a statement under this section or section nine, shall be deemed to be legally bound to do so within the meaning of sections one hundred and seventy-five and one hundred and seventy-six of the Indian Penal Code.

Enquiry into Value and Claims.

11. On the day so fixed, the collector shall proceed to enquire summarily into the value of the land and to determine the amount of compensation which in his opinion should be allowed therefor, and shall tender such amount to the persons interested who have attended in pursuance of the notice.

For the purpose of such enquiry, the collector shall have power to summon and enforce the attendance of witnesses and to compel the production of documents by the same means and (as far as may be) in the same manner as is provided in the case of a Civil Court under the Code of Civil Procedure.

12. The collector may, if no claimant attends pursuant to the notice, or if for any other cause he thinks fit, from time to time postpone the enquiry to a day to be fixed by him.

13. In determining the amount of compensation the collector shall take into consideration the matters mentioned in section twenty-four and shall not take into consideration any of the matters mentioned in section twenty-five.

Award by Collector.

14. If the collector and the persons interested agree as to the amount of compensation to be allowed, the collector shall make an award under his hand for the same.

Such award shall be filed in the collector's office and shall be conclusive evidence, as between the collector and the persons interested, of the value of the land and the amount of compensation allowed for the same.

15. When the collector proceeds to make the enquiry as aforesaid, whether on the day originally fixed for the enquiry or on the day to which it may have been postponed,

If no claimant attends,

Or if the collector considers that further enquiry as to the nature of the claim ought to be made by the Court,

Or if any person whom the collector has reason to think interested does not attend,

Or if the collector is unable to agree with the persons interested who have attended in pursuance of the notice as to the amount of compensation to be allowed,

Or if upon the said inquiry any question respecting the title to the land or any rights thereto or interests therein arise between or among two or more persons making conflicting claims in respect thereof, the collector shall refer the matter to the determination of the Court in manner hereinafter appearing.

Taking Possession.

16. When the collector has made an award under section fourteen or a reference to the Court under section fifteen, he may take possession of the land, which shall thereupon vest absolutely in the Government free from all encumbrances.

17. In cases of urgency, whenever the local government so directs, the collector (though no such reference has been directed or award made) may, on the expiration of fifteen days from the publication of the notice mentioned in the first paragraph of section nine, take possession of any waste or arable land needed for public purposes or for a company.

Such land shall thereupon vest absolutely in the Government free from all encumbrances.

The collector shall offer to the persons interested compensation for the standing crops and trees (if any) on such land; and in case such offer is not accepted, the value of such crops and trees shall be allowed for in awarding compensation for the land under the provisions herein contained.

PART III.

REFERENCE TO COURT AND PROCEDURE THEREON.

18. In making a reference under section fifteen, the collector shall state for the information of the Court, in writing under his hand—

- (a) The situation and extent of the land needed ;
- (b) The names of the persons whom he has reason to think interested in such land ;
- (c) The amount awarded for damages and paid or tendered under sections five and seventeen, or either of them, the amount of compensation tendered for the land under section eleven, or, if no claimant has attended pursuant to the notice mentioned in section nine, the amount of compensation which the collector is willing to give to the persons interested ; and
- (d) The grounds on which the amount of compensation was determined.

19. The Court shall thereupon cause to be served on each of the persons so named a notice requiring him (if he has not made a claim under section nine) to state to the Court, on or before a day to be therein mentioned, the sum which he claims as compensation for his interest in the land so needed.

The Court shall also cause a notice to be served on the collector and each of such persons requiring them to appoint, on or before a day to be therein mentioned, two qualified assessors (one to be nominated by the collector and the other by the persons interested) for the purpose of aiding the judge in determining the amount of the compensation.

If no claimant has attended pursuant to the notice mentioned in section nine, the Court shall cause to be affixed on some conspicuous place on or near the land needed a notice to the effect that, if the persons interested in such land do not, on or before a day to be therein mentioned, appear in Court and state the nature of their respective interests in the land and the amount and particulars of their claims to compensation, and nominate a qualified assessor, the Court will proceed to determine such amount.

20. In case of failure to nominate either of such assessors within the time so specified, the judge shall himself appoint an assessor in his stead.

21. As soon as the assessors have been appointed, the judge and the assessors shall proceed to determine the amount of the compensation.

22. If before such amount is determined, any of the assessors dies or desires to be discharged, or refuses or neglects, or becomes incapable to act, the party by whom he was appointed may appoint some other qualified person to act in his place.

If the assessor so dying, or desiring to be discharged, or

refusing, or neglecting or becoming incapable were appointed by the judge,
 Or, in the case of an assessor appointed by either party, if for the space of seven days after notice from the Court for that purpose the party who appointed such assessor fails to appoint another,
 the judge shall appoint some other qualified person in his stead.

Every assessor so substituted shall have the same powers as were vested in the former assessor at the time of his so dying or desiring to be discharged, or refusing or neglecting or becoming incapable.

23. Every proceeding under section twenty-one shall take place in open Court, and all persons entitled to practise in any Civil Court shall be entitled to appear, plead, and act, or to appear and act (as the case may be), in such proceeding.

24. In determining the amount of compensation to be awarded for land acquired under this Act, the judge and assessors shall take into consideration—

First, the market-value, at the time of awarding compensation, of such land :

Secondly, the damage (if any) sustained by the person interested, at the time of awarding compensation, by reason of severing such land from his other land :

Thirdly, the damage (if any) sustained by the person interested, at the time of awarding compensation, by reason of the acquisition injuriously affecting his other property, whether moveable or immoveable, in any other manner, or his earnings ; and

Fourthly, if, in consequence of the acquisition, he is compelled to change his residence, the reasonable expenses (if any) incidental to such change.

25. But the judge or assessors shall not take into consideration—

First, the degree of urgency which has led to the acquisition :

Secondly, any disinclination of the person interested to part with the land acquired :

Thirdly, any damage sustained by him which, if caused by a private person, would not render such person liable to a suit :

Fourthly, any damage which, after the time of awarding compensation, is likely to be caused by or in consequence of the use to which the land acquired will be put :

Fifthly, any increase to the value of the land acquired

likely to accrue from the use to which it will be put when acquired :

Sixthly, any increase to the value of the other land of the person interested, likely to accrue from the use to which the land acquired will be put ; or

Seventhly, any outlay or improvements on such land made, commenced, or effected with the intention of enhancing the compensation to be awarded therefor under this Act.

26. Where the person interested has made a claim to compensation, pursuant to any notice mentioned in section nine or in section nineteen, the amount awarded to him shall not exceed the amount so claimed, or be less than the amount tendered by the collector under section eleven.

Where the person interested has refused to make such claim, or has omitted without sufficient reason (to be allowed by the judge) to make such claim, the amount awarded may be less than, and shall in no case exceed, the amount so tendered.

Where the person interested has omitted for a sufficient reason (to be allowed by the judge) to make such claim, the amount awarded to him shall not be less than, and may exceed, the amount so tendered.

The provisions of this and the two preceding sections shall be read to every assessor, in a language which he understands, before he gives his opinion as to the amount of compensation to be awarded under this Act.

27. The opinion of each assessor shall be given orally and shall be recorded in writing by the judge.

28. In case of a difference of opinion between the judge and the assessors or any of them upon a question of law or practice or usage having the force of law, the opinion of the judge shall prevail, and there shall be no appeal therefrom.

29. In case the judge and one or both of the assessors agree as to the amount of compensation, their decision thereon shall be final.

30. In case of difference of opinion between the judge and both of the assessors as to the amount of compensation, the decision of the judge shall prevail, subject to the appeal allowed under section thirty-five.

31. Every assessor appointed under this Act, not being an officer of Government, shall receive such fee for his services as the judge shall direct, provided that such fee shall not exceed five hundred rupees.

Such fee shall be deemed to be costs in the proceeding.

32. The costs of all proceedings taken under this part by order of the Court shall, in the first instance, be paid by the collector.

33. Where the amount awarded does not exceed the sum tendered by the collector, the costs of all proceedings under this part shall be paid by the person interested.

Where the amount awarded exceeds the sum so tendered, such costs shall be paid by the collector.

34. Every award made under this part shall be in writing signed by the judge and the assessors or assessor concurring therein, and shall specify the amount awarded under the first clause of section twenty-four, and also the amounts (if any) respectively awarded under the second, third and fourth clauses of the same section, together with the grounds of awarding each of the said amounts.

It shall also state the amount of costs incurred in the proceedings under this part, and by what persons and in what proportions they are to be paid.

The costs (if any) payable by the person interested and not deducted under section forty-two may be recovered as if they were costs incurred in a suit, and as if the award were the decree therein.

35. If the judge differs from both the assessors as to the amount of compensation, he shall pronounce his decision, and the collector or the person interested (as the case may be) may appeal therefrom to the Court of the district judge, unless the judge whose decision is appealed from is the district judge, or unless the amount which the judge proposes to award exceeds five thousand rupees, in either of which cases the appeal shall lie to the High Court.

Every appeal under this section shall be presented within the time and in manner provided by the code of civil procedure for regular appeals in suits.

36. The following provisions of the Code of Civil Procedure

- (a) as to adding parties,
- (b) as to adjournment,
- (c) as to death, marriage and bankruptcy or insolvency of parties,
- (d) as to summoning witnesses and their attendance,
- (e) as to examination of parties and witnesses,
- (f) as to production of documents, and
- (g) as to commissions to examine absent witnesses and to make local inquiries,

shall apply, so far as may be, to proceedings before the Court.

PART IV.

APPORTIONMENT OF COMPENSATION.

37. Where there are several persons interested, if such persons agree in the apportionment of the compensation, the particulars of such apportionment shall be specified in the award, and as between such persons the award shall be conclusive evidence of the correctness of the apportionment.

38. When the amount of compensation has been settled under section fourteen, if any dispute arises as to the apportionment of the same or any part thereof, the collector shall refer such dispute to the decision of the Court.

39. When the amount of compensation has been settled by the Court, and there is any dispute as to the apportionment thereof, or when a reference to the Court has been made under section thirty-eight, the judge sitting alone shall decide the proportions in which the persons interested are entitled to share in such amount.

An appeal shall lie from such decision to the High Court, unless the judge whose decision is appealed from is not the district judge, in which case the appeal shall lie in the first instance to the district judge.

Every appeal under this section shall be presented within the time and in manner provided by the Code of Civil Procedure for regular appeals in suits.

PART V.

PAYMENT.

40. Payment of the compensation shall be made by the collector according to the award to the persons named therein, or, in the case of an appeal under section thirty-nine, according to the decision on such appeal :

Provided that nothing herein contained shall affect the liability of any person who may receive the whole or any part of any compensation awarded under this Act, to pay the same to the person lawfully entitled thereto.

41. When the amount of the compensation has been settled under section fourteen, if the persons interested shall so desire, the collector shall on the making of the said award pay the amount of such compensation and take possession of the land :

Provided that, in any case where immediate possession is not required, he may allow the occupants (if any) of the land

to remain in occupation of the same, upon such terms as he and they may agree on, until possession of the land is required.

42. In addition to the amount of any compensation awarded under Part II. or Part III. of this Act, the collector shall, in consideration of the compulsory nature of the acquisition, pay fifteen per centum on the market value mentioned in section twenty-four.

When the amount of such compensation is not paid on taking possession, the collector shall pay the amount awarded and the said percentage with interest on such amount and percentage at the rate of six per centum per annum from the time of so taking possession :

Provided that the costs, if any, payable to the collector by the person interested, shall be deducted from such amount and percentage.

Provided that, in cases where the decision of the Court under Part III. or Part IV. of this Act is liable to appeal, the collector shall not pay the amount of compensation or the percentage, or any part thereof, until the time for appealing against such decision has expired and no appeal shall have been presented against such decision, or until any such appeal shall have been disposed of.

PART VI.

TEMPORARY OCCUPATION OF LAND.

43. Subject to the provisions of Part VII. of this Act, whenever it appears to the local government that the temporary occupation and use of any waste or arable land are needed for any public purpose, or for a company, the local government may direct the collector to procure the occupation and use of the same for such term as it shall think fit, not exceeding three years from the commencement of such occupation.

The collector shall thereupon give notice in writing to the persons interested in such land of the purpose for which the same is needed, and shall, for the occupation and use thereof for such term as aforesaid, and for the materials (if any) to be taken therefrom, pay to them such compensation, either in a gross sum of money, or by monthly or other periodical payments, as shall be agreed upon in writing between him and such persons respectively.

In case the collector and the persons interested differ as to

the sufficiency of the compensation, the collector shall refer such difference for the final order of the Court.

44. On payment of such compensation,
or on executing such agreement,
or on making a reference under section forty-three,
the collector may enter upon and take possession of the land,
and use or permit the use thereof in accordance with the
terms of the said notice.

And on the expiration of the term, the collector shall make or tender to the persons interested compensation for the damage (if any) done to the land and not provided for by the agreement, and shall restore the land to the persons interested therein :

Provided that, if the land has become permanently unfit to be used for the purpose for which it was used immediately before the commencement of such term, and if the persons interested shall so require, the local government shall proceed under this Act to acquire the land as if it was needed permanently for a public purpose or for a company.

45. In case the collector and persons interested differ as to the condition of the land at the expiration of the term, or as to any matter connected with the said agreement, the collector shall refer such difference for the final order of the Court, and on such reference, or on a reference under section forty-three, the judge sitting alone shall decide the difference referred.

PART VII.

ACQUISITION OF LAND FOR COMPANIES.

46. Subject to such rules as the Governor-General of India in Council may from time to time prescribe in this behalf, the local government may authorize any officer of any company desiring to acquire land for its purposes to exercise the powers conferred by section four.

In every such case section four shall be construed as if, for the words "for such purpose," the words "for the purposes of the company" were substituted, and section five shall be construed as if, after the words "the officer," the words "of the company" were inserted.

47. The provisions of section six to section forty-five (both inclusive) shall not be put in force in order to acquire land for any company, unless with the previous consent of the local government, and unless the company shall have executed the agreement hereinafter mentioned.

48. Such consent shall not be given unless the local government be satisfied, by an enquiry held as hereinafter provided—

(1) that such acquisition is needed for the construction of some work, and

(2) that such work is likely to prove useful to the public.

Such enquiry shall be held by such officer and at such time and place as the local government shall appoint.

Such officer may summon and enforce the attendance of witnesses, and compel the production of documents by the same means and, as far as possible, in the same manner as is provided by the Code of Civil Procedure in the case of a Civil Court.

49. Such officer shall report to the local government the result of the enquiry, and if the local government is satisfied that the proposed acquisition is needed for the construction of a work, and that such work is likely to prove useful to the public, it shall, subject to such rules as the Governor-General of India in Council may from time to time prescribe in this behalf, require the company to enter into an agreement with the Secretary of State for India in Council providing to the satisfaction of the local government for the following matters, namely :—

(1) The payment to Government of the cost of the acquisition :

(2) The transfer, on such payment, of the land to the company :

(3) The terms on which the land shall be held by the company :

(4) The time within which, and the conditions on which, the work shall be executed and maintained ; and

(5) The terms on which the public shall be entitled to use the work.

50. Every such agreement shall, as soon as may be after its execution, be published in the *Gazette of India* and also in the local official gazette, and shall thereupon (so far as regards the terms on which the public shall be entitled to use the work) have the same effect as if it had formed part of this Act.

PART VIII.

MISCELLANEOUS.

51. Service of any notice under this Act shall be made by delivering or tendering a copy thereof signed, in the case of a notice under section four, by the officer therein mentioned,

and, in the case of any other notice, by or by order of the collector or the judge.

Whenever it may be practicable, the service of the notice shall be made on the person therein named.

When such person cannot be found, the service may be made on any adult male member of his family residing with him; and if no such adult male member can be found, the notice may be served by fixing the copy on the outer door of the house in which the person therein named ordinarily dwells or carries on business.

52. Whoever wilfully obstructs any person in doing any of the acts authorized by section four or section eight, or wilfully fills up, destroys, damages, or displaces any trench or mark made under section four shall, on conviction before a magistrate, be liable to imprisonment for any term not exceeding one month, or to fine not exceeding fifty rupees, or to both.

53. If the collector is opposed or impeded in taking possession under this Act of any land, he shall, if a magistrate, enforce the surrender of the land to himself, and if not a magistrate, he shall apply to a magistrate or (within the towns of Calcutta, Madras and Bombay) to the commissioner of police, and such magistrate or commissioner (as the case may be) shall enforce the surrender of the land to the collector.

54. Except in the case provided for in section forty-four, nothing in this Act shall be taken to compel the Government to complete the acquisition of any land unless an award shall have been made or a reference directed under the provisions hereinbefore contained.

But whenever the Government declines to complete any such acquisition, the collector shall determine the amount of compensation due for the damage (if any) done to such land under section four or section eight, and not already paid for under section five, and shall pay such amount to the person injured.

55. The provisions of this Act shall not be put in force for the purpose of acquiring a part only of any house, manufactory or other building, if the owner desire that the whole of such house, manufactory or building shall be so acquired.

56. Where the provisions of this Act are put in force for the purpose of acquiring land at the cost of any municipal fund, or of any company, the charges incurred by the collector in such acquisition shall be defrayed from or by such fund or company.

57. No award or agreement made under this Act shall be chargeable with stamp duty, and no person claiming under

any such award or agreement shall be liable to pay any fee for a copy of the same.

58. No suit shall be brought to set aside an award under this Act.

And no suit or other proceeding shall be commenced or prosecuted against any person for anything done in pursuance of this Act, without giving to such person a month's previous notice in writing of the intended proceeding, and of the cause thereof, nor after tender of sufficient amends, nor after the expiration of three months from the accrual of the cause of suit or other proceeding.

59. The local government shall have power to make rules consistent with this Act for the guidance of officers in all matters connected with its enforcement, and may from time to time alter and add to the rules so made.

All such rules, alterations and additions shall, when sanctioned by the Governor-General in Council, be published in the local official gazette, and shall thereupon have the force of law.

ACT NO. XIII OF 1885.

PASSED BY THE GOVERNOR-GENERAL OF INDIA IN COUNCIL.

*(Received the assent of the Governor-General on the
22nd July, 1885.)*

An Act to amend the law relating to Telegraphs in India.

WHEREAS it is expedient to amend the law relating to telegraphs in India; It is hereby enacted as follows:—

PART I.

PRELIMINARY.

1. (1) This Act may be called the Indian Telegraph Act, 1885.

(2) It extends to the whole of British India, and, so far as regards subjects of her Majesty, to the dominions of princes and states in India in alliance with her Majesty; and

(3) It shall come into force on the first day of October, 1885.

2. The Indian Telegraph Act, 1876, is hereby repealed.

But all licenses granted and rules made under that Act or any Act thereby repealed, and now in force, shall, so far as they could be granted or made under this Act, be deemed to have been respectively granted and made hereunder.

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

(1) "Telegraph" means an electric, galvanic or magnetic telegraph, and includes appliances and apparatus for transmitting or making telegraphic, telephonic or other communications by means of electricity, galvanism or magnetism :

(2) "Telegraph officer" means any person employed either permanently or temporarily in connection with a telegraph established, maintained or worked by the Government or by a person licensed under this Act :

(3) "Message" means any communication sent by telegraph, or given to a telegraph officer to be sent by telegraph or to be delivered :

(4) "Telegraph line" means a wire or wires used for the purpose of a telegraph, with any casing, coating, tube or pipe enclosing the same, and any appliances and apparatus connected therewith for the purpose of fixing or insulating the same :

(5) "Post" means a post, pole, standard, stay, strut or other above-ground contrivance for carrying, suspending or supporting a telegraph line :

(6) "Telegraph authority" means the Director-General of Telegraphs, and includes any officer empowered by him to perform all or any of the functions of the telegraph authority under this Act :

(7) "Local authority" means any 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 any municipal or local fund.

PART II.

PRIVILEGES AND POWERS OF THE GOVERNMENT.

4. Within British India, the Governor-General in Council shall have the exclusive privilege of establishing, maintaining and working telegraphs :

Provided that the Governor-General in Council may grant a license, on such conditions and in consideration of such payments as he thinks fit, to any person to establish, maintain or work a telegraph within any part of British India.

5. (1) On the occurrence of any public emergency, or in the interest of the public safety, the Governor-General in Council or a Local Government, or any officer specially authorized in this behalf by the Governor-General in Council, may—

- (a) take temporary possession of any telegraph established, maintained or worked by any person licensed under this Act; or
- (b) order that any message or class of messages to or from any person or class of persons, or relating to any particular subject, brought for transmission by or transmitted or received by any telegraph, shall not be transmitted, or shall be intercepted or detained, or shall be disclosed to the Government or an officer thereof mentioned in the order.

(2) If any doubt arises as to the existence of a public emergency, or whether any act done under sub-section (1) was in the interest of the public safety, a certificate signed by a secretary to the Government of India or to the local government shall be conclusive proof on the point.

6. Any railway company, on being required so to do by the Governor-General in Council, shall permit the Government to establish and maintain a telegraph upon any part of the land of the company, and shall give every reasonable facility for working the same.

7. (1) The Governor-General in Council may, from time to time, by notification in the *Gazette of India*, make rules consistent with this Act for the conduct of all or any telegraphs established, maintained or worked by the Government or by persons licensed under this Act.

(2) Rules under this section may provide for all or any of the following, among other matters, that is to say:—

- (a) the rates at which, and the other conditions and restrictions subject to which, messages shall be transmitted;
 - (b) the precautions to be taken for preventing the improper interception or disclosure of messages;
 - (c) the period for which, and the conditions subject to which, telegrams and other documents belonging to, or being in the custody of, telegraph officers shall be preserved; and
 - (d) the fees to be charged for searching for telegrams or other documents in the custody of any telegraph officer.
- (3) When making rules for the conduct of any telegraph

established, maintained or worked by any person licensed under this Act, the Governor-General in Council may by the rules prescribe fines for any breach of the same :

Provided that the fines so prescribed shall not exceed the following limits, namely :—

- (i) When the person licensed under this Act is punishable for the breach, one thousand rupees, and in the case of a continuing breach a further fine of two hundred rupees for every day after the first during the whole or any part of which the breach continues ;
- (ii) When a servant of the person so licensed, or any other person, is punishable for the breach, one-fourth of the amounts specified in clause (i).

8. The Governor-General in Council may, at any time, revoke any license granted under section 4, on the breach of any of the conditions therein contained, or in default of payment of any consideration payable thereunder.

9. The Secretary of State for India in Council shall not be responsible for any loss or damage which may occur in consequence of any telegraph officer failing in his duty with respect to the receipt, transmission or delivery of any message ; and no such officer shall be responsible for any such loss or damage, unless he causes the same negligently, maliciously or fraudulently.

PART III.

POWER TO PLACE TELEGRAPH LINES AND POSTS.

10. The telegraph authority may, from time to time, place and maintain a telegraph line under, over, along or across, and posts in or upon, any immoveable property :

Provided that—

- (a) The telegraph authority shall not exercise the powers conferred by this section except for the purposes of a telegraph established or maintained by the Government, or to be so established or maintained ;
- (b) The Government shall not acquire any right other than that of user only in the property under, over, along, across, in or upon which the telegraph authority places any telegraph line or post ; and
- (c) Except as hereinafter provided, the telegraph authority shall not exercise those powers in respect of any property vested in or under the control or management of any local authority, without the permission of that authority ; and

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- (d) In the exercise of the powers conferred by this section, the telegraph authority shall do as little damage as possible, and, when it has exercised those powers in respect of any property other than that referred to in clause (c), shall pay full compensation to all persons interested for any damage sustained by them by reason of the exercise of those powers.

11. The telegraph authority may, at any time, for the purpose of examining, repairing, altering or removing any telegraph line or post, enter on the property under, over, along, across, in or upon which the line or post has been placed.

Provisions applicable to Property vested in or under the Control or Management of Local Authorities.

12. Any permission given by a local authority under section 10, clause (c), may be given subject to such reasonable conditions as that authority thinks fit to impose, as to the payment of any expenses to which the authority will necessarily be put in consequence of the exercise of the powers conferred by that section, or as to the time or mode of execution of any work, or as to any other thing connected with or relative to any work undertaken by the telegraph authority under those powers.

13. When, under the foregoing provisions of this Act, a telegraph line or post has been placed by the telegraph authority under, over, along, across, in or upon any property vested in or under the control or management of a local authority, and the local authority, having regard to circumstances which have arisen since the telegraph line or post was so placed, considers it expedient that it should be removed or that its position should be altered, the local authority may require the telegraph authority to remove it or alter its position, as the case may be.

14. The telegraph authority may, for the purpose of exercising the powers conferred upon it by this Act in respect of any property vested in or under the control or management of a local authority, alter the position thereunder of any pipe (not being a main) for the supply of gas or water, or of any drain (not being a main drain):

Provided that—

- (a) When the telegraph authority desires to alter the position of any such pipe or drain it shall give reasonable notice of its intention to do so, specifying the time at which it will begin to do so, to the local

authority, and, when the pipe or drain is not under the control of the local authority, to the person under whose control the pipe or drain is ;

- (b) A local authority or person receiving notice under clause (a) may send a person to superintend the work, and the telegraph authority shall execute the work to the reasonable satisfaction of the person so sent.

15. (1) If any dispute arises between the telegraph authority and a local authority in consequence of the local authority refusing the permission referred to in section 10, clause (c), or prescribing any condition under section 12, or in consequence of the telegraph authority omitting to comply with a requisition made under section 13, or otherwise in respect of the exercise of the powers conferred by this Act, it shall be determined by such officer as the local government may appoint either generally or specially in this behalf.

(2) An appeal from the determination of the officer so appointed shall lie to the local government ; and the order of the local government shall be final.

Provisions applicable to other Property.

16. (1) If the exercise of the powers mentioned in section 10 in respect of property referred to in clause (d) of that section is resisted or obstructed, the district magistrate may, in his discretion, order that the telegraph authority shall be permitted to exercise them.

(2) If, after the making of an order under sub-section (1), any person resists the exercise of those powers, or, having control over the property, does not give all facilities for their being exercised, he shall be deemed to have committed an offence under section 188 of the Indian Penal Code.

(3) If any dispute arises concerning the sufficiency of the compensation to be paid under section 10, clause (d), it shall, on application for that purpose by either of the disputing parties to the district judge within whose jurisdiction the property is situate, be determined by him.

(4) If any dispute arises as to the persons entitled to receive compensation, or as to the proportions in which the persons interested are entitled to share in it, the telegraph authority may pay into the Court of the district judge such amount as he deems sufficient or, where all the disputing parties have in writing admitted the amount tendered to be sufficient or the amount has been determined under sub-section (3), that amount ; and the district judge, after giving

notice to the parties and hearing such of them as desire to be heard, shall determine the persons entitled to receive the compensation or, as the case may be, the proportions in which the persons interested are entitled to share in it.

(5) Every determination of a dispute by a district judge under sub-section (3) or sub-section (4) shall be final:

Provided that nothing in this sub-section shall affect the right of any person to recover by suit the whole or any part of any compensation paid by the telegraph authority, from the person who has received the same.

17. (1) When, under the foregoing provisions of this Act, a telegraph line or post has been placed by the telegraph authority under, over, along, across, in or upon any property, not being property vested in or under the control or management of a local authority, and any person entitled to do so desires to deal with that property in such a manner as to render it necessary or convenient that the telegraph line or post should be removed to another part thereof or to a higher or lower level or altered in form, he may require the telegraph authority to remove or alter the line or post accordingly:

Provided that, if compensation has been paid under section 10, clause (d), he shall, when making the requisition, tender to the telegraph authority the amount requisite to defray the expense of the removal or alteration, or half of the amount paid as compensation, whichever may be the smaller sum.

(2) If the telegraph authority omits to comply with the requisition, the person making it may apply to the district magistrate within whose jurisdiction the property is situate to order the removal or alteration.

(3) A district magistrate receiving an application under sub-section (2) may, in his discretion, reject the same or make an order, absolutely or subject to conditions, for the removal of the telegraph line or post to any other part of the property or to a higher or lower level or for the alteration of its form; and the order so made shall be final.

Provisions applicable to all Property.

18. (1) If any tree standing or lying near a telegraph line interrupts, or is likely to interrupt, telegraphic communication, a magistrate of the first or second class may, on the application of the telegraph authority, cause the tree to be removed or dealt with in such other way as he deems fit.

(2) When disposing of an application under sub-section (1), the magistrate shall, in the case of any tree in existence before the telegraph line was placed, award to the persons interested

in the tree such compensation as he thinks reasonable, and the award shall be final.

19. Every telegraph line or post placed before the passing of this Act under, over, along, across, in or upon any property, for the purposes of a telegraph established or maintained by the government, shall be deemed to have been placed in exercise of the powers conferred by, and after observance of all the requirements of, this Act.

PART IV.

PENALTIES.

20. If any person establishes, maintains or works a telegraph within British India, otherwise than as permitted by a license granted under section 4, or breaks any condition contained in such a license, he shall be punished with fine which may extend to one thousand rupees, and with a further fine which may extend to five hundred rupees for every week during which the line is maintained or worked or the breach of the condition continues.

21. If any person, knowing or having reason to believe that a telegraph has been established or is maintained or worked in contravention of this Act, transmits or receives any message by such telegraph, or performs any service incidental thereto, or delivers any message for transmission by such telegraph or accepts delivery of any message sent thereby, he shall be punished with fine which may extend to fifty rupees.

22. If a railway company, or an officer of a railway company, neglects or refuses to comply with the provisions of section 6, it or he shall be punished with fine which may extend to one thousand rupees for every day during which the neglect or refusal continues.

23. If any person—

- (a) without permission of competent authority, enters the signal room of a telegraph office of the government, or of a person licensed under this Act, or
- (b) enters a fenced enclosure round such a telegraph office in contravention of any rule or notice not to do so, or
- (c) refuses to quit such room or enclosure on being requested to do so by any officer or servant employed therein, or
- (d) wilfully obstructs or impedes any such officer or servant in the performance of his duty,

he shall be punished with fine which may extend to five hundred rupees.

24. If any person does any of the acts mentioned in section 23 with the intention of unlawfully learning the contents of any message, or of committing any offence punishable under this Act, he may (in addition to the fine with which he is punishable under section 23) be punished with imprisonment for a term which may extend to one year.

25. If any person, intending—

- (a) to prevent or obstruct the transmission or delivery of any message, or
- (b) to intercept or to acquaint himself with the contents of any message, or
- (c) to commit mischief,

damages, removes, tampers with or touches any battery, machinery, telegraph line, post or other thing whatever, being part of or used in or about any telegraph or in the working thereof,

he shall be punished with imprisonment for a term which may extend to three years, or with fine, or with both.

26. If any telegraph officer, or any person, not being a telegraph officer but having official duties connected with any office which is used as a telegraph office,—

- (a) wilfully secretes, makes away with or alters any message which he has received for transmission or delivery, or
- (b) wilfully, and otherwise than in obedience to an order of the Governor-General in Council or of a local government, or of an officer specially authorised by the Governor-General in Council to make the order, omits to transmit, or intercepts or detains, any message or any part thereof, or otherwise than in pursuance of his official duty or in obedience to the direction of a competent Court, discloses the contents or any part of the contents of any message, to any person not entitled to receive the same, or
- (c) divulges the purport of any telegraphic signal to any person not entitled to become acquainted with the same,

he shall be punished with imprisonment for a term which may extend to three years, or with fine, or with both.

27. If any telegraph officer transmits by telegraph any message on which the charge prescribed by the government, or by a person licensed under this Act, as the case may be, has not been paid, intending thereby to defraud the government or that person, he shall be punished with imprisonment for a term which may extend to three years, or with fine, or with both.

28. If any telegraph officer, or any person not being a telegraph officer but having official duties connected with any office which is used as a telegraph office, is guilty of any act of drunkenness, carelessness or other misconduct whereby the correct transmission or the delivery of any message is impeded or delayed, or if any telegraph officer loiters or delays in the transmission or delivery of any message, he shall be punished with imprisonment for a term which may extend to three months, or with fine which may extend to one hundred rupees, or with both.

29. If any person transmits or causes to be transmitted by telegraph a message which he knows to be false or fabricated, he shall be punished with imprisonment for a term which may extend to three years, or with fine, or with both.

30. If any person fraudulently retains, or wilfully secretes, makes away with or detains a message which ought to have been delivered to some other person, or, being required by a telegraph officer to deliver up any such message, neglects or refuses to do so, he shall be punished with imprisonment for a term which may extend to two years, or with fine, or with both.

31. A telegraph officer shall be deemed a public servant within the meaning of sections 161, 162, 163, 164 and 165 of the Indian Penal Code; and in the definition of "legal remuneration" contained in the said section 161, the word "Government" shall, for the purposes of this Act, be deemed to include a person licensed under this Act.

32. Whoever attempts to commit any offence punishable under this Act shall be punished with the punishment herein provided for the offence.

PART V.

SUPPLEMENTAL PROVISION.

33. (1) Whenever it appears to the local government that any act causing or likely to cause wrongful damage to any telegraph is repeatedly and maliciously committed in any place, and that the employment of an additional police-force in that place is thereby rendered necessary, the local government may send such additional police-force as it thinks fit to the place, and employ the same therein so long as, in the opinion of that government, the necessity of doing so continues.

(2) The inhabitants of the place shall be charged with the

cost of the additional police-force, and the district magistrate shall, subject to the orders of the local government, assess the proportion in which the cost shall be paid by the inhabitants according to his judgment of their respective means.

(3) All moneys payable under sub-section (2) shall be recoverable either under the warrant of a magistrate by distress and sale of the moveable property of the defaulter within the local limits of his jurisdiction, or by suit in any competent Court.

(4) The local government may, by order in writing, define the limits of any place for the purposes of this section.



ACT No. XI. OF 1888.

PASSED BY THE GOVERNOR-GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor-General on the 5th October, 1888.)



An Act to make an Addition to the Indian Telegraph Act, 1885.

WHEREAS it is expedient to make an addition to the Indian Telegraph Act, 1885 ; it is hereby enacted as follows :—

1. The following section shall be added to that Act, namely :—

“ 34. (1) This Act, in its application to the presidency towns, shall be read as if for the words ‘ district magistrate ’ in section 16, sub-section (1), and section 17, sub-sections (2) and (3), for the words ‘ magistrate of the first or second class ’ in section 18, sub-section (1), and for the word ‘ magistrate ’ in section 18, sub-section (2), there had been enacted the words ‘ commissioner of police,’ and for the words ‘ district judge ’ in section 16, sub-sections (3), (4) and (5), the words ‘ chief judge of the Court of Small Causes.’

“ (2) Section 16, in its application to the town of Rangoon, shall be read as if for the words ‘ district judge,’ wherever they occur in that section, there had been enacted the words ‘ judge of the Court of Small Causes.’

“ (3) The fee in respect of an application to the chief judge of a Presidency Court of Small Cases under sub-section (3) of section 16 shall be the same as would be payable under the Court Fees Act, 1870, in respect of such an application to a

district judge beyond the limits of a presidency town, and fees for summonses and other processes in proceedings before the chief judge under sub-section (3) or sub-section (4) of that section shall be payable according to the scale set forth in the fourth schedule to the Presidency Small Cause Courts Act, 1882."



Act No. XI. OF 1886.

PASSED BY THE GOVERNOR-GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor-General on the 12th March, 1886.)



An Act 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.

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

(2) It shall come into force at once.

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,—

(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, berms, drains and ditches 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 authorizing 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 by the order and any rules made under this 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) "District Court" means a principal civil Court of

original jurisdiction, and includes a High Court having ordinary original civil jurisdiction :

(14) "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

(15) "Prescribed" means prescribed by rules made by the local government under this Act.

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 application made—

(a) By the local authority of the circle with the consent of the road-authority of any road or part of a road which is to be traversed by the tramway and of which the local authority is not itself the road-authority; or

(b) By any person with the consent of the local authority of the circle, and of the road-authority of any road or part of a road which is to be traversed by the tramway and of which the local authority is not the road-authority :

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, or attaches conditions to its consent, the local government may, nevertheless, make an order authorising the construction of the tramway in the circle, or by the order impose on the promoter any conditions which it deems fit, if, after considering the reasons of the authority for withholding its consent or attaching the conditions thereto, it is satisfied that the construction of the tramway in the circle is expedient, or, as the case may be, that the conditions attached by the authority to its consent ought not to be imposed.

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 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 publication 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 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 substructure upon which they rest, as the local government may from time to time 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 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 or convenience of the public, and to alter the position or level of the tramway to suit future alterations in the road or roads ;
- (h) The application of material excavated by the promoter in the construction or maintenance of the tramway ;
- (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 ;
- (j) The powers which may from time to time be exercised

by the local governments, the local authority, the road authority or any person in respect of sewers, drains, telegraph lines, gas-pipes, water-pipes or other things 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 ;

- (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, water-pipes or other things as aforesaid ;
- (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, or by reason of the use of the road being interrupted by floods or other cause ;
- (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 ;
- (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 or convenience of the public ;
- (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 ;

- (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 ;
 - (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
 - (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.
- (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.
- (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.

(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, make an order empowering two or more local 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 to construct a tramway—

- (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 the working whereof 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 maintained in the manner 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. Subject to the provisions of any order for the time being in force with respect to the matters mentioned in section 7, sub-section (2), clause (g), the road-authority and the promoter may from time to time enter into agreements as to the keeping in repair of the whole or a part of a road traversed by a tramway, and as 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 in the order or any rule made under this 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.

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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.

(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.

(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.

(5) Where a servant of the promoter or lessee refuses under sub-section (4) to carry a parcel which has been received for the purpose of being carried upon the tramway, he shall, as soon as may be, give notice of his refusal to the consignor or consignee if he refuses at a time when neither of them is present.

Licences 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 considering any statement which the promoter or lessee or both may desire to make, and after such further enquiry as it deems necessary, it is satisfied as to the truth of the representation, grant a licence to any person to use the tramway conformably to this Act and to the order and the

rules made under this Act, subject to the following provisions, namely :—

- (a) The licence shall be for a period not less than one year or more than three years from the date of the licence, but the local government may in its discretion renew it ;
- (b) The licence 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 licence, thinks fit ;
- (c) The licence 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 authorized 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 ;
- (e) Any provision of this Act, or of the order or rules made under this Act, relating to the functions of a servant of a promoter or lessee shall be construed, so far as may be, as referring to a servant of the licensee ; and
- (f) The local government may revoke, alter or modify the licence 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 practically 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 of which the working has been 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 of which the working has been so discontinued, and use the materials thereof in reinstating 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 reinstating 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 reinstating 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 to 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 considering any statement which the promoter may desire to make, and after such further inquiry 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 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—

(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.

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 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 authorized 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 practically discontinued the working of the tramway leased, or of any part thereof, for the space of one month 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 authorized 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—

(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 the periodical submission by promoters, lessees and licensees, of accounts of traffic and receipts to the local government or as that government directs, and as to the forms in which those accounts are to be submitted;
 - (h) As to the accidents of which report is to be made to the local government or as that government directs;
 - (i) As to any matter respecting which rules may be made under this section by a local authority or a promoter or lessee; and,
 - (j) Generally, as to any other matter or thing in respect of which it may seem to the local government to be expedient to make rules for carrying out the purposes of this Act.
- (2) A local authority may, from time to time, with the previous sanction of the local government, make rules consistent with this Act and with the order and any rules made by the local government under this 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 are to be allowed to follow one after the other;

- (d) The stopping of carriages using the tramway, and the notice to be given to the public of their approach;
 - (e) The manner in which carriages using the tramway after sunset and before sunrise are to be lighted;
 - (f) The traffic on roads along or across which the tramway is laid;
 - (g) The number of passengers which may be carried in any carriage;
 - (h) The licensing and control of drivers, conductors and other persons having charge of the carriages of the promoter or lessee or a licensee; and,
 - (i) 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 with the order and any rules made under this 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.
- (4) The local government may cancel any rule made by a local authority or by a promoter or lessee under this section.

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 in-

terested, 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 expiration 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.

Offences.

27. If a promoter—

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

(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,

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 complaint made by the local government or by the local authority or road-authority or by the district magistrate or, with the previous sanction of the district magistrate, by any person injuriously affected by the act or omission, 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, or
- (b) Places or throws upon or across any such tramway any wood, stone, refuse or other thing, or
- (c) Does anything in such a manner as to obstruct any carriage using any such tramway, or
- (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 of 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 to his aid.

(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 omission 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, water-pipes or other things in or on land occupied by the tramway, 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 the 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 on 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 the rules made under this Act, and not otherwise expressly provided for therein, the matter in difference shall, except where the parties elect to proceed under section 523 of the Code of Civil Procedure, be settled, on the application of either party, by a referee.

(2) Where the difference is—

- (a) between the promoter or lessee on the one hand and the local government, either as such or as the road-authority, on the other, or

- (b) between the promoter on the one hand and the local authority on the other, with respect to the sum to be paid by the local authority for an undertaking or part of an undertaking which that authority has required the promoter to sell under section 22,

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) Except where referee is the district Court, the powers and procedure of the referee may be prescribed.

(5) In the case of a difference between a promoter on the one hand and a local authority on the other, with respect to the sum to be paid by the local authority for an undertaking or part of an undertaking which that authority has required the promoter to sell under section 22, an appeal shall lie to the High Court from the award of the referee as from an original decree of the district Court.

(6) In the case of every other difference the award of the referee shall be final.

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 by an order to be done by a promoter, and the cost incurred by a road-authority in removing a tramway and reinstating a road under this Act, may, without prejudice to any other remedy that 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 or his surety in execution of any process issued by the Collector.

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.

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 or any rule made under this Act, 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 or any rule made under this Act, 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 or any rule made under this Act, 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, rail-road 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 or any rule made under this Act, 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, lessee or licensee, for such period as it thinks fit, from all or any municipal taxes leviable within those limits.

45. (1) 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 enactment 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.

(2) The fund shall also be applicable, with the previous sanction of the local government, to a guarantee of the payment of interest on money to be applied, with the concurrence in writing of the local authority, within the limits of the local area under its control, to any of the purposes to which the fund might be applied by the local authority under sub-section (1).

46. The local government may, with the consent of the local authority and road-authority and of the promoter and his lessee (if any), extend any part of this Act, or any rules

made under this Act, either with or without modification, to the whole or any part of a tramway constructed, or authorised by the local government to be constructed, before the passing of this Act, and may withdraw any part of the Act or any rules so extended.

47. (1) A tramway of which the construction has not been authorised by the local government before the passing of this Act shall not, after the passing of this Act, be constructed for public traffic in any place to which this Act extends, except in pursuance of an order made under this Act.

(2) A person constructing a tramway in contravention of sub-section (1) of this section,

or after the passing of this Act maintaining or using for public traffic, otherwise than in pursuance of an order made under this Act, a tramway which was not constructed, or authorised by the local government to be constructed, before the passing of this Act,

shall be liable, on the complaint of the local government or local authority, to double the penalty to which a promoter acting otherwise than in accordance with an order is liable under section 27.

48. If at any time a local area comprising a tramway to which this Act or any part thereof or any rule thereunder applies ceases to be included in the circle of a local authority, the functions of that authority under this Act or the part thereof or the rule thereunder, and under the order (if any), shall, in respect of that local area, devolve on the local government or, if that government so directs, on the local authority of the circle in which the tramway has been included.

49. (1) 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.

(2) In the same section of that Act, after the words "by steam" the words "or other mechanical power" shall be added.

50. All powers conferred by this Act on a local government may be exercised from time to time as occasion requires.



ACT No. XI. OF 1887.

(Amended by Act IX. of 1890, s. 150.)

PASSED BY THE GOVERNOR-GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor-General on the 25th February, 1887.)

An Act to provide for the regulation of traffic on the Sindh-Pishin Section of the North-Western Railway.

WHEREAS it is inexpedient that the Indian Railway Act, 1879, should apply in its entirety to that part of the Sindh-Pishin section of the North-Western Railway which lies beyond the province of Sindh : It is hereby enacted as follows :—

1. (1) This Act may be called the Sindh-Pishin Railway Act, 1887.

(2) It shall extend to all persons for whom the Governor General in Council has power to make laws and regulations at meetings for that purpose ; and

(3) It shall come into force at once.

2. In the following sections of this Act, “ railway ” means that part of the Sindh-Pishin section of the North-Western Railway which, whether completed at the commencement of this Act or not, lies beyond the province of Sindh.

3. (1) Unless and until extended under this section, no portion of the Indian Railway Act, 1879, shall apply to any part of the railway.

(2) The Governor General in Council may, by notification in the Gazette of India, extend to the railway or any part thereof such portions of that Act as he thinks fit.

(3) In extending any portion of that Act to the railway or any part thereof the Governor General in Council may extend it subject to such modifications as he thinks fit.

4. (1) No person shall be entitled, as of right, to be carried on the railway or to have property carried thereon.

(2) But the carriage of passengers and property on the railway shall be permitted subject to such conditions and restrictions as the Governor General in Council may prescribe.

5. Where any person or property is permitted to be carried on the railway, the Government shall not be responsible for

any injury which may happen to the person, or for any loss or damage which may occur in respect of the property, unless the injury happens, or the loss or damage occurs, on a part of the railway with respect to which the Governor General in Council has, by notification in the Gazette of India, announced that the Government accepts responsibility, to such extent as may be described in the notification, for injury happening, or loss or damage occurring, thereon.

ACT OF THE LIEUTENANT-GOVERNOR OF BENGAL IN COUNCIL.

ACT No. VI. OF 1879.

PASSED BY THE LIEUTENANT-GOVERNOR OF BENGAL IN COUNCIL.

(Received the assent of the Lieutenant-Governor on the 16th April, 1879, and of the Governor-General on the 20th May, 1879.)

An Act to provide for the construction of a Steam Tramway between Siligoree and Darjeeling.

WHEREAS a company has been formed, called the Darjeeling Steam Tramway Company, Limited, hereinafter called the company for the purpose of constructing, maintaining, and working a steam tramway from Siligoree to Darjeeling; and whereas an agreement bearing date the eighth day of April eighteen hundred and seventy-nine, has been entered into between Franklin Prestage, Esq., as trustee on behalf of the company, and the Secretary of State for India in Council, for the above purpose; and whereas it is expedient that the company should be authorized to construct, maintain, and work a steam tramway upon the existing cart road between Siligoree and Darjeeling as aforesaid, and to do all things necessary in that behalf; it is enacted as follows:—

1. This Act may be called The Darjeeling Steam Tramway Act; and it shall come into force from the date on which it may be published in the *Calcutta Gazette* with the assent of the Governor-General.

2. The company may construct and maintain upon the said existing cart road between Siligoree and Darjeeling a tramway, conformable to the specification and conditions set forth in the hereinbefore mentioned agreement between the said trustee for the company and the said Secretary of State, or any agreement which may hereafter be entered into between

the company and the said Secretary of State, with all proper rails, sidings, stations, offices, warehouses, fixed machinery and other works connected therewith or for the purposes thereof, and use and employ upon such tramway such locomotive engines or other moving power, and such carriages or wagons to be drawn or propelled thereby, as they may deem fit.

3. The company may, with the permission of such officer as the local government may from time to time empower in that behalf, obstruct the said cart road ; but in such case the company shall provide such accommodation for the local traffic during such obstruction as the said officer shall direct.

MISCELLANEOUS.

ADDITIONAL POLICE.

Act V. of 1861, s. 14, following Act XXIV. of 1859, s. 14.—Whenever any railway, canal, or other public work, or any manufactory or commercial concern, shall be carried on or be in operation in any part of the country, and it shall appear to the inspector-general that the employment of an additional police force in such neighbourhood is rendered necessary by the behaviour or reasonable apprehension of the behaviour of the persons employed upon such work, it shall be lawful for the inspector-general, with the consent of the local government, to depute such additional force to such place, and to employ the same so long as such necessity shall continue; and to make orders from time to time upon the treasurer or other officer having the control or custody of the funds used in carrying on such works, manufactory, or concern, for the payment of the extra force so rendered necessary, and such persons shall thereupon cause payment to be made accordingly.

Bombay Act V. of 1867, s. 14, is in the same terms, the words "Commissioner" and "Government" being substituted for "inspector-general" and "local government" respectively.

PUBLIC GAMBLING.

Act III. of 1867 (An Act to provide for the punishment of Public Gambling, &c.), s. 2, empowers the Lieutenant-Governor of the North-West Provinces or the Punjab, as the case may be, or the Chief Commissioner of Oudh, the Central Provinces, or British Burma, as the case may be, whenever he may think fit, to extend by a notification, to be published in three successive numbers of the Official Gazette, all or any of the remaining sections of that Act to any city, town, suburb, railway-station-house, and place, being not more than three miles distant from any part of such station-house within the

territories subject to his government or administration ; and in such notification to define, for the purposes of that Act, the limits of such city, town, suburb, or station-house, and from time to time to alter the limits so defined.

By Bombay Act III. of 1866 (An Act for the prevention of gambling in certain places in the Presidency of Bombay), s. 1 (2), the Act is to apply and be in force in all railway station-houses beyond the local limits of the ordinary original jurisdiction of the High Court of Judicature at Bombay, and in all places surrounding such station-houses, and being not more than three miles distant from any part of such station-houses respectively.

ELEPHANTS.

By Act VI. of 1879, s. 3, no person shall kill, injure, or capture, or attempt to kill, injure, or capture, any wild elephant unless (a) in defence of himself or some other person, (b) when such elephant is found injuring houses or cultivation, or upon, or in the immediate vicinity of, any main public road, or any railway or canal, or (c) as permitted by a licence granted under the Act.

CONSUMPTION OF SMOKE.

By Bengal Act II. of 1863, s. (1), every furnace employed or to be employed anywhere within the town or suburbs of Calcutta, in the working of engines by steam, is to be constructed or altered so as to consume its own smoke ; but nothing in that Act is to apply to any locomotive engine used wholly upon any railway in the suburbs of Calcutta.

And by Bombay Act III. of 1872, s. 229, every furnace employed or to be employed in the city of Bombay in any works or buildings used for the purposes of any trade or manufacture whatsoever within the city, whether a steam engine be or be not used or employed therein, is to be constructed or altered so as to consume its own smoke as far as practicable ; but nothing in the section is to apply to locomotive engines used for the purposes of traffic upon any railway or for the repair of roads.

DRAINS CROSSING LINE OF RAILWAY.

By sect. 16 of Bengal Act II. of 1882, the Collector may make an order requiring that any railroad which interferes with the drainage of any tract of land be altered, or that any watercourse under or through such railroad be constructed.

The similar section (19) of Bengal Act VI. of 1873 was repealed, except in Assam and possibly in Chota Nagpore, by Bengal Act II. of 1882, s. 2.

By Madras Act I. of 1884, s. 255, whenever it is expedient to conduct any drain, sewer, or other work in connection with the drainage system of Madras across a line of railway, the commissioners may require the owners of such railway or their representatives, subject to the approval of the Governor in Council, and at the cost of the commissioners, to raise or lower the level of such line of railway as may be necessary for the purpose.

WINDING UP UNDER INDIAN COMPANIES ACT.

By Act VI. of 1882 (the Indian Companies Act, 1882), s. 243, railway companies incorporated by Act of Parliament or Act of the Governor-General in Council, are specially excepted from the unregistered companies which may be wound up under the provisions of that Act.

GENERAL RULES

Under sections 8 and 47 of the Indian Railway Acts, 1879 and 1890 respectively.

By a resolution of the Government of India, Public Works Department (published in the *Gazette of India*, August 30, 1890), sanction was given to the application to certain specified railways of certain modifications in the General Rules for Indian railways: and it was ordered that the General Rules in question, which had already been published in the *Gazette of India*, dated 18th September, 1880, should be further notified to the railway servants and to the public by a copy thereof, as in the resolution modified, being kept open to inspection, free of any charge, in the office of the station master of every station on the said railways.

Many of the General Rules concern railway servants only : such as appear to be of general interest are given below. None of them are affected by any of the modifications referred to, but all are applicable to all railways used for the public conveyance of passengers or goods, unless specially exempted by the Governor-General in Council.

GENERAL RULES FOR ALL RAILWAYS IN INDIA.

Made in conformity with Section 8 of "The Indian Railway Act, 1879."

The rules comprised in this code shall be held applicable to, and are to be observed on, all lines of Railway in India used for the public conveyance of passengers or goods, unless specially exempted by the Governor-General in Council.

Each railway administration may hereafter make such subsidiary rules as may be found necessary or expedient, provided that no such subsidiary rule shall be inconsistent with these general rules.

Every railway servant is bound by the terms of his employment to obey both the general and the subsidiary rules.

5. Except when necessary to carry passengers in goods vehicles, no passenger or mixed train shall be allowed to move from any station unless it be provided with an arrangement by which the guard can communicate with, make his way, or otherwise get access to every passenger carriage in the train.

12. No person suffering from an infectious disease shall enter a railway carriage or premises without previously notifying to the station master that he is so suffering, and obtaining from him permission to enter under special instructions.

13. Any one being in attendance on a person suffering from an infectious disease is subject to the same restrictions, while travelling by railway, as if he himself were suffering from the disease.

14. The maximum number of passengers that may be carried in each compartment of every description of carriage must be fixed by the railway administration with the approval of Government; and such number must be distinctly exhibited, inside each first and second class compartment in the English language, and both inside and outside of each compartment of all classes inferior to the second class, in conspicuous places in English and in the vernacular language

most commonly used in the districts through which the railway passes.

15. Tickets are only available from the date and for the period specified by the railway administration by which they are issued.

16. Any person found smoking, or having an open light or fire, in goods-sheds, store yards, or, who persists in smoking, after being warned by a railway servant or police officer to desist, on any other portion of the railway premises, where such practice may be deemed dangerous by the authorized officer, shall be liable to immediate removal from the railway premises, and to a fine which may extend to fifty rupees, or, in default of payment of such fine, to simple imprisonment for a term which may extend to two months.

17. In the event of any person being drunk and disorderly, or causing annoyance to others, the station master is to use all reasonable means to stop the annoyance, and if the offender persists, the station master is to have him removed from the railway premises, and the offender is liable to prosecution under the Railway Act.

18. Every person desirous of travelling on a railway shall, upon payment of his fare, be furnished with a ticket specifying in English and the principal vernacular language of the district in which the ticket is issued, the class of carriage for which, and the place from and place to which, the fare has been paid, and the amount of such fare.

And every passenger shall, when required, show his ticket to any railway servant duly authorized to examine the same, and shall deliver up such ticket upon demand to any railway servant duly authorized to collect tickets.

19. At the intermediate stations, the fares shall be deemed to be accepted and the tickets furnished only upon condition that there be room in the train for which the tickets are furnished.

In case there is no room for all the passengers to whom tickets have been furnished, those who have obtained tickets for the longest distance shall have the preference; and those who have obtained tickets for the same distance shall have the preference according to the order in which they have received their tickets.

20. Any passenger to whom a ticket has been furnished at any station and for whom there is no room shall, on returning the ticket within a reasonable time after its issue, be entitled to have his fare at once refunded.

21. No trespassing upon the railway shall be allowed, and no person, other than a railway servant, shall be permitted to walk on the line, unless provided with a licence to do so, signed by an authorized officer of the railway. If the trespasser, on being requested to quit, persists in remaining, he may be immediately removed from the railway by any railway servant or by any other person, and is liable to prosecution under the Railway Act.

22. No carriage door shall be opened while the train is in motion.

31. For the purposes of the Railway Act, the following are declared to be dangerous goods:—

Carbolic acid.	Cartridges.
Fusel oil.	Coloured fires.
Kerosine oil.	Congreve matches.
Naphthalin.	Crackers.
Paraffine.	Combustibles.
Petroleum and other hydro-carbon oils.	Cotton powder.
Rangoon oil.	Chlorate mixture.
Wood naphtha.	Detonators.
	Dynamite.
Muriate of tin.	Firework composition.
Nitrate of iron.	Fireworks.
Perchloride of iron.	Fog signals.
Solution of ammonia.	Fuze.
Sulphate of indigo, concentrated.	Gun-cotton.
	Gun-powder.
	Gun-cotton-powder.
Aquafortis.	Lithofracteur.
Bromine.	Lucifer matches.
Chloride of sulphur.	Nitrated gun-cotton.
Chloroform.	Nitro-glycerine and its compounds.
Fluoric acid.	Phosphorus.
Glacial acetic acid.	Percussion caps.
Mineral acids such as—	Schultze gun-powder.
Muriatic acid.	Tubes for firing explosives.
Nitric acid.	Vesuvians.
Sulphuric acid or Oil of vitriol.	War rockets.
Ammunition.	Explosive chemicals.
Amorphous phosphorus.	All other explosives.

48. No money or gratuity, in the shape of fee, or reward, is allowed to be taken from passengers, or other persons, by any

railway servant, even although the regular hours of duty shall have expired, without the permission of the railway administration. Any infringement of this rule renders the offender liable to immediate dismissal and on conviction to imprisonment for three years or to fine, or to both under sections 161 to 165 of the Indian Penal Code.

98. Every exertion must be made for the expeditious despatch of the station duties, and for ensuring the safety of the public, and punctuality of the trains. But no train conveying passengers must be started before the advertised time.

107. The station master is responsible that, immediately on the stopping of each passenger train, the name of the station is called out along the train in a distinct and audible manner, and that the station servants pay immediate attention to any indication shown by the passengers of their desire to alight.

109. When a passenger or mixed train has come to a stand at a station—whether alongside, beyond, or short of the platform—the driver must not move it for any purpose whatever except upon instructions from the guard under orders of the person in charge of the station. The signal for the train to again move must not be given by the guard until he has satisfied himself that no passenger is getting into, or out of, the train, and that all the carriage doors are closed. Before moving his train, the driver must sound his whistle sharply and distinctly.

129. No passenger train shall be stopped at a station where it is not timed to call, for the purpose of taking up or setting down passengers, without special authority.

134. No person shall be allowed without proper authority, to enter any carriage for the purpose of travelling therein unless the fare has been paid and a ticket obtained. See Rule 199.

135. If any passenger shall refuse, or be unable, to produce a proper ticket, or shall commit any other offence, the case must be immediately investigated by the station master, and he is to exercise his discretion as to the proceedings to be taken, always reporting to his immediate superior.

136. The power of arrest and detention is to be exercised with the greatest caution, and never where the address is given, and there is no good and sufficient reason to doubt its correctness; or adequate security is offered for appearance to answer a charge. When it shall be necessary to detain any

person, such detention shall not continue for a longer period than is absolutely necessary, but such person must be conveyed before a Magistrate with as little delay as possible.

137. As it is the intention which constitutes the offence, caution and discretion must be used in treating different cases, as it frequently occurs that passengers travel unintentionally beyond the distance for which they have paid their fares. In such cases they may be allowed to return to the station for which they booked on payment of the ordinary single fare for the distance overridden, provided they return by the next train, and do not, in the interval, leave the railway premises.

138. Passengers not producing their tickets are required to pay the fare from whence the train started until enquiry can be made in order to ascertain whether the fare had been previously paid, or not; in every case the circumstance must be enquired into without delay and reported. See Rule 199.

142. No unprotected light shall be allowed in any railway vehicle.

145. No person suffering from an infectious disease is to be allowed to travel in the same compartment with other passengers, but must take and pay for reserved accommodation, and special precaution is to be taken against the infection being communicated to other persons on the railway premises.

146. Any person found suffering from an infectious disease in a railway carriage or in any place on a railway where there is likelihood of the infection spreading, and who has not obtained the permission of the station master under Rule 12, is to be removed from the railway premises, and shall on conviction, under section 269 of the Indian Penal Code be liable to imprisonment for six months, or to fine, or to both, or on conviction under section 270 of the Indian Penal Code be liable to imprisonment for two years or to fine or to both.

147. If any railway carriage has been entered by a person suffering from an infectious disease, such carriage must be disinfected immediately after it has arrived at its destination, and no passenger shall be allowed into it until the disinfection has been completed.

148. Prisoners and persons afflicted with insanity must not be allowed to mix with other passengers, but must be placed, with their escort, in a prison-van or separate compartment, upon reserved accommodation being paid for.

1. The following information is being furnished to you for your information and use only. It is not to be distributed outside your organization.

2. The information contained herein is for your use only and is not to be used for any other purpose.

3. The information contained herein is for your use only and is not to be used for any other purpose.

4. When making any use of this information, you are to be sure that you are not disclosing any information that is classified as secret or confidential.

5. The information contained herein is for your use only and is not to be used for any other purpose.

6. The information contained herein is for your use only and is not to be used for any other purpose.

7. The information contained herein is for your use only and is not to be used for any other purpose.

8. The information contained herein is for your use only and is not to be used for any other purpose.

9. The information contained herein is for your use only and is not to be used for any other purpose.

Before opening the gates the gateman must look up and down the line to assure himself that no train is approaching.

326. Where special authority is given, gates made to close across the railway may be kept open to the public thoroughfare, except when an engine or train is due or expected, at which time such gates must be closed, and fastened across the public thoroughfare; and until such engine or train has passed, the gates must be kept closed, and no person or thing is to be allowed within them. While the gates are closed across the railway and open to the thoroughfare, the "danger" signal must be exhibited both up and down the line. In opening double gates closing across the railway for an approaching train where there is only one signal lamp to each gate, the half with the signal lamp attached is not to be moved until the other half is shut across the thoroughfare.

336. At level-crossings where the block system is not in operation, and where there are fixed signals, the "danger" signal must be exhibited for at least five minutes after the passing of any train; after which, if the gates are open for the passage of trains, a "caution" signal must be exhibited for a further period of five minutes.

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