THE LIABILITY

OF

RAILWAY COMPANIES

FOR

NEGLIGENCE TOWARDS PASSENGERS.

A. PARSONS,

5/-

UNIVERSITY
OF CALIFORNIA
LOS ANGELES

SCHOOL OF LAW
LIBRARY

THE

LIABILITY OF RAILWAY COMPANIES

FOR

NEGLIGENCE TOWARDS PASSENGERS.

BY

ALBERT PARSONS,

OF THE MIDDLE TEMPLE AND WESTERN CIRCUIT, BARRISTER-AT-LAW.

LONDON:

HORACE COX,

"LAW TIMES" OFFICE, WINDSOR HOUSE, BREAM'S BUILDINGS, E.C.

—

1893.

LONDON:
PRINTED BY HORACE COX, "LAW TIMES" OFFICE, WINDSOR HOUSE,
BREAM'S BUILDINGS, E.C.

PREFACE.

THIS book is an attempt to explain clearly and concisely the liability of railway companies for negligence towards passengers resulting in injury or loss. It has seemed to the writer that a brief but systematic consideration of the decided cases and the principles to be extracted from them might be of use both to the profession and to the travelling public. Railway accidents repeat themselves with curious similarity, and the injured passenger who reads the following pages will probably find that, whether his damage is due to the "slamming" of a carriage-door, or to a disastrous collision, there is a precedent covering his particular case, or that it is governed by the principles extracted from the various decisions. Though outside the original scheme of the book the subjects of "Luggage" and "Unpunctuality" have been dealt with on account of their special interest for railway passengers.

My thanks for much kind help and advice are due

to my friend Mr. A. H. Ruegg, of the Middle Temple (at whose suggestion the book was written); and I also gladly acknowledge my indebtedness to Mr. Beven's "Principles of Negligence"—a perfect storehouse of knowledge.

A. P.

3, *King's Bench Walk,*
Temple, E.C.
May, 1893.

CONTENTS.

TABLE OF CASES.

C.

H

N.

O.

P.

R.

S.

T.

V.

W.

Z.

THE

LIABILITY OF RAILWAY COMPANIES

FOR

NEGLIGENCE TOWARDS PASSENGERS.

CHAPTER I.

GENERAL PRINCIPLES OF THE LAW OF NEGLIGENCE.

Before considering especially the subject of the liability of railway companies for negligence towards passengers it will be necessary to give an abstract—as brief as the nature of the subject will permit—of the leading principles of the law relating to negligence generally. Railway cases have, of course, to be decided in accordance with these general principles, there being no special rules of law exclusively applicable to them. As far as possible, however, railway cases will be selected to illustrate these principles, in order that the method and extent of their application to similar cases treated of in subsequent chapters may be more easily understood.

Before going further, it is necessary to have a clear idea of what is held in law to constitute negligence.

Sect. 1. Definitions of Negligence.

The most generally accepted definition of negligence is that given by Baron Alderson in the case of

Baron Alderson's definition.

Blyth v. *Birmingham Waterworks Co.* (*a*), viz :—"The omission to do something which a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do."

Definition by Willes, J.

Willes, J. has defined negligence as being "the absence of care according to the circumstances," (*b*) and this seems, for ordinary purposes, a sufficiently clear, though somewhat wide, definition. It is apparent that what is or is not negligence must always depend on the whole of the facts and surroundings of each particular case. This is well put by an American judge, Agnew, J., in the case of *The Philadelphia Railway Company* v. *Spearen* (*c*) : "There is no absolute rule as to what constitutes negligence, that conduct which might be so termed in one case being in another properly considered ordinary care; nor in cases where it is concurrent will the same rule apply to adults and children. It is therefore always a question of fact for the jury, under the instruction of the court, as to the relative degree of care or the want of it, growing out of the circumstances and conduct of the parties."

Each case must be decided according to its own circumstances.

Exceptional care expected from railway companies.

It follows from these definitions that where, as in the case of railway traffic, the circumstances are such that the consequences of negligence may be exceptionally disastrous, the degree of care expected will be relatively high.

(*a*) 11 Ex. 784; 25 L. J., Ex. 212.

(*b*) *Vaughan* v. *Taff Vale Railway Company*, 5 H. & N. 679 (at p. 688).

(*c*) 47 Penn. St. 300 (at p. 305).

To sustain an action for negligence it is necessary that the plaintiff should be someone towards whom the person guilty of the negligent act owed a legal duty to use care. Such a duty arises in connection with the management of any land or premises whenever the public are invited expressly or impliedly to come thereon. With railway companies this duty is bound to exist to a very considerable extent from the very nature of their business, and it extends towards all those who are *lawfully* on their premises. (As to who are, and who are not, lawfully on railway premises see *post*, cap. II., sect. 1.)

No action for negligence unless a duty to use care was owed.

Sect. 2. Contributory Negligence.

Probably in the majority of actions against railway companies for negligence the defence of "contributory negligence" is set up—very frequently with complete success. It is therefore necessary to explain exactly what is meant by the expression before the numerous cases considered in succeeding chapters can be properly understood.

Contributory negligence a frequent defence.

It is by no means always the case that an accident, though arising from negligence, is solely due to the acts or omissions of the defendant. Very often the series of events culminating in the accident includes imprudent acts or want of reasonable care on the part of the plaintiff himself, which have operated, though in conjunction with the negligence of the defendant, to cause the accident. The question then arises as to how far such acts relieve the defendant of legal responsibility in the matter. Where an accident is really due to the carelessness of the plaintiff himself

it would be obviously unjust to hold the defendant liable, even though the latter has been guilty to some extent of negligence; but, further than this, it is a well established principle of law that, if the accident is the *direct* result of the *combined negligence* of both parties the plaintiff cannot make the defendant responsible. (*a*) It must be clearly understood that the defendant will not be able to escape by merely showing that the plaintiff has been guilty of *some* negligence. To free himself from liability he must show that the carelessness of the plaintiff has been an *essential* cause of the accident—carelessness without which it would not have occurred; and even then the defendant will be held liable if it can be shown that he was lacking in due caution by which the result of the plaintiff's carelessness could have still been averted. (*b*)

Definition of contributory negligence.

Judges and text-book writers have, from time to time, made more or less successful attempts to give a strict definition of contributory negligence. Perhaps none of them, however, is entirely satisfactory and in harmony with all the approved decisions on the subject. Possibly the explanation most in accord with decided cases is that given by the American writers, Messrs. Shearman and Redfield (*c*) which runs as follows—"One who is injured by the mere negligence of another cannot recover any compensation for his injury if he, by his own or his agent's

(*a*) *Butterfield* v. *Forrester*, 11 *East.* 60.
(*b*) *Davies* v. *Mann*, 10 M. & W. 546.
(*c*) "Law of Negligence," sect. 25, 3rd edition.

ordinary negligence, proximately contributed to produce the injury of which he complains, so that, but for his concurring and co-operating fault the injury would not have happened to him, except where the more proximate cause of the injury is the omission of the other party, after becoming aware of the danger to which the former party is exposed, to use a proper degree of care to avoid injuring him."

Explanations of the rule by English judges.

This enunciation of the rule seems on the whole to fit in with most of the considered judgments in connection with these cases. For instance, in delivering the judgment of the Court of Exchequer Chamber, in the case of *Tuff* v. *Warman* (*a*) Wightman, J. says: —"It appears to us that the proper question for the jury in this case, and indeed in all others of the like kind, is whether the damage was occasioned entirely by the negligence or improper conduct of the defendant, or whether the plaintiff himself so far contributed to the misfortune by his own negligence, or want of ordinary and common care and caution, that, but for such negligence or want of ordinary care and caution on his part, the misfortune would not have happened. In the first place, the plaintiff would be entitled to recover, in the latter not, as, but for his own fault, the misfortune would not have happened. Mere negligence or want of ordinary care or caution would not, however, disentitle him to recover, unless it were such that but for that negligence or want of ordinary care the misfortune would not have happened, nor

Wightman, J.

(*a*) 2 C. B., N. S. 740; 5 C. B., N. S. 573; 27 L. J., C. P. 322 (1857-8).

if the defendant might, by the exercise of care on his part, have avoided the consequences of the neglect or carelessness of the plaintiff."

Brett, M.R.

Similarly, in *Davey* v. *London and South-Western Railway Company* (*a*) Brett, M.R., remarks :—"Even though the defendants were guilty of negligence which contributed to the accident, yet if the plaintiff also was guilty of negligence which contributed to the accident, so that the accident was the result of the joint negligence of the plaintiff and of the defendants, then the plaintiff cannot recover ; it being understood that, if the defendants' servants could by reasonable care have avoided injury to the plaintiff, then the negligence of the plaintiff would not contribute to the accident."

The rule summarised.

To extract the pith of these rather lengthy expressions of the rule we may put it thus :—To disentitle the plaintiff to recover, his own negligence must be a *proximate* cause of the accident and the defendant must not have carelessly failed to avert its consequences.

Meaning of "proximate cause."

By proximate cause is meant an *essential* and *material* cause—that is, some cause not altogether insignificant, without which the accident could not have happened. Of course it need not necessarily be the cause nearest in order of time to the result. The subject of proximate cause is considered more fully in sect. 3 of this chapter.

Illustrations of contributory negligence.

It will be useful to give here a few illustrations of the application of the doctrine of contributory negligence as enunciated above.

(*a*) L. R., 12 Q. B. D. 70, at p. 71; 49 L. T. 739; 52 L. J., Q. B. 665 (1883).

A passenger on the Metropolitan Railway leaning out of the window to look at the signals, fell on the line owing to the door flying open. The railway company alleged contributory negligence on his part in leaning against the carriage door, but the courts held that the plaintiff had not been guilty of contributory negligence. The act of leaning against the door, though doubtless a proximate cause of the accident, was not in itself a negligent act. (*a*)

The door of a railway carriage kept flying open (owing to a defective fastening) and a passenger, after closing it several times, at last, in attempting to repeat the operation, fell out and was injured. At the original trial he obtained a verdict, but it was upset on appeal, the Court of Common Pleas finding that, though the railway company had been guilty of negligence in respect of the defective fastening, the plaintiff had also been guilty of negligence in keeping on trying to close the door when he knew of its condition. Here then is an example of the accident being the result of the combined negligence of plaintiff and defendant—the plaintiff's act being a proximate cause of the disaster. (*b*)

Contributory negligence of plaintiff cancelled by subsequent negligence of defendant.

The case of *Radley* v. *London and North-Western Railway Company* (*c*)—1874 — affords an excellent

(*a*) *Gee* v. *Metropolitan Railway Company*, 28 L. T., N. S. 282; L. R., 8 Q. B. 161; 28 L. T., N. S. 282; 42 L. J., Q. B. 105; 21 W. R. 504.

(*b*) *Adams* v. *Lancashire and Yorkshire Railway Company*, 20 L. T., N. S. 850; L. R., 4 C. P. 739; 38 L. J., C. P. 277; 17 W. R. 884.

(*c*) L. R., 1 App. Cases, 754; 46 L. J., Ex. 573; and see also

example of negligence on the part of the plaintiff being, so to say, cancelled by subsequent carelessness on the defendants' part. A railway company was in the habit of taking full trucks from the siding of a colliery owner, and returning the empty trucks there. Over this siding was a bridge 8 feet high from the ground. On a Saturday afternoon, when all the colliery men had left work, the servants of the railway ran some trucks on the siding. All but one were empty, and that one contained another truck, their joint height amounting to 11 feet. On the Sunday evening the railway servants brought on the siding many other empty trucks, and pushed forward all those previously left on the siding. Some resistance was felt; the power of the engine pushing the trucks was increased, and the loaded truck struck the bridge and broke it down. In an action to recover damages for the injury, the defence of contributory negligence was set up. The judge at the trial told the jury that the plaintiffs must satisfy them that the accident happened solely through the negligence of the defendants' servants, for that, if both sides were negligent, so as to contribute to the accident, the plaintiff could not recover. The jury found that the plaintiff had been guilty of contributory negligence, and judgment was accordingly entered for the defendants.

The case was then carried through the various Courts of Appeal, with the not unusual "see-saw"

Dowsett v. *London, Tilbury, and Southend Railway Company*, (1885) Times L. R. vol. 1, p. 326.

results. The House of Lords finally decided that there must be a new trial, on the ground that the law on the subject of contributory negligence had not been sufficiently explained to the jury, the judge not having submitted to them the question as to whether the defendants could, by the exercise of reasonable care, have averted the result of the plaintiff's negligence. Lord Penzance, in his judgment, remarks (*a*) :—" The plaintiff in an action for negligence cannot succeed if it is found by the jury that he has himself been guilty of any negligence or want of ordinary care, which contributed to cause the accident. But there is another proposition equally well established, and it is a qualification upon the first, viz., that, though the plaintiff may have been guilty of negligence, and although that negligence may, in fact, have contributed to the accident, 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. . . . It is true that in part of his summing up, the learned judge pointed attention to the conduct of the engine-driver, in determining to force his way through the obstruction, as fit to be considered by the jury on the question of negligence ; but he failed to add that if they thought the engine-driver might at this stage of the matter by ordinary care have avoided all accident, any previous negligence of the plaintiffs would not preclude them from recovering. In point of fact the evidence was strong to show that this was the

(*a*) L. R. 1 App. Cases, 759-60.

immediate cause of the accident, and the jury might well think that ordinary care and diligence on the part of the engine-driver would, notwithstanding any previous negligence of the plaintiffs in leaving the loaded-up truck on the line, have made the accident impossible. The substantial defect of the learned judge's charge is that the question was never put to the jury."

It must be understood that a plaintiff's negligence will not be excused by subsequent negligence on the part of the defendant unless the latter had a reasonable opportunity of perceiving the other's carelessness and averting its consequences. And so the Court of Appeal has held (*a*) that it was a misdirection for a judge to tell the jury that if the negligent act of the plaintiff preceded that of the defendant, the plaintiff could not have been guilty of contributory negligence. In the case in question the plaintiff had opened the door of the carriage in which he was travelling before the train finally pulled up; just then there was a violent jerk and he was thrown out and injured. Even assuming that the jerking of the train by the engine-driver was a negligent act, it is obvious that it would only transfer responsibility from the plaintiff if the driver was aware of the danger in which the passenger had put himself by his own want of caution. No doubt, if the train had come to a definite standstill before the jerk, the driver might have been expected to anticipate that his careless act would possibly be

(*a*) *Langton* v. *Lancashire and Yorkshire Railway Company*, 3 Times L. Rep. 18 (1886).

attended with danger to the passengers; but under the circumstances he would scarcely be supposed to expect that the plaintiff had put himself in a dangerous position, and would therefore be affected as he was by the sudden increase of motion.

Contributory negligence of children.

The same amount of care and caution cannot be expected from children as from adults, and therefore where contributory negligence is alleged against a child a less strict standard will generally be applied in testing whether it has been guilty of imprudence.

Examples.

To illustrate this:—In a regular thoroughfare, where the presence of persons of all ages might be expected, a barrier had been erected round the open flap-door of a cellar where painters were at work; a little girl, prompted by not unreasonable juvenile curiosity, leant against the barrier, which, being insecurely erected, gave way, and so caused her to tumble into the cellar. After being nonsuited at the original trial, she eventually recovered damages, it being held on appeal that the insecure barrier was evidence of negligence on the part of the defendants, and that the fact of the child leaning against it, taking into account her age, did not necessarily constitute contributory negligence. (*a*) No doubt if the injured person had been an adult she would have been held disentitled to recover.

The case of *Lynch* v. *Nurdin* (*b*) affords an even stronger example of the extent to which the usual

(*a*) *Jewson* v. *Gatti*, 2 Times L. R. 441; see also *Crocker* v. *Banks*, 4 Times L. R. 324.

(*b*) 1 Q. B. 29.

standard of negligence has been modified in cases of children. A child seven years of age got into a cart negligently left unattended, and was injured. She recovered damages, although she had no right whatever in the cart, and was in reality a trespasser—a fact which would have certainly disentitled a person of more mature age from obtaining compensation. Perhaps this case goes somewhat further than is consistent with the majority of decisions, as the act of a child in entering the cart without permission can scarcely be deemed less incautious than interference by quite young children with a machine, in one case, (*a*) and a shutter in another, (*b*) left negligently in the public street, in both of which instances the juvenile plaintiffs were held to have been guilty of contributory negligence.

But where the presence of young children unattended would not reasonably be anticipated, the defendant would doubtless be entitled to rely on the same standard of prudence and caution being applied as a test for contributory negligence on the part of the child as would be used in the case of an adult—seeing that the nature or locality of his business might fairly lead the plaintiff to take only such steps to prevent accidents as would suffice in the case of grown-up persons. If, however, as a matter of fact, the defendant should become aware of the plaintiff's helplessness and the consequently increased risk, he would doubtless be

(*a*) *Mangan* v. *Atherton*, 14 L. T., N. S. 411; L. R., 1 Ex. 239; 35 L. J., Ex. 161.

(*b*) *Hughes* v. *Macfie*, 2 H. & C. 744; 33 L. J., Ex. 177.

liable, unless he took reasonable precautions to modify the danger in proportion to the modified capacity of the plaintiff to avoid it.

Take a hypothetical case of a young child travelling by train alone—a child so young that it could not be deemed negligence in it to let its hand fall between the hinges of the open carriage door. The porter comes round and closes the door in the usual manner, with the result that the child's hand is caught and injured. Has the child any right of action in consequence? We think not. It is not usual for such young children to travel without supervision, and, assuming that the porter had no notice of its presence and close proximity to the door, he was surely justified in closing the door in the usual way (if a porter ever is justified in closing a door in "the usual way"—which is questionable).

In such a case the question of contributory negligence would really drop out of consideration, and the true ground of decision would be whether there was any evidence of negligence on the part of the porter, considering his knowledge, or power of knowledge, of the particular circumstances. A higher degree of caution than usual is expected from one who has become aware of the presence of a person of less than average capacity to look after himself.

View of American courts.

The view here expressed is also maintained in a case decided by the American Courts: "We are satisfied that, although a child, or idiot, or lunatic, may to some extent have escaped into the highway, through the fault or negligence of his keeper, and so be improperly there, yet, if he is hurt from the negligence of the defendant he is not precluded from his redress.

If one know that such a person is on the highway, or on a railway, he is bound to a proportionate degreeof watchfulness, and what would be but ordinary neglect in regard to one whom the defendant supposed a person of full age and capacity, would be gross neglect as to a child, or one known to be incapable of escaping danger." (*a*)

Child identified with contributory negligence of its custodian.

Where a quite young child or other helpless person, unable to look after himself in any way, is under the care of a person of ordinary capacity, who is guilty of contributory negligence in connection with an accident causing injury to his charge, it has been held that this contributory negligence of the custodian is so far reflected on to his charge as to disentitle the latter to recover compensation, though the defendant may have been guilty of neglect. This was the case in *Waite* v. *North-Eastern Railway Company* (*b*), when a child, travelling in the care of its grandmother, was injured while being negligently carried by her across the line before an advancing train. The Court of Exchequer Chamber held that, though there was, of course, no contributory negligence on the child's part, it was, under the circumstances, "identified" with its grandmother, who had been guilty of contributory negligence, and was therefore unable to recover compensation in spite of the proven negligence of the railway company (*c*).

(*a*) *Robinson* v. *Cone*, 24 Vermont, 213, 224, *ap.* Cooley on Torts, 681 (quoted in a note to Pollock on Torts, p. 383).

(*b*) 28 L. J., Q. B. 258; 4 E. B. & E. 719.

(*c*) The doctrine of identification here referred to has, not long since (1887) been much criticised, and to a great extent

Contributory negligence of third party.

It is often stated that "contributory negligence of a third party is no defence." This is another way of expressing the well-recognised rule, that where the accident arises from the negligence of the defendant, operating in conjunction with that of some one other than the plaintiff, if the defendant's negligence was a proximate cause of the accident (in the sense in which we have explained "proximate") he will remain liable. The "third party," however, will also be liable. In fact either or both of them may be sued (*a*).

Sect. 3. Cause and Effect: Negligence must be Proximate Cause of Injury.

Injury must be reasonably connected with negligent act.

It will not necessarily be sufficient to prove that the negligence relied on by the plaintiff was the original source from which the injury arose. The fact that the injury would not have happened but for the act or conditions complained of, will not in itself entitle the plaintiff to recover. He must go further, and show that such act or conditions were the *proximate* cause of the accident. The chain of events connecting cause and effect must be in clear and reasonable sequence—otherwise the original negligence may be held too remote. In fine, the accident must be such

overruled; but not to such a degree as to affect a case like the one under under consideration (*vide The Bernina*, L. R., 13 App. Cases, 1; 57 L. J., Prob. 65).

(*a*) *Harrison* v. *Great Northern Railway Company*, 3 H. & C. 231; 33 L. J., Ex. 266; 10 L. T., N. S. 621; 12 W. R. 1081; *Clarke* v. *Chambers*, 38 L. T. 454; 47 L. J., Q. B. 427; 3 Q. B. D. 327; 26 W. R. 613; and *The Bernina* (*supra*).

as, in the ordinary course of things, without straining the imagination, might reasonably be expected to result from the negligent act. "A person is expected to anticipate and guard against all reasonable consequences, but he is not, by the law of England, expected to anticipate and guard against that which no reasonable man would expect to occur." (*a*)

Jackson *v.* Metropolitan Railway Company.

The case of *Jackson* v. *Metropolitan Railway Company*—decided in 1877 (*b*)—admirably illustrates this principle. The facts in that case were as follows:

The plaintiff was travelling by the defendants' railway in a third-class carriage from Moorgate-street to Westbourne Park. By the time the train reached King's Cross all the seats in the compartment were occupied. At Gower-street Station three extra passengers got in, notwithstanding the plaintiff's remonstrances. At the next station (Portland-road) the three extra passengers still remained standing in the compartment, the door of which was opened, presumably by persons looking for room in the train, and then shut. Just as the train was starting from Portland-road some of the crowd of persons on the platform tried to enter the carriage, again opening the door. The plaintiff, then rising, held up his hand to prevent any more persons coming in. After the train had moved, a porter pushed the people away and slammed the door to, just as the train was entering the tunnel. The plaintiff at that moment, owing to

(*a*) Per Pollock, C.B., in *Greenland* v. *Chaplin*, 5 Ex. 248.

(*b*) 37 L. T., N. S. 679: 47 L. J., C. P. 303; 26 W. R. 175; L. R., 10 C. P. 49; L. R., 2 C. P. D. 125; L. R., 3 App. Cas. 193.

the motion of the train, fell forward, and putting his hand on one of the hinges of the door to save himself, his thumb was caught and injured. For this injury he claimed compensation. At the trial, before Brett, J., the plaintiff recovered 50*l.* damages, and the jury stated that they thought "that the accident was caused by the presence of the three extra persons in the carriage, and that they were there through the default of the company's servants." On appeal to the Court of Common Pleas, and subsequently to the Court of Appeal, this decision was upheld, although in the latter court the judges were equally divided, Cockburn, L.C.J. and Amphlett, L.J. holding that there was evidence of negligence, and Bramwell, L.J. and Kelly, C.B. that there was not. The defendant company then appealed to the House of Lords and that tribunal finally (in December, 1877—five and a half years after the date of the accident!) reversed the decision of the courts below, and ordered a nonsuit to be entered, the plaintiff in the original action having to pay the costs of the appeal and all the costs in the courts below. The Lord Chancellor (Cairns) in his judgment in the House of Lords observes (*a*): "I do not find any evidence from which, in my opinion, negligence could reasonably be inferred. The negligence must in some way connect itself, or be connected by evidence, with the accident. It must be, if I might invent an expression founded upon a phrase in the civil law, *incuria dans locum injuriæ*. In the present case there was, no doubt, negligence in the

Lord Cairns's judgment.

(*a*) 47 L. J., C. P. 306.

company's servants in allowing more passengers than the proper number to get in at the Gower-street Station, and it may also have been negligence if they saw these supernumerary passengers, or if they ought to have seen them at Portland-road and not to have then removed them; but there is nothing in my opinion in this negligence which connects itself with the accident that took place. If, when the train was leaving Portland-road, the overcrowding had any effect on the movements of the respondent, if it had any effect on the particular portion of the carriage where he was sitting, if it made him less a master of his actions when he stood up or when he fell forward, this ought to have been made matter of evidence; but no evidence of the kind was given." Lord Blackburn, in his judgment, says: "The reasoning by which it is sought to say that the jury might legitimately connect the fact that the plaintiff's thumb was in the hinge of the door at Portland-road with the negligence at Gower-street seems to me a good example of what Lord Bacon means in his maxim when he says: "It were infinite for the law to consider the causes of causes and their impulsion one on the other" (*a*).

From the difficulty which the courts experienced in deciding this case, and the diversities of judicial opinion, it would seem to be, so to say, just on the boundary line between the "proximate" and "too remote" divisions of damage.

(*a*) See also *Bullner* v. *London, Chatham, and Dover Railway Company*, 1 Times L. R., 534 decided expressly on this precedent.

A case in which the damage was more clearly too remote from the cause to sustain an action is that of *Glover* v. *London and South Western Railway Company* (*a*), 1867. The plaintiff, a passenger, was removed from the train by the company's ticket collector, under the erroneous belief that he had not a ticket. No more force than was necessary for the purpose was used. Plaintiff left a pair of race-glasses behind him in the carriage, and they were lost. He sought to recover damages for the loss of the glasses (as well as for the personal assault committed by removing him from the train). It was held, however, that the loss of the glasses was neither the necessary consequence nor the immediate result of the wrongful act of assault, there being no proof that the plaintiff was prevented from taking his glasses with him.

Glover v. London and South-Western Railway Company.

The case of *Adams* v. *Lancashire and Yorkshire Railway Company* (*b*), 1869, in which the plaintiff, by his excessive zeal in frequently trying to close a carriage door with a defective fastening, fell out, and was hurt, offers another illustration in point. Although the fastening of the door was shown to have been defective, there was no adequate reason why the plaintiff should have kept on trying to shut it after he had once discovered that it was out of order, and it was held that he was not entitled to recover for the fall from the carriage, which was the result of his misplaced energy. The connection between the defective fastening and the

Adams v. Lancashire and Yorkshire Railway Company.

(*a*) L. R., 3 Q. B. 25.

(*b*) L. R., 4 C. P. 739; 38 L. J., C. P. 277; 20 L. T., N. S. 850; 17 W. R. 884.

fall was held to be too slight; to quote from Lord Cairns's judgment in *Jackson's case*, there was no evidence of *incuria dans locum injuriæ*.

Coultas *v.* Railway Commissioners of Victoria.

In the case of *Coultas* v. *The Railway Commissioners of Victoria* (*a*), 1888, which came before the Privy Council on appeal from the Supreme Court of Victoria, it would almost seem that the principle as to "remoteness" was carried somewhat too far; and certainly great hardship was inflicted by the decision upon the unfortunate plaintiffs. The facts were as follows:— The plaintiffs—husband and wife—were driving in their buggy in the vicinity of Melbourne, and had to cross the defendants' line at a level crossing. The gate-keeper opened the near gates, and walked across the line to open the further ones, the plaintiffs following in their carriage. They had got partly on to the far set of rails when a train was seen approaching on that line. The gate-keeper directed them to go back, but Coultas, probably doubting the wisdom of attempting to turn or back in face of the advancing train, shouted to the man to open the far gates, and drove on. He just managed to get across as the train, which was going at a rapid pace, came up, passing within a hair's-breadth of the back of the carriage. Meanwhile Mrs. Coultas, terrified by the perilous situation, had fainted, and, being in a delicate state of health at the time, the nervous shock which she sustained brought on a severe illness. The plaintiffs

(*a*) L. R., 13 App. Cases, 222; 58 L. T. 390; 57 L. J., P. C. 69; 37 W. R. 129; and, in the Victoria Courts, 12 Vict., L. R. 895.

brought an action for damages, and the jury awarded 342*l.* 2*s.* to the gentleman and 400*l.* to his wife, finding that the defendants' servants negligently opened the gate and invited the plaintiffs to drive over the crossing when it was dangerous to do so, and that the plaintiffs could not have avoided what had occurred by the exercise of ordinary care and caution.

The following three points were reserved for the decision of the Supreme Court of Victoria :—

1. Whether the damages awarded by the jury to the plaintiffs, or either of them, are too remote to be recovered ?
2. Whether proof of "impact" is necessary in order to entitle the plaintiffs to maintain the action ?
3. Whether the female plaintiff can recover damages for physical or mental injuries, or both, occasioned by fright caused by the negligent acts of the defendants ?

The Supreme Court having answered all these questions in favour of the plaintiffs, the defendants appealed to the Privy Council, who reversed the judgment of the colonial courts. The reasons for this decision are set forth in the judgment as follows : (*a*)

Judgment of the Privy Council.

"Damages arising from mere sudden terror, unaccompanied by any actual physical injury, but occasioning a nervous or mental shock, cannot, under such circumstances, be considered a consequence which, in the ordinary course of things, would flow from the negligence of the gate-keeper. If it were held that they can, it appears to their lordships that it would be

(*a*) L. R., 13 App. Cases, 222 (at p. 225).

extending the liability for negligence much beyond what that liability has hitherto been held to be. Not only in such a case as the present, but in every case where an accident caused by negligence had given a person a serious nervous shock, there might be a claim for damages on account of mental injury. The difficulty which often exists in cases of physical injuries, of determining whether they were caused by the negligent act, would be greatly increased, and a wide field opened for imaginary claims. . . . It is remarkable that no precedent has been cited of an action similar to the present one having been maintained, or even instituted, and their lordships decline to establish such a precedent. They are of opinion that the first question, whether the damages are too remote, should have been answered in the affirmative, and on that ground, without saying that 'impact' is necessary, that the judgment should have been for the defendants."

Correctness of this decision doubted.

This decision, it is submitted, cannot be considered altogether satisfactory. The Privy Council judges seem to have failed to distinguish between *mental shock*, in the sense of an emotion of the *intellectual* feelings, and *nervous shock*, as expressing a *physical* disorder of the nervous system. It is no doubt true that in the former case damages cannot be recovered, however deep the wound to the feelings may be, or however severely the consequent state of mind may re-act on the physical health; and that damages are not to be awarded for mere grief and pain of mind is a generally accepted proposition. Nervous shock, however, in the sense explained above, is surely a natural and direct result of any sudden and violent

terror, quite independent of the "moral" feelings, and if the nature of the occurrence be such as to make the terror not unreasonable in an ordinary individual, damages should, it would seem, be as properly awardable as in a case of bodily hurt from direct impact. (*a*)

Bell v. Great Northern Railway Company of Ireland— Decision in Coultas's case disapproved.

In the case of *Bell* v. *Great Northern Railway Company of Ireland* (*b*), which came before the Irish courts (Exchequer Division on appeal) in 1890, the correctness of the decision in the preceding case was directly doubted, and the judges refused to be bound by it. They seem to have been led to this determination by somewhat the same argument as has been submitted above. The facts of the case were as follows:—While the plaintiff was travelling as a passenger in an excursion train over a portion of the defendants' line of railway, the train, which was too heavy to be carried by the engine up an incline, was divided by the defendants' servants, the carriage occupied by the plaintiff, with certain others, remaining attached to the engine. The hinder part of the train having thereupon descended the incline with great velocity, the engine was reversed, and with the remaining carriages (including that in which the plaintiff was seated) followed down the incline, also at a high rate of speed, until stopped with a violent jerk. In an action for injuries sustained by the

(*a*) See the able criticism of this decision in Mr. Beven's "Law of Negligence" (p. 67, *et seq.*) referred to and approved by the Irish Court in the next quoted case.

(*b*) 26 L. R., Ir., 428.

plaintiff, it was proved that she was put in great fright by the occurrence, and that she suffered from nervous shock in consequence of such fright. She was incapacitated from performing her ordinary avocations, and medical witnesses were of opinion that her symptoms might result in paralysis. The railway company relied on the precedent of Coultas's case, but the court declined to follow it, Chief Baron Palles stating: "The judgment (in Coultas's case) assumes as a matter of law that nervous shock is something which affects merely the mental functions, and is not in itself a peculiar physical state of the body. This error pervades the entire judgment." The court referred to an unreported case decided four years previously in the Irish courts (*Byrne* v. *Great Southern and Western Railway Company*), in which the superintendent of telegraphs at Limerick Junction station recovered 325*l.* damages for nervous shock caused by an engine running into and partially destroying his office; he was not actually touched. The verdict in that case was upheld in the Court of Appeal, and the court elected to follow that decision in preference to that in Coultas's case. They therefore held that the judge at the trial had rightly charged the jury, in directing them, that if great fright was in their opinion a reasonable and natural consequence of the circumstances in which the defendants had placed the plaintiff, and she was actually put in great fright by these circumstances, and if injury to her health was in their opinion a reasonable and natural consequence of such great fright and was actually occasioned thereby, damages for such

Judgment of Irish Court of Exchequer.

injury would not be too remote, and might be given for them.

Where a pregnant woman was injured in a railway accident and the subsequently born infant brought an action against the railway company on the ground that it had, in consequence of its mother's injuries, been permanently crippled and disabled, it was held that the damage was too remote. (*a*)

Injuries to child *en ventre sa mere.*

Sect. 4. Amount of Proof Necessary to Sustain Action for Negligence.

Before deciding whether or no it is possible under the circumstances to sustain an action for negligence, it is always necessary in the first place to consider on whom rests what is termed the "onus of proof"—*i.e.*, which party to the action will have to give affirmative evidence on the subject, the other party having to rebut such evidence. The general principle is clearly stated by Lord Wensleydale in the case of *Morgan* v. *Sim* (*b*): "The party seeking to recover compensation for damage must make out that the party against whom he complains was in the wrong. The burthen of proof is clearly upon him, and he must show that the loss is attributable to the opposite party. If at the end he leaves the case in even scales, and does not satisfy the court that it was occasioned by the negligence or default of the other party, he cannot succeed." (*c*) Thus, in a recent case, where

Burden of proof.

Statement of the rule by Lord Wensleydale.

(*a*) *Walker* v. *Great Northern Railway Company*, 28 L. R., Ir., 69.

(*b*) 11 Moo. P. C. C. 307 (at p. 311).

(*c*) See also *Cotton* v. *Wood*, 8 C. B., N. S. 568.

the plaintiff had been injured owing to the slamming of a railway carriage door, the court held that he must make out a *primâ facie* case of negligence against the defendants by showing that there was something which the person shutting the door had omitted to do. (*a*)

"Res ipsa loquitur."

It is obvious, therefore, that it is for the plaintiff to prove negligence affirmatively in the first instance, though of course the onus of proof may, and usually does, shift from plaintiff to defendant, and *vice versâ* from time to time at different stages of the case. Under certain circumstances this *primâ facie* case of negligence which it is necessary for the plaintiff to make out may arise from the mere occurrence of the accident and consequent damage—it resting with the defendant to rebut the presumption of negligence so raised. In such cases it is considered that the occurrence speaks for itself—"*res ipsa loquitur.*"

When this doctrine applies.

As to what are the circumstances in which the doctrine embodied in this maxim applies, of course no definite rule can be laid down. Each case must be considered on its own merits. A good test for deciding whether a particular case comes within the scope of this principle is that implied in the judgment of Erle, C.J. in the case of *Scott* v. *The London Docks Company* (*b*) (1865).

Test suggested by Erle, C.J.

"Where the thing is shown to be under the management of the defendant or his servants, and

(*a*) *Cohen* v. *Metropolitan Railway Company*, 6 Times L. R. 192 (1890).

(*b*) 13 L. T., N. S. 148; 34 L. J., Ex. 220; 3 H. & C. 596; 13 W. R. 410.

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 the defendants, that the accident arose from want of care."

When it is doubtful whether the nature of the occurrence denotes antecedent negligence the defendant will receive the benefit of that doubt, and the plaintiff will be put to positive proof of the alleged want of caution. "If the facts proved are equally consistent with the exercise and with the omission of proper care . . . the plaintiff must be nonsuited." (*a*)

When negligence doubtful, plaintiff must prove.

It is obvious that there must be many cases (especially of railway accidents) where it is almost impossible for the plaintiff to give affirmative evidence as to the cause of the accident—knowledge which is frequently not even possessed by the defendants themselves. In such cases, before commencing an action the plaintiff should consider whether the accident be one which does not usually happen if due care be taken. It must of course be remembered that different judges will sometimes take different views of similar cases, and what may be a clear *primâ facie* case of negligence against the defendant in the eyes of one judge may, with another, cause the plaintiff to be nonsuited on the ground that there is no evidence to go to the jury. Still it is something for plaintiffs to be thankful for that there are circum-

(*a*) *Gilbert* v. *North London Railway Company*, 1 C. & E. 31.

stances which will relieve them from having to prove acts or conditions of which they have no knowledge. Some idea of what are such circumstances will be gathered from succeeding chapters in connection with the various classes of railway accidents, but it has been thought well to refer here to one or two of the most important decisions which have special reference to this point.

Illustrations of the doctrine of "res ipsa loquitur."

In the case of *Welfare* v. *London, Brighton, and South Coast Railway Company* (*a*) the facts were as follows :—An intending purchaser was looking at a time-table in the London Bridge station when a plank and a roll of zinc fell through a hole in the roof and injured him, some person being at the time engaged at work on the roof. It was held that this fact alone was no evidence to go to the jury of negligence on the part of the company, as the fall of the zinc and consequent injury might have been the result of a pure accident, not arising from any want of care. It was not shown that there was any knowledge on the defendants' part that the roof was unsafe, nor was it proved that the man on it was employed by them, and under these circumstances the mere happening of the accident was not deemed a sufficient proof of negligence on their part. The failure to show the responsibility of the railway company for the workmen's presence on the roof was no doubt some reason for coming to this conclusion, but this is certainly an extreme case against the *primâ facie* inference to be drawn from the happening

(*a*) 20 L. T. 743 ; 38 L. J., Q. B. 241 ; L. R., 4 Q. B. 693.

of an accident, and it is very doubtful whether it would now be so decided.

In an earlier decision (1844), in the case of *Carpue* v. *London, Brighton, and South Coast Railway Company* (*a*), an opposite though perhaps equally extreme view was taken by the court. The cause of the accident was not clear, but it was probably attributable to the sinking of the permanent way through heavy rain. The main question for argument in the case had reference to the notice to be given to the defendants, but incidentally it was laid down that "in actions against a railway company for negligence in not safely carrying, the onus is upon the defendants to explain the cause of the occurrence, and to show that it was not occasioned by any misconduct or negligence for which they would be liable."

This decision has, however, been more than once adversely criticised, and cannot now be held to be good law.

A much better case to illustrate the doctrine of "*res ipsa loquitur*" than either of the two extreme instances already given, is that of *Skinner* v. *London, Brighton, and South Coast Railway Company* (*b*)—1850—in which the applicability of the principle will be perfectly apparent. The injury which was the subject of the action was due to a collision betwen two trains, both belonging to the defendant company, and under the control (or, as the event proved, *not* under the control!) of their servants. The judge

(*a*) 13 L. J., Q. B. 133; L. R. 5 Q. B. 747.
(*b*) 5 Ex. 787.

(Pollock, C.B.) in his charge to the jury explicitly stated that the mere fact of such an accident occurring was *primâ facie* evidence of neglect on the part of the railway company, and this direction was upheld on appeal. It is certainly difficult to imagine facts which would more fairly give rise to a presumption that the defendants had not exercised due care.

Another good instance of the application of the principle of "*res ipsa loquitur*" is afforded by the case of *Gee* v. *Metropolitan Railway Company*. (*a*) The plaintiff was injured by falling out of a train, owing to the door flying open while he was looking out of the window to see the lights of the next station. Though there was no evidence as to the construction of the door-fastening he obtained a verdict, the court holding that the mere fact of the door flying open under ordinary pressure raised a *primâ facie* case of negligence against the company.

Primâ facie case not necessarily enough for jury.

Although at a trial the judge may hold that the nature of an accident raises a sufficient case of negligence to be left to the jury, it does not necessarily follow that they will accept this unsupported presumption as adequate ground on which to find a verdict for the plaintiff—even though the defendants may have given no rebutting evidence. The jury have a perfect right (which they sometimes exercise) to take their own view of the matter. Thus, in *Bird* v. *Great Northern Railway Company* (*b*)—1858—the judge

(*a*) L. R., 8 Q. B. 161; 28 L. T., N. S. 282; 42 L. J., Q. B. 105; 21 W. R. 504.

(*b*) 28 L. J. Ex. 3.

considered that the mere fact of the engine of a passenger train running off the line was sufficient evidence of negligence to justify him in leaving the case to be dealt with by the jury. Though the railway company were unable to give any explanation which would rebut the inference of negligence which the judge thought had been raised, the jury found for the defendants, on the ground that there was "not sufficient evidence of the cause of the accident." That the jury were within their right in so deciding is shown from the fact that, on appeal, the court declined to grant a fresh trial. (*a*)

(*a*) For further examples of the application (or non-application) of *res ipsa loquitur*, see the following cases :—

Hanson v. *Lancashire and Yorkshire Railway Company*, 20 W. R. 297 (chain breaking—no evidence of negligence).

Byrne v. *Boadle*, 9 L. T., N. S. 450; 2 H. & C. 722; 33 L. J., Ex. 13; 12 W. R. 279 (falling of barrel of flour from warehouse—evidence of negligence).

Kearney v. *London, Brighton, and South-Coast Railway Company*, 24 L. T., N. S. 913; 40 L. J., Q. B. 285; L. R., 6 Q. B. 759 (brick falling from railway bridge—evidence of negligence.

Murray v. *Metropolitan District Railway Company*, 27 L. T. 762 (falling of window—no evidence of neglgence).

Dawson v. *Manchester, Sheffield, and Lincolnshire Railway Company*, 5 L. T., N. S., Ex. 682 (train running off line—held evidence of negligence.

Scott v. *London Dock Company*, 13 L. T., N. S. 148; 34 L. J., Ex. 220; 3 H. & C. 596; 13 W. R. 410 (fall of bags of sugar being hoisted into warehouse—held evidence of negligence).

Toomey v. *London, Brighton, and South-Coast Railway Company*, 3 C. B., N. S., 146 (passenger falling down steps of lamp-room, mistaking it for urinal—no evidence of negligence of company).

CHAPTER II.

SCOPE OF A RAILWAY COMPANY'S LIABILITY FOR NEGLIGENCE.

Sect. 1. Towards whom does Liability Exist?

Contract not necessary to found action for negligence.

It is important to bear clearly in mind that an action against a railway company for negligence need not, generally speaking, be founded on any breach of contract (*a*). It has been clearly decided that the liability of a railway company for injuries arising from its own negligence is not confined to the cases of persons with whom the company has contracted. (*b*) The duty of care is owed, and consequently liability attaches, as regards all who are rightfully upon the company's premises or in their trains—though not, as we shall

(*a*) In cases, however, where the damage is the result of the negligence of some company other than the one which issued the ticket to the passenger an action for negligence against the issuing company must be founded on a breach of their implied contract that due care and caution shall be exercised throughout the journey for which they booked him (see *post*, Cap. V.).

(*b*) *Foulkes* v. *Metropolitan Railway Company*, 42 L. T. N. S. 345; L. R. 5 C. P. D. 157; *Self* v. *London, Brighton, and South-Coast Railway Company*, 42 L. T. N. S. 179; *Hooper* v. *London and North-Western Railway Company*, 43 L. T. N. S. 570.

see, to the same extent in all cases. To put it conversely, the only persons towards whom a railway company is not liable, in some degree, for injuries arising from negligence are those who are in the position of trespassers. Such persons come at their own peril and must take any consequences (short of those caused by wilful injury) which may result from their unlawful intrusion. "No man," says Lord Bramwell, "can by his wrongful act impose a duty." (*a*)

No duty of care towards trespassers.

Those towards whom a company is liable—that is, who are *not wrongfully* present—may be conveniently divided into two classes:

Liability towards persons rightfully present.

1. Persons on the company's premises by invitation (express or implied) for some purpose in which they and the company have a common interest.

This class would of course include ordinary passengers, (*b*) and also, as we shall show, probably persons coming to meet or take leave of them. It would also embrace people coming to a station on *bonâ fide* business, to receive or despatch parcels, make inquiries, &c. (*c*)

Towards this class a railway company's liability is not (as already stated) necessarily dependent on any express or implied contract, but arises from the duty which they owe at common law to observe all reasonable care and caution in the conduct of their business and conveyance of their passengers.

2. Persons who have been permitted to come upon

Liability towards "bare licensees"

(*a*) In *Degg* v. *Midland Railway Company*, 1 H. & N. 773.

(*b*) As to who is a railway passenger see next section.

(*c*) *Cornman* v. *Eastern Counties Railway Company*, 4 H. & N. 781: 29 L. J.. Ex. 94; 33 L. T. 302.

the premises simply for their own purposes, without any reference to those of the company, or, as they are usually termed, "bare licensees."

Towards this latter class the company is not altogether free from liability, but that liability is of a very limited nature. Its extent is well indicated by Chief Baron Pigot in *Sullivan* v. *Waters* (*a*)—"A mere licence given by the owner to enter and use premises which the licensee has full opportunity of inspecting, which contain no concealed cause of mischief, and in which any existing source of danger is apparent, creates no obligation in the owner to guard the licensee against danger."

Generally speaking, a "bare licensee" can only recover damages when his injury results from some concealed source of danger in the nature of a trap.

Example of a "bare licensee."

A common instance of a person occupying the position of a "bare licensee" on railway premises occurs where the general public, either by actual consent on the part of the authorities in response to a direct request, or by a prevailing custom at a particular station (such custom being within the knowledge of the railway authorities, and not objected to by them) are suffered to come upon the premises for the purpose of purchasing newspapers or using urinals, &c. Under such circumstances it is apparent that the person so permitted does not come for the mutual interests of

(*a*) 14 Ir. C. L. R. 460. See also on this point *Bolch* v. *Smith*, 7 H. & N. 736; 31 L. J., Ex. 201; 10 W. R. 387; *Corby* v. *Hill*, 4 C. B., N. S. 556; *Batchelor* v. *Fortescue*, L. R., 11 Q. B. D. 474; *Tebbutt* v. *Bristol and Exeter Railway Company*, 40 L. J., Q. B. 78; L. R., 6 Q. B. 73.

himself and the railway company, but it is a purely "one-sided" benefit, and therefore liability would only attach to the company for injury caused by acts of gross negligence or defective conditions in the nature of a trap. (*a*)

Liability towards passengers' friends using station.

What is the actual legal position of a person using railway premises for the purpose of taking leave of or meeting friends? Is such person a "bare licensee," permitted to come upon the premises for his own purpose only, without any reciprocal advantage to the company, and with the comparatively slender rights against them above mentioned; or does he occupy a higher position in some degree analogous to that of the actual passenger? This question is dealt with in *Watkins* v. *Great Western Railway Company*,(*b*) in which case the plaintiff, while accompanying her daughter, an intending passenger, to a train in Worcester station, knocked her head against a plank which had been placed across a footbridge, from hand-rail to hand-rail, 4ft. 6in. above the ground, and on which a porter was standing cleaning a hanging lamp. It was broad daylight at the time. The Court of Common Pleas were divided in opinion as to whether there was any evidence of negligence to go to the jury, but in his judgment Denman, J. said: "I am of opinion that a railway company keeping open a bridge over their line for the use of their passengers, is bound to keep that bridge reasonably

(*a*) *Southcote* v. *Stanley* (per Bramwell, B.), 1 H. & N. 248; 25 L. J. Ex. 339.

(*b*) 37 L. T., N. S. 193; 46 L. J., Q. B. 817 25 W. R. 905.

safe, and that if in practice the friends of passengers are allowed by the company's servants to see passengers off by the trains, and to cross the bridge without asking special permission, the duty of the company in that respect cannot be put lower towards them than towards those whom they accompany for such not unreasonable purpose. I think that this view is consistent with the case of *Corby* v. *Hill* (*a*) and *Smith* v. *London, &c., Docks Company.*(*b*) I regard the passenger's friend so permitted to go along the bridge by constant acquiescence on the part of the railway (*sic*) as not being in the nature of a person *barely licensed* to be there, but as being *invited* to go, to the same extent as the passenger whom he accompanies, and who is there on lawful business in which the passenger and the company have both an interest."

Sect. 2. Extent of Liability as Carriers of Passengers.

In the previous section we briefly indicated the general scope of a railway company's liability towards all persons who may be, lawfully or unlawfully, upon their premises. It is now proposed to explain more particularly the extent of their liability towards actual passengers. Before doing so, however, it will be well to consider who is legally a *passenger*.

Who is a "passenger?"

A passenger has been defined (*c*) as "a person who

(*a*) *Ante*, p. 34.

(*b*) L. R., 3 C. P. 330; 37 L. J., C. P. 217.

(*c*) Shearman and Redfield's "Law of Negligence," sect. 488 3rd edit.).

undertakes, with the consent of the carrier, to travel in the conveyance provided by the latter otherwise than in the service of the carrier as such." As to what will constitute "consent" on the part of the carrier the decided cases go to show that this need not necessarily be actually expressed, as in the case of those to whom tickets have been issued, but it will be inferred from comparatively slight circumstances; and it is submitted that a company would be liable in all cases in which they have acquiesced in the conveyance of a person, unless they can show an intent to defraud on his part. The following cases will support this proposition:

Travelling with "non-transferable" ticket.

A railway company were in the habit of allowing the reporters of *Bell's Life*, when on duty, to travel free on their line. Harrison, the plaintiff, who was a reporter on the staff of this paper, was supplied with a ticket from the company, made out in the name of an editor or other officer of the paper, and it purported on its face not to be transferable, and also had on it a statement that any person, other than he whose name was on it, using the ticket, would be liable to the penalty which a passenger incurs by travelling without having paid his fare. The plaintiff, acting *bonâ fide*, presented this ticket at the station to the porter whose duty it was to examine tickets, who said "All right," and put him in a carriage. It did not appear that the porter knew him, but it was shown that on several occasions the plaintiff and other reporters had travelled with similar tickets, made out in the names of persons other than those who used them, and that the persons whose names were on the tickets were

known to some of the station staff. At the trial the jury found for the plaintiff, and on appeal to the Court of Exchequer Chamber it was held that the evidence of the irregular use of the tickets being with the sanction of the superintendents, was evidence for the jury that the plaintiff was in the carriage with the licence of the company, and therefore lawfully—that there was "such evidence of a licence as would make it wrong to say that the plaintiff was a trespasser."(*a*)

Travelling without a ticket.

In a subsequent case, decided in 1867,(*b*) the defendant company was held liable in respect of injuries caused to a child over the age of three years while travelling with its mother, who had omitted to take a ticket for it. The defendant company appealed on the ground that the plaintiff was not lawfully a passenger, it being alleged that there had been concealment equivalent to fraud. The Court of Queen's Bench, however, upheld the verdict of the jury. The law on this point was very clearly laid down by Blackburn, J. in his judgment in this case. He says: —"I think that what was said in the case of *Marshall* v. *Newcastle and Berwick Railway Company*(*c*) was quite correct. It was there laid down 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

(*a*) *Great Northern Railway Company* v. *Harrison*, 10 Ex. 376; 23 L. J., Ex. 308 (1854).

(*b*) *Austin* v. *Great Western Railway Company*, L. R., 2 Q. B. 442; 36 L. J., Q. B. 201.

(*c*) 11 C. B. 662.

the company to carry him safely. If there had been fraud on the part of the plaintiff, or if the plaintiff had been taken into the train without the defendants' authority, no such duty would arise. Whether the mother's fraud could be treated as the fraud of the child, so as to bring the case within the principle of the cases which have been referred to, we need not now inquire. The averment of fraud which may be thought to make the plea valid is disproved. We must take it that the child, without fault and through an honest mistake on the mother's part, was taken into the train by the railway company, and received as a passenger by their servants with their authority. . . . It seems to me that a duty to carry safely arises under these circumstances."

Tickets issued by society; no contract with company.

So in a case where a society had chartered a train from a railway company and issued to its members tickets for an excursion, the railway company was held liable to these individual members, although there was no contract with them. (*a*)

Liability arises from reception of passenger.

In giving judgment on appeal in the case of *Foulkes* v. *The Metropolitan District Railway Company* (*b*), a case in which the London and South-Western Railway Company had issued a combined ticket, and an accident had occurred to the plaintiff while alighting from the Metropolitan District Company's train, Thesiger, L.J. said: " . . . Even assuming the

(*a*) *Skinner* v. *London, Brighton, and South-Coast Railway Company*, 5 Ex. 787.

(*b*) 5 C. P. D. 157 (at p. 168); 49 L. J., Q. B. 361 (at p. 368); 42 L. T.. N. S. 345; 28 W. R. 526.

contract of carriage . . . to have been made between [the plaintiff] and the South-Western Company exclusively, the defendants are still liable in respect of the wrongful act which led to the plaintiff's injuries, by virtue of their actual reception of him in their carriage. . . ."

American view.

The American courts have held (*a*) that the relationship of passenger and carrier may be established without either entry into the conveyance or payment of fare, and that a person in a waiting-room waiting for a carriage may be as much a passenger as though he were actually in the conveyance.

Inference from foregoing cases.

From the cases which have been quoted, and many others decided on their authority, it is quite clear, as previously stated, that contract need not be the basis of a claim for compensation for injury, but that the mere acceptance of a person for conveyance by a railway company gives him, in the absence of fraud on his part, the position and rights of a passenger, and entails on the company so accepting him responsibility for his safety so far as reasonable care and caution can ensure it. The fact of a person having been in too great a hurry to take a ticket before starting, or travelling beyond the place to which his ticket applied, will not, in the absence of fraudulent intent, divest the company of that responsibility. Allowing a person to enter the train without first producing his ticket; the existence of a custom for

(*a*) *Gordon* v. *New Town Railway Company*, 40 Barb. 546; *Russ* v. *War Eagle*, 14 Iowa, 363; *Warren* v. *Pittsburg Railway Company*, 90 Mass. 227; *Hamilton* v. *Caledonian Company*, 19 D. 457.

payment of fares to be permitted on arrival at the end of the journey; or any evidence of genuine mistake on the part of the passenger as to the destination of the train in which he was travelling, would no doubt be sufficient to distinguish him from a mere trespasser. The question in such cases would always be, "Was there fraud on the part of the injured person? If so, he cannot make the company liable for negligence; if not, they will be so liable.

Railway companies are not liable as *insurers* of passengers' safety.

Railway companies are only liable towards passengers for acts of negligence and *not as insurers*. This was finally decided in *Readhead* v. *Midland Railway Company* (*a*) (1869). The facts in that case were shortly as follows:—The plaintiff, a passenger from Nottingham to South Shields on the defendants' railway, had suffered an injury in consequence of the carriage in which he was travelling getting off the line and upsetting. The accident was caused by the breaking of the tire of one of the wheels of the carriage, owing to a latent defect in the tire, viz.:—an air-bubble in the welding—a flaw which was not attributable to any fault on the part of the manufacturers, and could not have been discovered by inspection, nor by any of the ordinary tests previously to the breaking. The jury at the trial found that there was no negligence on the part of the defendants, who took every reasonable precaution in examining the tire before the journey. Lush, J. directed the jury, that, under these circumstances, the defendants were

(*a*) 20 L. T. 628; 38 L. J., Q. B. 169; 17 W. R. 327; L. R., 2 Q. B. 412; 4 Q. B. 379.

not responsible for the accident, and they therefore found for the defendants. A rule for a new trial was granted on the ground that a carrier of passengers is bound at his peril to provide a roadworthy carriage, and is consequently liable if the carriage turns out to be defective, notwithstanding that the infirmity was of such a nature that it could neither be guarded against nor discovered. On the rule being argued before the Court of Queen's Bench, a majority (Lush and Mellor, JJ.) upheld the decision of the court below, but Blackburn, J. dissented on the ground that in principle, and by analogy to other cases, there is a duty on the carrier to the extent that he is bound at his peril to supply a vehicle in fact reasonably sufficient for the purpose, and is responsible for the consequences of his failure to do so, though occasioned by a latent defect; and therefore that the direction to the jury was wrong, and that there should be a new trial. On appeal to the Court of Exchequer Chamber it was held, affirming the judgment of the Court of Queen's Bench, that the company was not liable in respect of the injury in question, there being no contract of warranty or insurance in the case of passengers that the carriage should be in all respects perfect for its purpose, that is to say, free from all defects likely to cause peril. In delivering the judgment of the court, Montague Smith, J. remarked "It seems to be perfectly reasonable and just to hold that the objection well-known to the law, and which, because of its reasonableness and accordance with what men perceive to be fair and right, has been found applicable to an infinite variety of cases in the business of

life, viz.: the obligation to take due care, should be attached to this contract. We do not attempt to define, nor is it necessary to do so, all the liabilities which the obligation to take due care imposes on the carriers of passengers. Nor is it necessary, inasmuch as the case negatives any fault on the part of the manufacturers, to determine to what extent, and under what circumstances they may be liable for the want of care on the part of those they employ to construct works, or to make or furnish carriages and other things they use: (See on this point *Grote* v. *Chester and Holyhead Railway Company*) (*a*). Due care, however, undoubtedly means, having reference to the nature of the contract to carry, a high degree of care, and casts on carriers the duty of exercising all vigilance to see that whatever is required for the safe conveyance of their passengers is in fit and proper order. But the duty to take due care, however widely construed, or however rigorously enforced, will not, as the present action seeks to do, subject the defendants to the plain injustice of being compelled by the law to make reparation for a disaster arising from a latent defect in the machinery they are obliged to use, which no human skill or care could either have prevented or detected." (*b*)

Actual extent of liability

It is therefore clear that the duty of railway companies is to use all reasonable care to convey their

(*a*) 2 Ex. 251.

(*b*) See also *Hyman* v. *Nye*, 44 L. T. 919; L. R., 6 Q. B. D. 685; *Stokes* v. *Eastern Counties Railway Company*, 2 F. & F. 691; *Francis* v. *Cockrell*, 23 L. T., N. S. 466; 39 L. J., Q. B. 291; L. R., 5 Q. B. 501; 18 W. R. 1205.

passengers safely, but they are not to be held liable for accidents arising from latent defects, the existence of which it was impossible to know of before the occurrence of the accident which they caused. In other words railway companies do not *insure* the safety of their passengers; but they undertake to do all that can be reasonably expected under the special circumstances of their important and hazardous business to prevent accident.

Railway company not liable for acts of independent party.

A company will not be held liable where an accident is due to the acts of some independent person engaged in extraneous work over which the company have no control, and which they have no reason to expect is being negligently carried on, so as to be a source of danger as regards their traffic. Thus, in *Daniel* v. *Metropolitan Railway Company* (*a*), where the Thames Ironworks Company, under contract with the corporation of London, were engaged in placing a large iron girder across and between the walls forming the sides of the Metropolitan Railway, and the girder, overbalancing, fell upon a passing train, killing and injuring several persons, the railway company were held not liable, on the ground that they might reasonably rely on the work being carefully and properly carried out by the contractors.

Nor for acts of their officials outside the scope of their duties.

Neither will a company be liable in connection with acts of its officials which it was not within the scope

(*a*) L. R., 5 H. L. 45; 24 L. T., N. S. 815; 40 L. J., C. P. 121; 20 W. R. 37 (1871); and see also *Latcher* v. *Rumney*, 27 L. J., Ex. 155, in which it was laid down that "negligence may be disproved by showing another sufficient cause, as a stone wilfully put on the rail by a stranger.

of their duties to perform; for when a servant is engaged for a particular purpose (*e.g.*, to discharge the duties of a railway porter) his capacities for such employment only are considered, and it would be obviously unjust if the company employing him were to be held liable for injuries he might cause by voluntary acts entirely beyond the scope of his authorised labours. (*a*)

(*a*) *Poulton* v. *London and South-Western Railway Company*, 36 L. J., Q. B. 294; L. R., 2 Q. B. 534 (1867); 17 L. T., N. S. 11.

CHAPTER III.

THE MOST USUAL CLASSES OF RAILWAY ACCIDENTS SPECIALLY CONSIDERED.

Under the different sections of this chapter it is proposed to consider in detail the various kinds of accidents to which railway passengers are most usually exposed. It has been considered convenient to treat of them in the order of the usual stages of a railway journey.

Sect. 1. Accidents at Stations.

(a) *Steps and bridges.*

Dangerous steps.

In the case of *Osborne* v. *London and North-Western Railway Company* (a) (1888) the plaintiff, an intending passenger, slipped on a flight of stone steps leading to the platform of Perry Bar station. These steps were worn and caked with frozen snow. The plaintiff admitted that he had noticed that they were dangerous, and therefore came down them carefully, holding the hand-rail. On behalf of the railway company it was suggested that this foreknowledge of their dangerous condition disentitled the plaintiff to

(a) 57 L. J., Q. B. 618; L. R., 21 Q. B. D. 220; and see also *Bridges* v. *North London Railway Company*, 43 L. J., Q. B. 151; L. R., 7 H. L. 213; and *Davis* v. *London, Brighton, and South-Coast Railway Company*, 2 F. & F. 588.

recover damages, as he had voluntarily incurred the risk of the descent. The County Court judge, however, found that the accident was primarily due to the worn state of the steps, which was aggravated by the frosty weather, and that the steps had not been properly swept. Against this finding the company appealed, but without success. Grantham, J., in answer to the suggested application of the maxim "Volenti non fit injuria," referred to the case of a stage-coach, one of the horses of which a passenger had observed to be vicious before he started on his journey. "Is he," says the learned judge, "bound not to travel by it? or, if he does travel by it, and injury results during the journey, does he lose all remedy?"

In an earlier case (*Crafter* v. *Metropolitan Railway Company* (1866) (*a*), though the facts were somewhat similar, a different decision was come to. The plaintiff slipped and fell while ascending some brass-edged steps at King's Cross station; there was a wall on each side, but no hand-rail. Although two witnesses confirmed the plaintiff's statement that the steps were dangerous, and the only defence set up by the railway company was the fact that an average number of 43,000 persons had used the steps every month without accident, it was held that there was no evidence of negligence on the part of the defendants.

At first sight it seems hard to distinguish between these two cases, but probably the unswept snow in the former one was the chief factor in determining the

(*a*) L. R., 1 C. P. 300; 35 L. J., C. P. 132; 14 W. R. 334.

liability of the defendants. The court, no doubt rightly, held in the latter case that the defect alleged in the steps—viz., the use of brass-nosings (instead of lead as suggested)—the fact that this metal edging had become somewhat worn, and the absence of a hand-rail, did not necessarily constitute a dangerous state of things arising from negligence, but were points on which the railway company might to a certan extent exercise their own judgment. In the case of the snow-covered steps, however, there was obvious negligence on the part of the defendants in not having taken the very ordinary precaution of having the steps swept. (As to liability for uncleared snow on platforms see *post*.)

Dangerous foot-bridges.

At a small station between Birmingham and Wolverhampton, on the Great Western Railway, a wooden bridge was constructed across the line from platform to platform for the use of passengers. At each end of the bridge was a short flight of steps, then a square landing, and then, at right angles, a longer flight of steps leading to the platform. The bridge itself was guarded at the sides by means of the customary "cross-girders," but at each side of the short flight of steps there was only one girder, a considerable aperture measuring 7ft. 3in. by 4ft. 2in. thus being left. The only other way of passing from one platform to the other was either by crossing the metals or by going out of the station to a public bridge higher up the line and then coming back to the other platform. The wooden bridge had been used by thousands of persons, and frequently by the plaintiff, who, however, one night slipped, and, falling

through the aperture described, by the side of the short flight of steps, was killed.

In an action (*Longmore* v. *Great Western Railway Company* (*a*) brought by the deceased's widow to recover compensation for her husband's death, the jury found a verdict for the plaintiff on the ground that the bridge was not a safe or proper one. This verdict was upheld on appeal, Byles, J. remarking: "The defect was not obvious, and the danger was not apparent; it was the nearest way and the deceased was invited to use it." This case was referred to in the trial, in the Court of Common Pleas, of the previously mentioned case of *Crafter* v. *Metropolitan Railway Company* (*b*) it being then suggested by the plaintiff's counsel that there was no difference between them. The court, however, in that case seemed to consider that the real distinction lay in the fact that the dangerous state of the bridge (in *Longmore* v. *Great Western Railway Company*) was not apparent to those using it—that, in fact, it was in the nature of a trap—while there was no hidden danger in connection with the brass-nosed steps.

A bridge need only be so constructed as to provide for the safety of persons using it in an ordinary way, and not of children walking over it sideways without looking where they are going (*c*).

(*b*) *Dangers of the platform:*

In the case of *Cornman* v. *Eastern Counties Railway*

(*a*) 19 C., B. N. S. 183; 35 L. J., C. P. 135 (1865).

(*b*) *Ante*, p. 47.

(*c*) *Lay* v. *Midland Railway Company*, 30 L. T., N. S. 529; 34 L. T., N. S. 30.

Falling over weighing-machine.

Company—1859—(*a*) the plaintiff claimed compensation for injuries received from a fall caused by catching his foot against the base of a weighing machine on the platform. The machine in question (a portable one), the base of which was raised some six inches above the level of the platform at Bishopsgate-street station, stood close to a counter on which passengers' luggage was placed (and, if necessary, weighed) on the arrival of a train. On Christmas Day the plaintiff went to the station to receive a parcel he was expecting, and, there being a crowd of 200 or more persons assembled, when the platform gates were opened he was carried by the rush against the machine, and, slipping, broke his knee-cap. He alleged that the machine was in a dangerous position and was an improper obstruction, although it had been in the same place for five years. The jury found for the plaintiff with 50*l.* damages. The defendant company appealed on the ground that there was no evidence of negligence to go to the jury, and the Court of Exchequer concurred in this view. Taking into consideration the facts of the case—that the machine had occupied its then position for many years, and that the position in question was apparently just the place where one would expect to find such an article, the concluding portion of Baron Martin's judgment in this case seems by no means uncalled for. He remarks: "I believe that at the trial no comment was made to the jury on the fact that the defendants are a railway company. If this accident had occurred

(*a*) 33 L. T. 302; 4 H. & N. 781; 29 L. J. Ex. 94.

in a timber-yard no jury would find negligence against the owner of it; but with these unhappy railway companies it is different, for many persons think that if an accident happens within the gates of a railway company's premises there should always be a verdict against them." (*a*)

Falling over boxed-in signal levers.

Where, however, an obstruction on a platform is not so conspicuous as to make a reasonably observant person aware of its presence, but is still of such a nature as to be a likely stumbling block, the railway company will be liable for consequent injuries. Thus, where a passenger by an excursion train, who had to pass over a platform with a crowd of other passengers, stumbled against a box containing signal levers, which projected two inches above the level of the platform, it was held by the Court of Appeal that a jury might reasonably find the railway company guilty of negligence, and liable for the injuries which the plaintiff had sustained in her fall. (*b*)

Falling over hamper.

In the case of *Nicholson* v. *Lancashire and Yorkshire Railway Company*, (*c*) 1865, the plaintiff claimed compensation for injuries sustained by his falling over a hamper. The facts were as follows: "At the station, where the accident occurred, it was customary for the passengers to cross from one platform to the other by means of a 'level crossing' between the ends of the two platforms. It sometimes

(*a*) See also *Blackman* v. *London, Brighton, and South Coast Railway Company*, 17 W. R. 769.

(*b*) *Sturges* v. *Great Western Railway Company*, 56 J. P. 278.

(*c*) 34 L. J., Ex. 84; 3 H. & C. 534.

happened, however, that the arriving train would be so long as to extend beyond this point, as was the case on the night in question. On such occasions it was usual for passengers to walk along to the end of the train and then cross behind the last carriage, as the train often waited ten or fifteen minutes at the station. A ticket collector stood with a light at the point where the train was over the crossing, and, after giving up his ticket there, the plaintiff was, with other passengers, directed to "pass on." He accordingly walked alongside of the train, intending to cross over the line behind it, in conformity with the usual practice, which had not been objected to by the company's servants when the train was of exceptional length. While so walking he stumbled over a hamper which had been taken out of the train and set down at the side of the line, and sustained the injuries complained of. There was no light near the place where he fell. The jury found for the plaintiff —damages 200*l.* The defendants appealed to the Court of Exchequer but without success, Pollock, C.B. in his judgment saying: "It appears to us sufficient to say that, if, on the arrival of a train, there is an obstacle to the passengers getting at the exit from the station, the train remaining there for ten minutes or a quarter of an hour, there is some evidence of negligence; certainly a passenger should be able to get away in much less time than a quarter of an hour after the arrival of the train by which he came; and, if that be so, unless the jury thought that the accident was entirely attributable to the negligence of the plaintiff, the defendants would

be responsible for any mischief that arose in this case."

This decision appears eminently reasonable. The defendant company, owing to deficiency in the length of their platforms, or excessive length of their trains, had been compelled to permit a practice to arise among their passengers of escaping from the virtual imprisonment to which they would otherwise have been subjected for a considerable time, by crossing the line at a place where there was neither light nor footway; and they thereby rendered themselves liable for any injurious consequences which might ensue—even though, as in this case, it could not be denied that in itself there was nothing improper or dangerous in placing a hamper beside the carriage from which it had been removed. (*a*)

Accident through mistaking door.

The mere fact that a person enters by mistake part of the station not intended for passengers, and injures himself in consequence, will not entitle him to recover compensation in the absence of evidence to show that there was special danger. In the case of *Toomey* v. *London, Brighton, and South Coast Railway Company* (*b*) the plaintiff, an illiterate man unable to read, entered by mistake the "Lamp Room" at Forest Hill Station, instead of the "Gentleman's Room," which immediately adjoined it. Some steps led down into the lamp-room, and down these the plaintiff fell, breaking his ribs. It was held by Williams, J. and

(*a*) See also *Martin* v. *Great Northern Railway Company* (1855), 16 C. B. 179; 24 L. J., C. P. 209 (falling over switch-point handle; no light; company held liable).

(*b*) 3 C. B., N. S. 146; 27 L. J., C. P. 39 (1857).

Willes, J., that in the absence of evidence to show that the steps in question were especially dangerous, there was no evidence of negligence on the part of the company to go to the jury.

Who is liable for refreshment room coal-hole being uncovered?

It is sometimes a question involving much consideration as to who is the actual party liable for injuries caused in connection with the premises of a sub-tenant or lessee in a railway station. In the case of *Pickard* v. *Smith* (*a*) (1861) the plaintiff, a passenger about to leave a railway station, fell into an unprotected hole, and was injured. He brought an action against the defendant, who was the lessee and occupier of refreshment-rooms at the station in question, and had employed a coal-dealer to put coals into the cellar. The coal-dealer's servants opened a trap-door in the part of the platform over which passengers had to go on their way out, and into the hole thus exposed the plaintiff fell. The court held that, though the leaving of the trap-door open and unguarded was the immediate act of the coal-dealer's servants, nevertheless the defendant (the refreshment-room keeper) was liable, because he employed the coal-dealer to open the trap-door, and entrusted him to guard it while open, and to close it when the coaling was over; that the act of opening the trap-door was the act of the defendant, though done through the medium of the coal-dealer, and the defendant, having thereby caused the danger, was bound to take all reasonable means for the prevention of accidents. *Semble*: (per Williams, J.) that the railway

(*a*) 4 L. T., N. S., C. P. 470; 10 C. B. N. S. 470; (1861).

company would also be liable, but not the coal-merchant.

Unswept snow on platform.

Station platforms, like other spots on which persons are invited to come, are expected to be kept in as safe a condition as possible, and all reasonable efforts to counteract special dangers arising from the state of the weather must be made. In the case of *Shepperd* v. *Midland Railway Company* (*a*) the plaintiff, while walking on the platform of a country station, slipped on ice half an inch thick, which had been allowed to remain thereon. The railway company were held liable for the plaintiff's injuries, Martin, B. remarking, "Railway servants ought to be alert in cold weather to see whether there is ice upon the platform, and make it safe by sanding it or otherwise, if it is there."

Injury from carriage-door of incoming train.

Intending passengers must be careful not to stand within the radius of the carriage doors of an incoming train. as they will scarcely be able to fix the railway company with liability in case of consequent injury—unless they can prove that the door was carelessly opened by the company's servants; and even then the plaintiff would probably be upset on the ground of contributory negligence. In a recent case of *Pattinson* v. *Midland Railway Company* (*b*) the plaintiff sought to recover compensation for personal injuries sustained while he was awaiting, at King's Cross underground station, the arrival of a Midland train by which he intended to proceed to Crouch Hill. As the train came into the station, the door of a carriage flew

(*a*) 25 L. T., N. S. 879; 20 W. R. 705 (1871).
(*b*) Reported in newspapers of Jan. 30, 1893.

open, and struck him on the left cheek, inflicting a a very severe wound. He submitted that the accident was due to the negligence of the defendants' servants. The defendants denied that the accident was attributable either to the door being left unfastened or the lock being defective, and contended that the door was opened by a passenger anxious to cross the bridge at the spot where the accident happened, and for whose act they were not liable. They further said that the plaintiff was guilty of contributory negligence in standing so near the edge of the platform. The jury found a verdict for the defendant company.

Overcrowding platforms: Passengers pushed on to rails.

The overcrowding of platforms, especially at "excursion" seasons, is frequently a source of grave danger to passengers. The fatal accident at Hampstead station in the early part of last year, (1892), by which several persons were crushed to death at the bottom of a narrow staircase leading to the platform, drew special attention to the tremendous responsibility which a railway company incurs by permitting an uncontrolled crowd to gather in the frequently inadequate space afforded by station platforms, and the approaches thereto.

A case of great importance in this connection is that of *Hogan and wife* v. *South-Eastern Railway Company*, (*a*) which was decided in 1873. The action was originally tried at the Sussex Summer Assizes, 1872, when the following facts appeared in evidence:—The plaintiffs, with two children, were third class passengers on a journey from London to Hastings and

(*a*) 28 L. T., N. S. 271

back by an excursion train on Whit Monday. In the evening they reached the Hastings station in good time for a train due to start for London at 8 p.m. The station was so crowded that they could not at first get in, and when they did there was such a crush on the platform that they could not reach either of two trains which passed successively. An empty train was then run in alongside of the departure platform, whereupon the crowd, swaying towards the train, carried the female plaintiff, who held a child in her arms, completely off her feet, and, pushing her off the platform on to the line, caused her to receive the injuries complained of. Large numbers of persons had gone down from London in the morning by the excursion trains. There were no barriers outside the station or upon the platform. A gate leading into the station was left unlocked. No person had asked for the tickets of the plaintiffs, nor was there any servant of the company on the platform to regulate the movements of the crowd. On these facts the plaintiffs were nonsuited, on the ground that there was no evidence of negligence on the part of the defendants to go to the jury; but on appeal to the Court of Common Pleas a new trial was granted, the court holding that the facts mentioned above were *in themselves* sufficient to sustain an action for negligence. Grove, J. remarked . . . "I think that if, as was decided in *Gee* v. *Metropolitan Railway Company*, (*a*) it is negligence in a railway company to leave the

(*a*) 28 L. T., N. S. 282; L. R., 8 Q. B. 161; 42 L. J., Q. B. 105; 21 W. R. 504. (See *post.*)

door of a railway carriage unfastened, it is *à fortiori* their duty to provide some person at an unlocked gate to see that too many people do not rush on to their platforms."

From the above case, it seems that a railway company may be expected to take reasonable precautions to control the number of passengers who assemble on their platforms, and to prevent those numbers from exceeding the quantity for which there is safe standing room. But the company is under no liability (even when an unusually large number of passengers by a special and cheap train is expected) to provide a staff of servants sufficient, not merely for the guidance and assistance of passengers, and the preservation of order amongst them, but adequate to control the violence of an assemblage of persons entering the station without permission, and overcrowding the platform.

An important case on this subject was decided in the Irish Court of Appeal in 1879. The action (*Cannon* v. *Midland Great Western Company of Ireland* (*a*) was brought, under Lord Campbell's Act, to recover damages for death caused by the alleged negligence of the railway company. It appeared that on the occasion of the casualty the deceased had taken a ticket for a special train at a cheap rate for harvest-men. He was unable to find accommodation in the special train, but remained on the platform until the arrival of the next ordinary train, together with a crowd composed of harvest-men who had also taken tickets for the special train, and of other persons, a

(*a*) L. R., Ir., 6 C. L. 199.

large number of whom had entered the station without permission. The company had an extra number of porters at the station; but in consequence of the extreme disorder of the persons assembled on the platform, resulting in a sudden and violent rush of the crowd, the deceased was pushed on to the line, and was killed by the approaching engine of the ordinary train. At the original trial the special jury found that the accident was occasioned by the rush of the crowd, and that the company had not taken due and reasonable precautions to prevent injuries from the overcrowding of the platform. The case came before the Irish Court of Appeal in January, 1880, with the result that judgment was entered for the defendants. The ground of this decision seems to have been that (in the words of FitzGibbon, L.J.) the rush of the crowd causing the plaintiff's death was "voluntary and violent on the part of the persons composing the crowd, and as against the company it was unauthorised and unlawful, and that the company was not legally answerable for the consequences of such voluntary and unlawful violence."

Ball, C., in his judgment, speaks to the same effect:—"When a railway company, for an excursion or other special purpose, invites numbers to its station, it is not unreasonable to require more than the ordinary attendants to perform the same duties which devolve upon the usual staff at other times. But to go further, and require them to have a force capable of resisting and overcoming whatever violence a drunken or riotous mob may choose to exhibit, is to impose an obligation upon carriers of passengers

without precedent, and without analogous instances to support it."

Distinction between this and Hogan's case.

The case of *Hogan* v. *South-Eastern Railway Company* (*a*) does not appear to have been referred to in the course of this case; but, although there is a *primâ facie* resemblance between the facts in the two cases, the real distinction lies in the circumstance that in the former case the accident was due to the platform becoming crowded with a greater number of passengers than it could safely accommodate, while in the latter, the disaster was directly attributable to the violence and disorder of an unruly mob who had forcibly entered the station, a state of things which ordinary and reasonable prudence could neither have foreseen nor prevented.

Liability for acts of violent or drunken persons.

Nevertheless, a railway company would no doubt be liable for injuries caused to their passengers by a violent or intoxicated person whom they had, with a knowledge of his condition or character, voluntarily admitted to their premises or carriages; or if they might by reasonable care have ascertained his condition but did not, as a fact, notice it they would still be liable.(*b*)

Overcrowding carriage: violent fellow passengers.

In this connection, however, the decision in the recent *Candy Hall case* (*c*) (November, 1891) is of great interest; and, although it properly belongs to

(*a*) 28 L. T. N. S. 271 (*ante*, p. 56).

(*b*) *Murgatroyd* v. *Blackburn and Over Darwen Tramway Company*, 3 Times L. R. 451.

(*c*) *Pounder* v. *North-Eastern Railway Company*, 1892, L. R. 1 Q. B. 385, and see also the recent case of *Cobb* v. *Great Western Railway Company*, 1893, L. R., 1 Q. B. 459.

a somewhat later stage of our imaginary journey, (seeing that the injuries were received while travelling in the train and not prior to its departure), nevertheless, it will be convenient to refer to it here in connection with the foregoing cases.

The plaintiff claimed damages for assaults committed on him while travelling on the defendants' railway. It appeared from the evidence that he had been employed in the eviction of pitmen from their houses, and had thereby incurred the ill-will of the pitmen in the neighbourhood in which he was travelling. When he took his ticket the defendants' servants had no notice that he was exposed to greater danger than one of the ordinary travelling public; but before the train started he was threatened, in the hearing of some of the company's officials, with violence by a number of pitmen at the station. In consequence of these threats the plaintiff got into the guard's van for safety, but was removed and placed in a third-class carriage by the defendants' servants, who at this time knew that he had been engaged in the evictions, and that he feared violence in consequence. The pitmen crowded into the compartment in which he was, greatly overcrowding it, but the defendants' servants, when applied to by him, did nothing towards attempting to get the pitmen out, or to get the plaintiff a seat in another carriage. He was assaulted and injured by the pitmen during the journey to the first station at which the train stopped; and at that station the pitmen got out of the compartment, and others got in and repeated the assaults upon him. This happened at each station at which the train stopped, and at each

station he complained of the assaults to the guard, who did nothing to secure his safety. The County Court judge on these facts held the defendant company liable, stating his opinion that the allowing the carriage to be overcrowded (especially after notice that the pitmen were threatening and intending to assault the plaintiff), and also the not removing either the pitmen or the plaintiff from the carriage at two different stations, was negligence on the part of the officers or servants of the company; and that the assault was the consequence of such negligence, and, under the circumstances, not too remote. The defendant company appealed, and the case was heard by a divisional court, consisting of A. L. Smith and Mathew, JJ., who reversed the judgment of the court below. A. L. Smith, J., in the course of his judgment, said: "The cause of action, if any, which the plaintiff had against the defendants, was for an act of omission, and this cannot be supported unless the plaintiff can in the first place establish a duty upon the defendants to do that which it is said they have omitted to do. What is the duty of a railway company to its passengers? It arises out of the contract, and must be determined upon the facts known to the contracting parties at the time of the contract. Ordinarily it is the duty of a carrier of passengers arising out of the contract of carriage to carry the passenger upon the contracted journey with due care and diligence, and to afford him reasonable accommodation in that behalf. If the carrier omits to perform either of these duties, he is responsible for the ordinary consequences arising to the ordinary passengers thereupon. There is no duty in these circumstances to

take extraordinary care of a passenger by reason of any unknown peculiarity then attaching to him. It is said in the present case that the defendant company committed a breach of duty in allowing the carriage in which the plaintiff was travelling to become overcrowded, and that consequently they omitted to supply him with reasonable accommodation, which the House of Lords, in the case of *Jackson* v. *Metropolitan Railway Company* (*a*) had held to be evidence of negligence, *i.e.*, breach of duty on the defendants' part. Be it so. But the obligation which the defendants undertook when they contracted with the plaintiff was that, if they omitted to supply him with reasonable accommodation, they would be liable for the consequences usually arising therefrom to one of the travelling public—not for consequences which might result to a man who required, whilst travelling, special protection for his safety, and which fact was unknown to the company when they contracted to carry him. To an ordinary passenger the consequence of not supplying reasonable accommodation, which is the breach of duty now set up, is certainly not his being assaulted by an independent tort-feasor, which is the sole injury or loss complained of in the present case. The cases put in argument, of the company putting a known lunatic, or a known biting dog, or a known leper, or a man known to be drunk and quarrelsome, into a carriage with one of the ordinary travelling public, have no bearing upon the present case, for the consequences likely to arise therefrom would be well-known to the company when

(*a*) *Ante*, p. 16.

they contracted to carry the passenger. The consequences likely to arise from putting pitmen to travel with a passenger, at the time of the contract believed to be one of the ordinary travelling public, would not be that the pitmen should break the law and assault their fellow-passenger. This is the difference between the cases. For the reasons above, and I do not say there are not others, the judgment of the County Court judge must be reversed, and judgment entered for the defendants with costs here and below."

The gist of this decision is that a railway company cannot be held liable for assaults committed on a passenger owing to such passenger's exceptional relations with his fellow-travellers.

Savage animals.

How far is a railway company liable for injuries occasioned to passengers by savage or uncontrolled animals which may be upon the premises?

If a passenger is injured by such an animal while it is in charge of its owner or his agent, his remedy is, of course, against the owner, and not against the railway company on whose premises it may happen to be; but the question arises, would a railway company be liable for such injuries if caused by an animal which had strayed on to their premises? According to the decision in the case of *Smith* v. *Great Eastern Railway Company*, (*a*) (1866), no liability would attach to the company. In that case an intending passenger had been bitten at a station by a stray dog; it was proved that the dog had attacked other

(*a*) L. R., 2 C. P. 4; 36 L. J.. C. P. 22; 15 L. T., N. S. 246; 15 W. R. 131.

persons in the station shortly before, and had been kicked out by a porter, but had returned. The court held that there was no evidence of negligence by the defendants in keeping the station.

The case might (and no doubt would) be very different where a passenger was injured by a dog or any other animal, while such animal was being conveyed in a passenger-carriage—contrary to the regulations generally in force among railway companies In such a case, whether the animal were in the charge of any person or not, there can be little doubt but that a railway company would be held liable for injuries arising from their negligence in permitting such a breach of their rules, provided that such breach had been brought to the notice of the company's servants.

(c) Crossing line at station.

Accidents to persons crossing "the metals" at railway stations are of such frequent occurrence that, although the liability of the railway company for injuries so received must ever depend on the extent of the invitation to the injured person to use such means of crossing, and to some extent on the position and construction of the crossing, it may not be superfluous to refer shortly to one or two points in connection with this particular source of danger to railway passengers.

Non-effective prohibition.

Where notices have been put up by a railway company forbidding persons to cross the line at a particular point, but these notices have been continually disregarded by the public, and the company's servants have not interfered to enforce their observance, the company cannot, in the case of an injury occurring to

anyone crossing the line at that point, set up the existence of the notices by way of answer to an action for damages for such injury. (*a*) But where it is not clear that the company did acquiesce in this way, the passenger must take the consequences of negligently crossing the line, if he knew, or ought to have known, that there was a bridge provided for the purpose. (*b*)

Dangerous construction of crossing,

In the case of *Wright* v. *Great Northern Railway Company*—1881—(*c*) the plaintiff, an intending passenger from Newbliss Station, in Ireland, wished to cross from the down platform to travel by the up-train. A down train was in the station. There was a gate usually, and in this case, open at the end of the down platform. The plaintiff was unacquainted with the station, and was not warned against crossing the line, which, having passed through the open gate referred to, he proceeded to do. The actual crossing was oblique, and not straight across from platform to platform. Plaintiff ran straight across the line, not following the oblique crossing, and while doing so he saw the up-train (by which he wished to travel) approaching, though he had heard no whistle. He tried to jump on to the platform, which was here of full height, and not sloped as at the ends of the crossing, but was caught by the approaching train

(*a*) *Dublin, Wicklow, and Wexford Railway Company* v. *Slattery* (1878), 39 L. T., N. S. 365; 27 W. R. 191; L. R., 3 App. Cases, 1155; L. R., Ir., 10 C. L. 256; also *Rogers* v. *Rhymney Railway Company*, 26 L. T., N. S. 879.

(*b*) *Wilby* v. *Midland Railway Company*, 35 L. T., N. S. 244; *Clarke* v. *Midland Railway Company*, 43 L. T., N. S. 381.

(*c*) L. R., Ir., 8 C. L. 257.

and injured. If he had remained in the spot whence he had first seen the advancing train he would have been safe. The jury found a verdict for the plaintiff—not on the ground of the company's negligence either as to the open gate or the non-whistling, but on account of what they held to be the dangerous construction of the crossing; and they did not find that the plaintiff had by his own conduct been guilty of contributory negligence. On appeal, however, the court held that this verdict could not be sustained, as it was against the weight of evidence as regards the plaintiff's contributory negligence.

Dangerous situation of crossing.

In another case (*Coburn* v. *Great Northern Railway Company*, 1891) (*a*) it appeared that, owing to a curve in the line, approaching trains did not come into view until within 275 yards of a level crossing, which was the only means provided for getting from platform to platform at a certain country station. It took a fast train eight or nine seconds to traverse this distance. The plaintiff's wife, who had alighted from a train which had then been shunted, was knocked down and killed by an express train, while trying to cross the line at the usual place. The evidence proved that, though the gates at the opposite side of the crossing were locked and carts were waiting outside them, there was no whistling or other warning of the advancing train. The Court of Appeal held that, as the station was a peculiarly dangerous one, owing to the nearness of the curve, precautions ought to have been taken to warn passengers about to cross, of the approach of the

(*a*) 8 Times L. R. 31.

express train, and that as this had not been done the railway company was liable.

Misleading conduct of officials.

In *Crowther* v. *Lancashire and Yorkshire Railway Company* (1889) (*a*) the defendants were held liable for the death of the plaintiff's wife on the ground that the conduct of one of their officials misled her into attempting to cross the line when it was, in fact, dangerous to do so. The station master had told the persons waiting for an "up slow" train at a country station not to cross from the booking office to the platform from which their train would depart until an "up express," due at 2.8 p.m., had passed through. A fast train ran through the station at 2.10 p.m., and after waiting a minute or two, the plaintiff, his wife, and son seeing a train approaching, which they took to be their "slow," proceeded to cross the line at the usual place. The approaching train was, however, in reality, the express due at 2.8 p.m., the preceding one being a "special." The express, coming up much more rapidly than they (believing it was the "slow") had expected, the plaintiff's wife was knocked down and killed. The Court of Appeal, before whom the case finally came, confirmed the verdict for the plaintiff which had been found by the jury at the original trial. The ground of their decision was that the station-master, though he knew that the special train was not the expected express, had retired into his office after the "special" had passed, without telling the waiting people that it was not the train against the approach of which he had warned them.

(*a*) 6 Times L. R. 18.

The court found no contributory negligence on the part of the deceased, as, if the train which killed her had been the "slow," as she reasonably assumed, there would have been no danger in crossing as she had done.

Absence of usual warning of approaching train.

The railway company has also been held liable for the death of a person killed at a station crossing, when the ringing of a bell—the customary warning that a train was coming—was omitted (*a*).

(*d*) *Injuries from "slamming" doors of carriages.*

Though usually not the most serious, still, certainly not the least painful and frequent railway accidents are those arising from the (sometimes excessive) energy with which railway officials are in the habit of closing the doors of carriages at a standstill, or, more frequently and with more excuse perhaps, when in motion. The decided cases on this point are very numerous and, of course, the decisions vary according to the particular facts.

Absence of warning

Fordham v. *London, Brighton, and South Coast Railway Company* (*b*) (1868) is a case very frequently referred to in this connection and one which it will be well to consider. The plaintiff, when getting into a railway carriage at Dulwich station between eight and nine o'clock in the evening, put his hand on the "hinge" side of the door of the carriage, which was standing open; before he had got quite in and taken his seat the guard of the train came, and, without any warning, slammed the door upon the plaintiff's hand,

(*a*) *Wright* v. *Midland Railway Company*, 1 Times L. R. 406; and see also *Brown* v. *Great Western Railway Company*. 1 Times L. R. 614.

(*b*) L. R., 3 C. P. 368; 4 C. P. 619; 38 L. J., C. P. 324.

jamming it between the door and the door-post. It appeared, from the plaintiff's evidence at the trial that there was no hand-rail by which to get into the carriage, or at least none which could be seen, it being after dark and no light being sufficiently near. The train, though about to start, had not moved at the time of the accident. The jury found a verdict for the plaintiff with 25*l.* damages. The defendant company appealed to the Court of Common Pleas, chiefly on the ground that the evidence showed that the plaintiff had been guilty of contributory negligence in placing his hand where he did, and that it was the position of the hand, and not the shutting of the door, that caused the accident, and that, therefore, the judge ought not to have let the case go to the jury. The verdict for the plaintiff was, however, upheld, Byles, J. remarking: "No doubt the position of the plaintiff's hand was the *causa sine quâ non*, but was the position of the plaintiff's hand, at that moment, a negligence which caused the accident? The plaintiff was a third-class passenger. It was after dark. He saw no handle. According to his witnesses there either was none to see or no light to see it. He carried a bundle, which he had a right to take with him into the carriage. He had to mount with that bundle a considerable height. The train had not started; it was waiting. The plaintiff did not keep his hand where it was longer than was necessary to enable him to get into the carriage, for he had not got in when the accident occurred. The jury might have concluded from these facts that the plaintiff could not have got in otherwise than he did, and that

he might reasonably suppose that the door would not be slammed upon him prematurely and without previous warning; that if this had not been done by the guard, no injury could have happened, so that what the plaintiff did was not originally negligence, and had not become negligence contributory to the accident." Notwithstanding this decision the defendants carried the case to the Court of Exchequer Chamber, where it was finally decided in favour of the plaintiff.

In this case, no doubt, a fact that largely influenced the finding of the jury was that the plaintiff had not had time to complete the action of taking his seat, or even of entering the carriage, before the guard closed the door on him, knocking him forward on to another passenger. That fact alone must naturally have operated strongly in the jury's mind as an indication of the guard's negligence. (*a*)

A doubtful case.

In an earlier case (*Coleman* v. *South-Eastern Railway Company* (*b*) (1866) the passenger was successful in his action, although the evidence in his favour was not nearly so strong as in the preceding instance. The plaintiff, a child nine years old, entered a carriage at Charing Cross with his father; the door was shut by a porter, and the child, who was taking his seat, had his fingers crushed between the door and the hinge-post. Although the father entered

(*a*) See also *Maddox* v. *London, Chatham, and Dover Railway Company* (1878), 38 L. T. 458; *Atkins* v. *South-Eastern Railway Company*, 2 Times L. R. 94; *Catherall* v. *Mersey Railway Company*, 3 Times L. R. 508.

(*b*) 12 Jur. N. S. 944; 4 H. & C. 699.

behind the child, the closing door only touched the former's back, and one can therefore well understand the remark of Chief Baron Kelly (who dissented from the other members of the Court before which the case came on appeal, after the Court below had found for the plaintiff with 5*l.* damages,) when he says, "That the plaintiff had sufficient time to enter and seat himself is clear, for his father, who followed him, was inside the compartment when the door was shut, and the child had taken the seat nearest the door. We cannot treat the case of a person of this age otherwise than the case of any other person, and this conduct on his part certainly contributed to the accident." In spite of this seemingly well-deserved observation, the majority of the Court (Barons Martin, Channell, and Pigott) upheld the verdict for the plaintiff.

Door closed after warning given.

When the door is only closed after some sort of warning has been given to the passengers, it will be difficult to fix the railway company with negligence for any consequent injury. It will be remembered that in the case of *Fordham* v. *London, Brighton, and South Coast Railway Company* (*ante*, p. 69) a strong point in the plaintiff's case was the absence of any warning. In the case of *Richardson* v. *Metropolitan Railway Company* (*a*) (1868) the plaintiff, after getting into a full carriage, left his hand for half a minute on the door-jamb; the guard, after calling out "Take your seats," shut the doors of the carriages, and, not seeing the plaintiff's hand, crushed his thumb

(*a*) 18 L. T., N. S. 721; 37 L. J., C. P. 300; L. R., 3 C. P. 374.

in shutting the door. At the trial a verdict was found for the plaintiff, but, on appeal, the Court of Common Pleas reversed this decision on the ground that there was no evidence of negligence by the defendants, and that there was evidence of negligence by the plaintiff. The Court were of opinion that this case was not the same as that of *Fordham* v. *London, Brighton, and South Coast Railway Company*, and also intimated that they considered that a very doubtful case.

Combined "door-slamming" and over-crowding

One of the most important and most frequently cited cases on the subject of "door-slamming" (and also on "over-crowding") is that of *Jackson* v. *Metropolitan Railway Company* (*a*) which has been fully considered in connection with the question of "Proximate cause of injury" (*ante*, p. 16).

Another case turning (or might we say *hinging ?*) on both these points is that of *Bullner* v. *London, Chatham, and Dover Railway Company* (*b*) (1885). At the Elephant and Castle Station the train for which the plaintiff was waiting came up quite full, and he could not find a seat. The platform was crowded. The porters cried out "Get in; it is the last train." The plaintiff just got in the last compartment of the last carriage, and, turning round while still standing, had a push from a fellow passenger. To save himself, he put out his hand, and a porter coming up and closing the door "in the usual way" his finger was caught and injured. In the action which the plaintiff brought

(*a*) L. R., 3 App. Cas. 193; 37 L. T., N. S. 679; 47 L. J., C. P. 303; 26 W. R. 175.

(*b*) 1 Times L. R. 534.

in the County Court the judge non-suited him on the precedent of *Jackson* v. *Metropolitan Railway Company.* (*a*) On appeal this decision was upheld, Mathew, J. remarking: In "*Jackson's case* the Lords held that the mere fact that the carriage is overcrowded does not make the company liable if one of the passengers—through other circumstances—happens to have his finger or thumb injured, as other circumstances intervened, and in this case another passenger pushed the plaintiff."

Both this case and that of *Jackson* v. *Metropolitan Railway Company,* really turn upon the question of "causation" as opposed to mere sequence of incidents preceding an injury, but as a very large number of "door-slamming" cases involve consideration of this point it has been thought advisable to refer to them here.

The carriage-door as a "weapon against passengers."

In the case of *Jones* v. *Great Western Railway Company* (*b*)—1885—the plaintiff had taken his seat next the door and had his arm up, holding something in his hand at the side of the carriage, the door being open. He had been in the carriage about three minutes when the guard blew his whistle, the train moved on, and at that moment a porter shut the door violently against the plaintiff's arm, injuring the elbow. The County Court judge thought there was evidence of negligence, and no evidence of contributory negligence, and gave judgment for the plaintiff with 50*l.* damages. On appeal, Mathew, J.

(*a*) *Ante*, p. 16.
(*b*) 1 Times L. R. 333.

remarked: "Each case must depend on its circumstances, and it is difficult to decide any case upon decisions in others. Slamming doors is not necessarily evidence of negligence, but it is certainly not evidence of care, and it may, in certain cases, be very strong evidence of negligence, and is so in this case. The train was late; it was delayed a little by persons getting in without tickets; then the train was started suddenly before the doors were closed, the porter came up and slammed the door violently, and it struck the plaintiff's arm and injured it. The porter shut the door so suddenly and quickly as to afford the plaintiff no opportunity of withdrawing his arm. Under such circumstances it is impossible to set aside the judgment for the plaintiff without laying it down that railway porters may use doors of carriages as weapons against passengers."

The court distinguished this case from that of *Jackson* v. *Metropolitan Railway Company*, pointing out that in the latter case the Lords reversed the decision of the court below, and found for the defendant company on the ground that the *overcrowding* was not the cause of the accident, and not because there was not negligence.

We have now considered the classes of accidents to which railway passengers are most frequently liable before their journey actually commences.

Following out our plan of treating of the different incidents in the order of the usual stages of a journey, we will assume that, in spite of the many preliminary perils which we have indicated, our traveller has

got fairly under way without having so far come to grief. We have now, then, to consider the dangers *en route*.

Sect. 2. Accidents during the Journey.

(a) *Doors and windows.*

The doors of railway carriages in motion are supposed to be securely fastened, and, as a general rule, if they are not so fastened, and an accident consequently ensues, the railway company will be liable for the results.

Door flying open while looking out of window.

In the case of *Gee* v. *Metropolitan Railway Company* (a)—1873—the facts were as follows:—The plaintiff, in company with his brother, took a ticket from Victoria to Aldersgate-street Station, and entered a second-class carriage, across the window of which was a small brass rod or bar. Some conversation having arisen between the plaintiff and his brother with respect to the mode of signalling on the Metropolitan Railway, the plaintiff, as the train was approaching the Sloane-square station, stood up with the intention of observing the signal lights at the station. He took hold of the cross-bar on the window of the off-side door, and leant a little forward for the purpose of looking out, when the door immediately flew open and he fell upon the railway, sustaining the injury complained of. No further evidence was given as to the condition of the door or its fastening from the time the train left Westminster till the time of the accident. A verdict for the plaintiff with 250*l.*

(a) L. R., 8 Q. B. 161; 28 L. T., N. S. 282; 42 L. J., Q. B. 105; 21 W. R. 504.

damages was returned. The defendants appealed to the Court of Queen's Bench, but without success, and on carrying the case up to the Court of Exchequer the result was the same. In the course of his judgment Chief Baron Kelly remarked: "I am of opinion that there was evidence for the jury to consider whether the defendants had not, when the train left the station, failed to see that the door was properly fastened in the ordinary manner in which such doors are fastened. I think it was their duty to see that the door was fastened before it left the station, and that the fact that it flew open was evidence that it was not properly fastened. The degree of pressure applied by the plaintiff was not sufficient to account for its flying open. . . . I think that there was clearly no evidence of contributory negligence. . . . I think that any passenger in a railway carriage who rises for the purpose of looking out of the window, or for some lawful purpose, and brings his body into contact with the door, has a right to assume, and is justified in assuming, the door is properly fastened; and if, by reason of the door being improperly fastened, the act which he does causes the door to fly open, any accident which is caused thereby is owing to the omission on the part of the company."

Doors "not meant to be leant upon"—?

In a similar but earlier case (*Warburton* v. *Midland Railway Company*) (*a*) (1870) Blackburn, J. remarked that doors "were not meant to be leant upon," and if the jury thought the plaintiff had borne with unusual

(*a*) 21 L. T. N. S. 835.

pressure on the door, the railway company would not be liable. This statement of the law can scarcely have been well considered by the learned judge, and it is certainly not consistent with the decision in the previous and other similiar cases on this point.

Door flying open owing to passenger falling against it.

An even stronger case than *Gee* v. *Metropolitan Railway Company* is that of *Dudman* v. *North London Railway Company*, decided in 1885. (*a*) Two boys travelling on the Metropolitan line, were playing in the carriage. The plaintiff, to avoid a blow from his companion, jumped up against the carriage door which opened, causing him to fall on to the line, where his arm was crushed by a passing train. A verdict for the plaintiff with 250*l.* damages having been returned, the railway company appealed on the ground of contributory negligence, their counsel remarking that a railway carriage was "not a playground; the plaintiff was acting improperly at the time of the accident, and his conduct was not that of an ordinary passenger." The Court of Appeal, however, upheld the verdict, Lopes, J., saying "There was negligence in leaving the door unfastened; the plaintiff had no suspicion that it was unfastened, and there was no want of reasonable care on his part."

Falling out while trying to fasten door.

Of course a plaintiff may put himself out of court in this as in other classes of accidents, through contributing to bring about the catastrophe by his own carelessness. A very strong example of this is to be

(*a*) 2 Times L. R. 365; see also *Richards* v. *Great Eastern Railway Company* (1873), 28 L. T., N. S. 711; in which case the train had come to a standstill; but this must be considered a doubtful decision.

found in the case of *Adams* v. *Lancashire and Yorkshire Railway Company*, (1869) (*a*). The plaintiff was a passenger in a frequently-stopping train; the door of the carriage in which he was flew open several times, and on each occasion he closed it. After the third attempt he held it to with his hand, but, his arm getting tired, he let go and the door again flew open. He then endeavoured to lean out and fasten it on the outside, but in doing so fell out, and received the injuries in respect of which he claimed compensation. A verdict was found for the plaintiff, but the Court of Common Pleas set it aside on the ground that, though there might have been some negligence on the part of the defendants in not having a proper fastening, still this negligence was not the *immediate* or *effectual* cause of the accident, the negligence of the plaintiff himself being in fact the proximate cause. There was no evidence to show that the plaintiff was endangered (or even inconvenienced) by the open door, and there was ample room in the carriage for him to get away from it. Nevertheless, he voluntarily put himself into a perilous situation, which conduct was the proximate and effectual cause of the accident.

Alternative peril: Danger v. Inconvenience.

As to whether, under certain circumstances, a passenger may voluntarily incur a certain amount of peril without being guilty of such contributory negligence as will debar him from recovering compensation for any resulting damage, the words of

(*b*) L. R., 4 C. P. 739; 38 L. J., C. P. 277; 20 L. T., N. S. 850; 17 W. R. 884.

Montagu Smith, J., in giving judgment in this case may be quoted: "I agree to the proposition that if the neglect of the defendants puts a passenger in a position of alternative danger, so that there is danger if he remains still, and also danger if he attempts to avoid it, and if, in so attempting to avoid it, an injury occurs to him, such injury flows from the negligence of the defendants; but if this be not so, and he is only subjected to inconvenience, and voluntarily runs into peril to remedy it, and receives injury, such injury does not arise from the negligence of the defendants. It is not necessary to lay this down as a general rule, for I by no means say that, if there be great inconvenience and little peril, it may not be reasonable in some cases to run the risk." (*a*)

Window falling suddenly.

The mere fact of a railway carriage window falling suddenly and causing damage is, of itself, no evidence of negligence on the part of the railway company. In the case of *Murray* v. *Metropolitan District Railway Company* (*b*), the plaintiff, who was seated next the door of the carriage, placed his right hand on the seat, allowing his left to rest on the window-sill, and, as the train approached a station, the vibration of the brake being suddenly applied caused the window to fall, seriously wounding his finger. He sought compensation for the injury but was nonsuited, and this decision was supported on appeal. A model of the carriage was produced, but there was no evidence of defective

(*a*) See on this point Lord Ellenborough's judgment in *Jones* v. *Boyce*, 1 Stark, 493.

(*b*) 27 L. T., N. S. 762.

construction. Chief Baron Kelly treated the claim as a *reductio ad absurdum,* saying "There is no evidence of negligence, unless it be contended that the company are bound to examine each window of each carriage before each journey.

(b) Mean communication between passenger and guard, &c.

The importance of railway trains being fitted with an adequate means of communication for use in case of need between passengers and those who have control of the train, cannot be over-estimated, and for many years past this has been rendered compulsory by Act of Parliament, (*a*) which enacts: "Every company shall provide and maintain in good working order, in every train worked by it which carries passengers and travels more than twenty miles without stopping, such efficient means of communication between the passengers and the servants of the company in charge of the train as the Board of Trade may approve." In connection with the Act of Parliament above quoted the Board of Trade issued a recommendation to all railway companies, that "there should be means of intercommunication between a guard at the tail of every passenger train and the engine-driver, and between passengers and the servants of the company."

The leading case in which the absence of the prescribed means of communication has materially affected the liability of a company for the results of a railway accident is *Blamires* v. *Lancashire and Yorkshire Railway Company* (*b*) (1873). The plaintiff in

(*a*) Regulation of Railways Act, 31 & 32 Vict. c. 119, s. 22.
(*b*) L. R., 8 Ex. 283; 42 L. J. Ex., 182.

this case was a passenger by an excursion train from Cleckheaton to Blackpool, and travelled in the seventh carriage from the guard's van. Shortly after passing through Blackpool station a severe shock was felt in that carriage "as if the end of the carriage had been lifted up and suddenly let fall." Shortly after, a more severe shock was felt, which threw the passengers from their seats. After two or three minutes a third shock occurred, followed by continuous jerks, and then the train separated between the seventh and eighth carriages. The seventh carriage was thrown down an embankment, and the plaintiff and several other persons sustained severe injuries. The shocks preceding the accident were also felt in all the carriages behind the seventh.

At the trial it appeared that the accident occurred owing to the breaking of a tire across a rivet hole; the plaintiff offered evidence to show that this was due to negligence on the part of the company, and the defendants gave evidence to negative this proposition. In the result the jury found that, as regards the breakage of the tire, there was no negligence on the part of the defendants. But the plaintiff, in addition, relied on the want of means of communication between the passengers and the guard and engine-driver, and between the guard and the engine-driver and themselves, and in support of the view that the want of such means of communication constitutes negligence the plaintiff referred to the Act of Parliament above quoted. (*a*) The facts proved that there were in this

(*a*) 31 & 32 Vict. c. 119, s. 22 (*ante*, p. 81).

case no means of communication whatever in any carriage of the train, and several witnesses in different carriages proved that, on the second shock occurring, they looked for such means of communication, and if there had been any such they would have used them, and that there was then time to have stopped the train before the accident happened. On the evidence given, however, the defendants denied that this could have been done. There was no means of communication between the guard and the engine-driver except the brake, which the guard applied on the occurrence of the third shock, until that time not knowing that anything was wrong. As regards the question whether the particular train came within the scope of the Act of Parliament (*a*) as being one "travelling more than twenty miles without stopping," the evidence went to show that, according to the time-table delivered to the guard, the train was to run through several stations (which would have been a greater distance than the statutory limit of twenty miles) without stopping; but the company, in opposition to this, gave evidence of general instructions to their officials that excursion trains were not to travel more than twenty miles without stopping. The jury found that the time-table delivered to the guard, taken together with the general instructions, did not prevent the excursion train running more than twenty miles without stopping, and that the want of the means of communication was negligence on the part of the company causing or materially conducing to

(*a*) *Ante*, p. 81.

cause the accident. The verdict was upheld on appeal.

It may be noticed that, early in 1892, an application was made to the Board of Trade to extend the compulsory fitting of means of communication to all passenger trains, but it was not acceded to.

(c) *Accidents to train itself.* Collisions.

In no class of railway accidents is there so strong a *primâ facie* presumption of negligence against a company as in cases of collision, where both trains are under that company's control (*a*); in fact the presumption is so strong that it is seldom capable of being rebutted. Still, that it is possible for a defendant company to rebut the presumption was proved by the case of *Hart* v. *Lancashire and Yorkshire Railway Company* (1869) (*b*). The facts in this case were extraordinary: At Miles Platting station, on the defendants' main line, a few miles from Manchester, there were sidings leading from the main line of rails to coaling and engine sheds, the points of which sidings were always open on to the main line. On the day in question an engine had, in accordance with the usual practice, been taken by a servant of the company appointed for the purpose to the coaling-shed, and was returning slowly therefrom on its way to the engine-shed. In the ordinary course of things the engine would have gone along the siding until it passed the points of the siding leading to the engine-shed, when it would have been reversed and backed

(*a*) *Skinner* v. *London, Brighton, and South Coast Railway Company*, 5 Ex. 787.

(*b*) 21 L. T., N. S. 261.

over them into that shed; but, at the moment when the driver should have reversed, he fell down in a fit on the footboard of the engine, which consequently proceeded on towards the main line. At this moment a down express from Manchester and an up express from Rochdale were approaching the station at full speed, and the pointsman in charge of the points at the spot, seeing the runaway engine with the man lying on the floor approaching, in order to prevent its getting on to the main line and colliding with either of these expresses, deliberately, as a choice of evils, turned the points so as to send it on to a branch line from Ashton which formed a junction at this station with the main line, at the platform of which branch line he knew that a train was stopping for tickets to be collected. The consequence was that the engine ran into the stationary branch train, and the plaintiff, a second-class passenger in one of the carriages of that train, was injured. He sued the company for compensation on the ground of negligence, firstly, in not having two men on the engine while coaling and running it from the coaling-shed to the engine-shed; and secondly, in having the points of the siding so arranged that the engine must necessarily in case of accident to the driver, pass on to the main line; and the fact of an alteration having been made since their accident, so that a runaway engine would pass on to a supplementary siding leading up to a "dead end" was urged as evidence of their previous negligence in this respect. It was admitted on all hands that the pointsman had acted with great presence of mind, and for the best under the circumstances. A verdict with

damages was found for the plaintiff, but a rule for a new trial was obtained on the ground that there was no evidence of negligence on the part of the defendants fixing them with liability, and this rule was made absolute by the Court of Exchequer, because :—

1. There was nothing dangerous or peculiarly risky in the operation of coaling engines and running them to and from the coaling and engine-sheds, and, it being an operation usually performed properly by one man, the not employing two men to perform it was not deemed negligence in the defendants.
2. The arrangement of the sidings having been used for twenty years without accident, the defendants could not be held bound to have foreseen the accident, or to be held responsible for it upon its happening; nor was the subsequent alteration of the siding rails evidence of antecedent negligence on their part in that respect. Baron Channell in his judgment remarked :—"The pointsman was justified in turning the points in the way he did, and the company are not bound to warrant that the men employed by them on their engines shall be free from attacks of illness. With regard to the branch siding and its alteration since the accident, it is not because the defendants have become wiser, and done something subsequently to the accident, that their doing so is to be evidence of any antecedent negligence on their part in that respect."

Running off line.

Whether or no the mere fact of a train running

off the line is in itself sufficient to support an action for negligence, is a point on which the courts have spoken with somewhat uncertain voice. There have been many decisions on the subject, and it is impossible to reconcile them all. Two cases, especially, decided by the same judge (Baron Pollock) afford a striking example of this inconsistency. In the case of *Bird* v. *Great Northern Railway Company* (*a*) (1858) the accident arose owing to the engine leaving the rails at a spot to which the process of "fishing" the rails, which was being carried on above and below that point, had not been extended. It was admitted that this process was an improvement, but it had only lately been introduced, and on many railways had not been carried out. At the trial the jury found for the defendant company, on the ground that there was not sufficient evidence as to the cause of the accident. A new trial was moved for on the ground of misdirection, in that the jury were not told that there was a *primâ facie* case of negligence, and that if it was not satisfactorily answered by the defendants, the verdict should be for the plaintiff. In support of this contention the case of *Carpue* v. *London, Brighton, and South Coast Railway Company* (*b*) was quoted to the effect that in actions against a company for not safely carrying, the onus is upon the defendants to explain the cause of the occurrence. "That depends," replied Baron Pollock, "on the nature of the accident. If it arises from a collision of

(*a*) 28 L. J. Ex. 3.
(*b*) L. R., 5 Q. B. 747; 13 L. J., Q. B. 133 (*ante*, p. 29).

different trains on the same line it may be so. Here it was otherwise; the evidence was of a nature consistent with the absence of negligence. It was for the plaintiff to prove negligence. The defendants' undertaking was not to carry safely, but with reasonable care. Therefore the burthen of proof was on the plaintiff."

In the case, however, of *Dawson* v. *Manchester, Sheffield, and Lincolnshire Railway Company*, (*a*) which came before him four years later (1862) the learned judge seems to have changed his mind. The engine of a fast train (thirty-seven miles per hour) ran off the line at a curve, and dragged some of the carriages after it. On examination it was found that the axle-tree of the engine was broken close to the wheel, but whether this was the cause or result of the accident there was no evidence to show. There was no patent or visible flaw in the axle which could have been discovered. The jury found for the plaintiff, and on appeal this finding was upheld, Baron Pollock saying: "Where an accident happens to a passenger in a carriage on a line of railway, either by the carriage breaking down or running off the rails, that is *primâ facie* evidence for the jury of negligence on the part of the railway company. There was such *primâ facie* evidence of negligence here, and it was not rebutted by any evidence on the part of the defendants."

After these two decisions have been studied we may, perhaps, be forgiven for hesitating to lay down definitely whether or no there is a *primâ facie*

(*a*) 5 L. T., N. S., Ex. 682.

case against a railway company in accidents of this class.

Defects in rolling-stock.

As regards accidents happening through defects in the rolling stock, &c., the extent of liability is much more clear. As previously stated (*a*) railway companies do not insure their passengers' safety, but undertake to carry with reasonable care, and it is therefore necessary, in order to sustain an action under such circumstances, for the plaintiff to affirmatively prove the existence, previous to the accident, of some apparent defect which might, by the exercise of reasonable caution, have been discovered by the defendants. Where an accident arose from the breaking of a tire owing to a latent flaw not attributable to the fault of the manufacturers, and which could not have been previously detected, the defendants were held not liable. (*b*)

It must be recollected that a railway company who purchase their rolling stock from competent manufacturers in the due course of business are responsible for the negligence of those manufacturers in the construction of that stock to the same extent as they would be in case they were themselves the manufacturers. (*c*)

Inspection of rolling-stock.

What is to be deemed reasonably careful inspection of rolling-stock on the part of the railway company? This point was somewhat critically considered in the case of *Stokes and others* v. *Eastern Counties Railway*

(*a*) *Ante*, Cap. II., sect. 2, p. 43.

(*b*) *Readhead* v. *Midland Railway Company*, *ante*, p. 41.

(*c*) See *Burns* v. *Cork and Bandon Railway Company* (1862), L. R., Ir., 13 C. L. 543.

Company (*a*), in which an accident was alleged to have been caused by the negligence of the defendant company in using a tire which, owing to a flaw in it, was defective. It was suggested that the flaw was due either to the fault of the company in the original welding, or else that it had arisen in the course of use, so as to have become visible or capable of detection on proper examination. There was evidence of a longitudinal flaw in the original making of the tire, and also of a transverse flaw or defect in the welding. It was agreed that the first defect was not the cause of the accident, and that the true cause was the giving way of the iron at the transverse flaw; but it was suggested that the longitudinal flaw ought to have attracted attention to the tire as a sign of its weakness. It was also suggested that the use of the tire after it had been worn down to a certain degree of thinness was negligence which had led to the accident. The thinness of the tire was apparent, and the evidence was contradictory as to whether it was dangerous. There was conflicting testimony as to whether the other flaws or defects were visible before the accident. The evidence that they were so was scientific and speculative; the evidence that they were not so was practical and positive. The accident occurred on the 26th Feb., and the last time the tire was turned was in the previous October, the wheel having run constantly since without any sign of weakness which had actually been seen or was proved to have been actually visible. The jury found that there was no evidence of

(*a*) 2 F. & F. 691.

negligence on the part of the railway company. According to Cockburn, J., in this and similar cases, the question is not whether, according to evidence of a speculative and scientific kind, the flaw might possibly have been detected, but whether practically and by the use of ordinary and reasonable care it ought to have been observed (*a*).

Defects in permanent way.

Where accidents happen owing to defects in the permanent way, bridges, &c., of a railway, the maxim "*Res ipsa loquitur*" generally applies (*ante*, p. 26), and it will be for the defendant company to rebut the presumption of liability thus cast on them.

In *Great Western Railway of Canada* v. *Braid* (*b*) Lord Chelmsford remarks: "There is no doubt that, where an injury is alleged to have arisen from the improper construction of a railway, the fact of its having given way will amount to *primâ facie* evidence of its insufficiency, and this evidence may become conclusive from the absence of any proof on the part of the company to rebut it." In the case in question the accident was due to the falling away of the embankment on which the rails were laid, for a space of some forty-five yards. It was submitted for the defence that this subsidence was due to the excessively violent weather (it being shown that a storm of unusual violence was raging at the time), and that

Subsidence of embankment owing to violent storm: Railway company liable.

(*a*) See also *Manser* v. *Eastern Counties Railway Company* (3 L. T., N. S., Ex. 585) in which case the jury found that the railway company might reasonably have been expected to test afresh a tire which had been "turned," and were guilty of negligence in not doing so.

(*b*) 1 Moo. P. C. C., N. S. 103.

the railway company could not be fairly expected to foresee and guard against the damage caused by exceptional atmospheric disturbances. The embankment in question had stood for five years without injury. The railway company was held liable, Lord Chelmsford, in the course of giving the judgment of the court in this case, further remarked: "The railway company ought to have constructed their works in such a manner as to be capable of resisting all the violence of weather which in the climate of Canada might be expected, though rarely, to occur."

Subsidence of embankment owing to *phenomenal* weather: Railway company may escape liability.

In this connection the cases of *Withers* v. *Great Northern Railway Company* (*a*) and *Wyborn* v. *Great Northern Railway Company* (*b*) (1858) are of importance. They also were claims for compensation for injuries received owing to an accident caused by the subsidence of an embankment after an extraordinary storm and violent rain. The country through which the railway ran was of a marshy nature, and it was alleged by the plaintiffs that the railway company had been guilty of negligence in the construction of a line "on a low embankment composed of a sandy sort of soil likely to be worked away by water, and that the culverts were insufficient to carry off the water." It was furthermore alleged that at the time of the accident the train was travelling at an excessive rate of speed. A verdict was given for the plaintiff with heavy damages. A new trial was, however, obtained on the grounds, firstly, that "the line had lasted five years in a country subject to floods, and it does not

(*a*) 1 F. & F. 162. (*b*) 1 F. & F. 165.

appear that there had been any accident or objection to its construction until this extraordinary flood occurred. The company were not bound to have a line constructed so as to meet such extraordinary floods." In the second place, "The speed was the ordinary express train speed, and there had been nothing to indicate there would be danger in continuing it."

Inference from this decision. The Canadian and English cases distinguished.

From this decision it would seem that railway companies will not be held liable for accidents attributable to causes which could not reasonably have been foreseen, and which were dependent upon quite unusual and unlooked-for conditions of weather or other natural circumstances. The difference between the decisions in the above cases seems to arise from the fact that in the former case the storm, although of exceptional violence, was one which might naturally be considered to be within the range of Canadian weather, while in the latter two cases the accident was due to a storm and consequent flood of a character quite phenomenal in the district where it happened. In other words, the storm in the first case might have been reasonably anticipated and guarded against by a prudent man in building the embankment, while in the latter cases it could not have been so foreseen.

Break-down of bridge.

The mere employment of a competent engineer will not suffice to exonerate a railway company from liability for accidents due to defects in the permanent way, bridges, &c., unless they can also show that they have used reasonable care and proper materials in the construction of the works. As has already been seen (Lord Chelmsford's judgment *supra*) the onus of proof in such cases is upon the railway company. In

the case of *Grote* v. *Chester and Holyhead Railway Company* (*a*) (1848)—which was an action for compensation on account of injuries sustained by the breakdown of a bridge, alleged to have been improperly made, but which had been constructed under the superintendence of a competent engineer—the judge directed the jury that the question for them to consider was "Whether the bridge had been constructed and maintained with sufficient care and skill, and of reasonably proper strength having regard to the purpose for which it was made." It was held on appeal that this direction was right.

Sect. 3. Accidents on Leaving Train.

(*a*) *Trains overshooting platform: "Invitation to alight."*

A frequent cause of accidents to railway passengers who have escaped *en route* the various dangers which have been referred to in the last section, is the fact of the train (or some portion of it) not stopping alongside the station platform. Sometimes the train is altogether too long for the platform (especially at small country stations), sometimes the driver misjudges the speed at which the train is travelling, and either overshoots the platform or brings the carriage to a standstill too soon. Whatever the cause, the result is frequently a sprained ankle or a broken leg to some passenger who is either unaware of the fact or, being aware of it, still endeavours to alight, either to avoid delay, or in the fear that the train will proceed without allowing him any further opportunity of getting out. It is therefore obviously of great

(*a*) 2 Exch. 251 ; 5 Railw. C. 649.

importance for us to consider carefully what are the circumstances which will cast liability on a railway company for accidents arising from this cause. The broad question in such cases would appear to be, "Was the plaintiff misled in any way as to the circumstances, by acts or omissions on the part of the railway company's servants; or did he act spontaneously with full knowledge of the position and its attendant risks? Was there, in fact, such a state of circumstances as might induce a reasonable man to infer that there was an invitation to alight?" (*a*)

Siner v. Great Western Railway Company.

In the case of *Siner and wife* v. *Great Western Railway Company* (*b*) (1868), the carriage in which the plaintiffs were travelling stopped at a point beyond the platform in the daytime. They were neither told to get out nor to remain in the carriage. No servant of the railway company was to be seen, and after waiting three or four minutes, observing nothing which would suggest that the train was going to be backed, and fearing lest they should be carried on, the male plaintiff jumped from the carriage and then assisted his wife to do the same, but she in so alighting sustained the injury in respect of which the action was brought. It was not shown that the platform at the station was inadequate to the ordinary traffic of the place, the train in question being of

(*a*) There can be no "invitation to alight" where the situation is obviously dangerous: (*Baird* v. *South London Tramways Company*, 2 Times L. R. 756.)

(*b*) 38 L. J., Ex. 67; L. R., 4 Ex. 117; 20 L. T., N. S. 114; 17 W. R. 417. See also *Foy* v. *London, Brighton, and South-Coast Railway Company*, 18 C. B., N. S. 225.

exceptional length. It was held, on these facts, by the Court of Exchequer Chamber on appeal from the Court of Exchequer, that the accident arose from the acts of the plaintiffs, and that there was no evidence of negligence on the defendants' part to go to the jury.

Now this seems a somewhat extreme decision, and it is very doubtful how far it must now be relied on. It has not so far been absolutely overruled, but it has been so often "distinguished," (with so many refinements of distinction) that it is clearly not in accord with the principle of later decisions.

Robson v. North-Eastern Railway Company.

In the case of *Robson* v. *North-Eastern Railway Company* (*a*) decided in 1876, the facts were, it would seem, practically identical with those of *Siner's case*, although the Court of Appeal, before whom the case was finally heard, managed to perceive distinctions which most of us would probably be unable to appreciate. In this case the carriage in which the plaintiff was travelling was carried past the platform of the station at which she intended to alight and was brought to what appeared to be a final standstill.

There were no railway servants to assist her, she saw the stationmaster taking luggage out of the van, and, fearing she would be carried on she attempted, after a time, to alight by stepping from the iron steps on to the footboard and so to the ground. In doing so her foot slipped, and she fell and sustained injuries. The Court of Appeal upheld the decision of the Court

(*a*) L. R., 10 Q.B. 271; 2 Q. B. D. 85; 35 L. T. N. S. 535; 46 L. J., Q. B. 50; 25 W. R. 418.

of Queen's Bench, that on these facts there was evidence of negligence to go to the jury.

This conclusion appears to have been based upon the ground that the circumstances of the case were such as to induce the plaintiff to believe that the train had come to a final standstill, and that she was therefore to alight at this spot. Acting under this reasonably founded belief, and not perceiving anyone to whom she could appeal for assistance, the plaintiff was justified in running the slight apparent risk involved in attempting to alight.

Reasoning in Robson's case.

It certainly seems as if this decision must be taken to overrule the case of *Siner* v. *Great Western Railway Company*. (*a*) This is the more clear from the fact that the decision in *Robson's case* was followed a month later (Dec., 1876) by the Court of Appeal in the case of *Rose* v. *North-Eastern Railway Company* (*b*)—a case in which the defendant company proved that their porter had actually called out "Keep your seats" to the passengers seated in the carriages which were not opposite the platform. The plaintiff, however, did not seem to have heard this warning, the train was not put back, and, after waiting a reasonable time, she attempted to alight, and was injured in so doing. The position of a railway company in respect to accidents of this kind occurring in open day is clearly put by Chief Justice Cockburn in giving judgment in this case. He

Robson's case followed in Rose *v.* North-Eastern Railway Company.

Liability of railway companies in these cases fully considered by Cockburn, C.J.

(*a*) *Ante*, p. 95.

(*b*) L. R., 2 Ex. Div. 248; 35 L. T., N. S. 693; 46 L. J., Ex. 374; 25 W. R. 205.

remarks; "In such cases [of carriages not being drawn up opposite the platform] it becomes the duty of the company to take such measures to ensure the safe alighting of the passengers in the carriages beyond the end of the platform as experience and common sense point out. Persons who have to alight ought not to be exposed to unnecessary danger. The train might be backed and the passengers might be told to keep their seats till that had been done. Then, if a passenger chose to get out immediately, it would be his own fault if he was injured, and the company would not be liable. I cannot but think that either the train ought to be put back, or the passengers should be asked whether they will alight where they are, or something of that sort. They should have the choice of being carried back if they please or getting out where they are, which everyone is not active enough to do without assistance. Something must be done to obviate the danger, and the question is, whether enough was done in the present case. The train overshot the platform. If the porters called out to the people to keep their seats, they were bound to sit still and not to get out at once. But it is not enough that the porters should call out "Keep your seats," unless afterwards the carriage is backed or something done to alleviate the inconvenience of the position, and the cry should reach the ears of the persons warned. Now, in this case the porter cried "Keep your seats," but not in such a tone as to afford a warning to those in the compartment where the plaintiff was seated. And, if they had afforded such warning, that would have been of

no use if they had not proceeded to back the train. But they did not. What, then, is the passenger to do? Can it be said that when the passenger cannot get out under ordinary circumstances of safety he must consent to be carried on? No one would be so absurd as to say so. The passenger would be liable to a demand for extra fare and all sorts of inconveniences. Here the passenger sat in the train till she feared it would go on, and that impression was confirmed by its not being put back; and, clearly after waiting a reasonable time, she must do the best she can for herself." . . .

Rule deduced from above decision.

It appears clear, therefore, from this decision that, if the circumstances of the stoppage of a train are such as to afford reasonable ground for supposing that it is a final stoppage (so far as concerns the particular station), this is tantamount to an invitation to alight; and if the risk, though apparent, appear inconsiderable, and all due care be taken, a passenger is justified in alighting and the railway co npany will be liable for any ensuing injury.

What will indicate a "final stoppage?"

As to what circumstances will suffice to indicate a "final stoppage," the above-quoted passage from Lord Cockburn's judgment in *Rose* v. *North-Eastern Railway Company* (*a*) is very clear and comprehensive. There must in the first place be a reasonable pause on the part of the passenger in order to ascertain whether there is any apparent intention of "backing" the train; there must also be an absence of warning as regards the particular passenger, and the apparent

(*a*) *Ante*, p. 97.

risk must not be so great as to amount to an obvious danger.

Calling out name of station is not enough.

The mere calling out of the name of the station cannot, taken by itself, be held to indicate a final stoppage, and consequent invitation to alight. Where there was such a calling out, but, from the situation (his carriage stopped in a dark tunnel) the plaintiff, a regular traveller, was bound to know the position he was in, the defendant company was held not liable. (*a*)

In this case the mere situation of the carriage was sufficient to indicate that there would be considerable risk in alighting in the dark, and the doctrine of "*Volenti non fit injuria*" clearly applied.

Liability of company where passenger ignorant of situation.

So far we have considered only cases in which the fact of the train not having been alongside of the platform was clearly known to the passenger. It is plain that the railway company's liability must be much more certain when, owing to want of light or other causes, the passenger is unable to realise the situation. A very strong instance in this connection is the case of *Praeger* v. *Bristol and Exeter Railway Company*. (*b*) The carriage in which the plaintiff was travelling drew up alongside the platform, but at a point where it curved away, leaving a considerable space between it and the carriages. The guard came round and opened the door, and said nothing. . . . There was a dim light at the spot, and the plaintiff,

(*a*) *Lewis* v. *London, Chatham, and Dover Railway*, 29 L. T., N. S. 397; L. R., 9 Q. B. 66; 43 L. J., Q. B. 8; 22 W. R. 153 (1873).

(*b*) 24 L. T., N. S. 105; cited at L. R., 7 C. P. 323.

in endeavouring to alight, fell between the carriage and the platform. It was held that the opening of the door by the guard was an implied invitation to alight, and that the railway company were liable. This was, no doubt, an exceptionally bad business; but in a case a few months afterwards (*a*) (May, 1873), where there was no opening of the door or other distinct action on the part of the railway servants (though the situation of the carriage and platform was similar to what it was in the last case), the Court of Exchequer Chamber held the railway company liable. Cockburn, C.J., in delivering the judgment of the court, said: "It is true that in the case before us there was not an invitation to alight, which is implied by the opening of the carriage door in the case of *Praeger* v. *Bristol, &c., Railway Company* (*b*), but it appears to us that the bringing up of a train to a final standstill for the purpose of passengers alighting, amounts to an invitation to alight—at all events after such a time has elapsed that the passenger may reasonably infer that it is intended that he should get out if he purposes to alight at the particular station."

Increased speed after invitation to alight.

The fact of the door of a carriage being opened by one of the company's servants is a fair indication of an invitation to alight. (*c*) On the arrival of a train at Huddersfield station, before it had quite

(*a*) *Cockle* v. *South-Eastern Railway Company*, 27 L. T., N. S. 320; L. R., 7 C. P. 321; 41 L. J., C. P. 140.

(*b*) *Vide supra.*

(*c*) See *Praeger* v. *Bristol and Exeter Railway Company* (*ante*, p. 100).

stopped the porters opened the doors of the carriages and called out, "All out for Huddersfield." Thereupon a female passenger attempted to alight, but, owing to the sudden removal of the brake power, the almost dead-speed of the train became accelerated, with the result that she fell and was injured. The railway company was held liable. (*a*) Of course if the motion of the train at the time the plaintiff attempted to alight had been sufficient to make it apparent that it had not stopped she could not have succeeded in her action, as she would have been clearly guilty of contributory negligence.(*b*)

(*b*) *Carriage not adapted to platform.*

In *Churchill* v. *South-Eastern Railway Company* (*c*) (1889) the plaintiff sued the company in respect of injuries sustained owing to his having fallen while alighting at St. John's Station. On attempting to get out at night-time his foot found no support, and he fell between the carriage and the platform up to his waist. It appeared that the carriage, which was of an old type, was too wide to admit of a footboard being attached to it, and so a space of (according to the company) four-and-a-half inches intervened between it and the platform. Into this space the plaintiff fell as described. He was in the habit of travelling by that line, but had not previously been in a carriage not provided with a foot-board. It appeared that the carriage was one of thirty-two

No foot-board.

(*a*) *Hellawell* v. *London and North-Western Railway Company*, 26 L. T., N. S. 557 (1872).

(*b*) *Folkes* v. *Metropolitan Railway Company*, 8 Times L. R. 269.

(*c*) 4 Times L. R. 418.

"North Kent" saloon carriages which were in the company's possession. They were thirty-six years old, the average life of a railway carriage being stated to be forty years. On these facts the jury returned a verdict for the plaintiff—£146 damages.

Step too high above platform.

Another case in which the railway company was held liable for an injury due to the carriage not being properly adapted to the platform (or *vice versâ*) was that of *Wharton and Wife* v. *Lancashire and Yorkshire Railway Company* (*a*) (1888). The plaintiff in that case fell and broke her knee-cap owing to the foot-board being one foot below the floor of the carriage and two feet above the platform. It was daylight at the time, but the Court of Appeal held that the fact that the plaintiff must have seen every element of danger, and elected to face them though she might have called for assistance, did not, under the circumstances, make her guilty of contributory negligence. A railway carriage is supposed to be properly constructed for ordinary passengers to alight, at any station at which the train may stop, without special assistance; and if the unsuitability of the steps is such as to amount to a real source of danger (as in the two cases last mentioned) and not merely to an inconvenience, the company will be responsible for the consequences. (*b*)

(*a*) 5 Times L. R. 142.

(*b*) See also *Folkes* v. *Metropolitan Railway Company* (*ante*, p. 102).

CHAPTER IV.

THE EFFECTS OF "COMPROMISE OF CLAIM," "SPECIAL CONDITIONS," AND "BREACH OF BYE-LAWS" ON THE MAINTENANCE OF AN ACTION.

SECT. 1. "COMPROMISE OF CLAIM."

When compromise is usual.

A RIGHT of action may be, and very frequently is satisfied by agreement. Where from the nature of an accident the railway company is clearly liable—as in the case of a collision between two trains of the same company on the same line—it is customary for the company to "settle" all claims that may be brought against them in respect of such accidents. Under these circumstances it is only when the amount of compensation payable cannot be agreed upon between the parties that litigation usually becomes necessary. But the question sometimes arises: "How far is such a compromise conclusive against the injured party's further right of action?" The answer may be gathered from the following decided cases on the point:

How far does compromise prevent further action?

In *Rideal* v. *Great Western Railway Company* (*a*),

(*a*) 1 F. & F. 706; and see also *Lee* v. *Lancashire and Yorkshire Railway Company*, L. R., 6 Ch. 527, 537.

decided in 1859, it appeared that, owing to a collision (which admittedly arose through the carelessness of the defendant company's servants), the plaintiff, a commercial traveller, was thrown backwards and forwards several times, and finally was cast violently to the floor. He received several severe blows on his head, which produced no outward effect but loosened his front teeth, and he also had a bruise on the leg. Beyond this there were no external injuries. He, however, was much shaken, and had evidently sustained a severe concussion. He stayed the night at the nearest hotel, and on the next day the station-master saw him, when the injured man asked for compensation. The station-master said that the company would pay any fair and reasonable amount, and mentioned 20*l.* The plaintiff replied that that would suffice. The station-master said he would send a receipt to be signed, and soon afterwards sent his clerk with 20*l.* and a receipt in the following form. It was dated 1st February (the accident having occurred on the previous day), and was headed in print with the name of the company, and ran thus: "Received of the Great Western Railway Company the sum of 20*l.* in full satisfaction of the injuries arising from the accident of the 31st ultimo, and all consequences arising therefrom." The plaintiff signed this on receiving the money, but there was a direct conflict of evidence between him and the clerk as to whether he had read it. The medical evidence went very strongly to show that he had sustained serious and permanent injuries which afterwards developed themselves, and of which, probably, he could not have

Terms of discharge not understood by plaintiff.

been aware at the time he signed the receipt. He would never again be able to follow his vocation which brought him in 500*l.* per annum. In addressing the jury Erle, C.J. said: "The question for you will be, whether the plaintiff's mind went with the terms of the receipt. Was he aware of its import and effect at the time he signed it? If, as he declares, he did not read, but merely signed it, supposing that it was a mere receipt, it is clear that he did not agree to its terms. But, on the other hand, if he did read it, being a man of business, he must be taken to have understood it, and it expressly included future and consequential injuries. It does not appear that the company's servants took any unfair advantage over the plaintiff. The question is, therefore, did his mind go with the terms of the receipt, and was he aware of its effect?" The jury returned a verdict for the defendants. This statement of the case seems in accordance with common sense. If it is clear that the injured party, in signing away his right of action, knew what he was doing, and there was no fraud in the matter, then he cannot bring a claim for further compensation, although his injuries subsequently turn out to be of a far more serious nature than could have been anticipated at the time. The moral is obvious.

Where plaintiff understands nature of discharge.

The North British Railway Company v. *Wood* (*a*) is another case in point. A commercial traveller, who had been injured in a railway accident, accepted a sum of 27*l.* from the company and granted them a

(*a*) 28 Scotch Law Reporter, 130; 18 Sc. Sess. Cas. (H. of L.) 27; 26 W. N. 130 (1891).

receipt stating that that sum was accepted by him "in full of all claims" competent to him in respect of injury and loss sustained by him in the accident in question. About eighteen months after granting this receipt he brought an action against the company, claiming as damages 5000*l.*, whereupon they set up the receipt in reply. It appeared that at the time of granting the receipt the plaintiff had been visited by the railway company's surgeon, but not by any surgeon employed by himself. He had no external injuries, but had sustained a nervous shock. He had no legal advice, and the receipt was granted nine days after the accident. The court awarded the plaintiff 500*l.*, whereupon the railway company appealed, and the House of Lords reversed the judgment of the courts below, being of opinion that the writing signed by the plaintiff was a discharge; that there had been no attempt on the part of the railway company to mislead the plaintiff; that he was capable of understanding the meaning of the writing; and that there had been no understanding between him and the person who acted for the company that there was any reservation of claims made by the plaintiff at the time the discharge was granted.

Effect of fraudulent misrepresentations by company's agents.

Fraudulent misrepresentations on the part of the company's agents as to the effect of a document of release will invalidate it, and enable the injured party to bring a further claim.

In the case of *Hirschfeld* v. *London, Brighton, and South Coast Railway Company* (*a*)—1876—the plain-

(*a*) L. R., 2 Q. B. D. 1.

tiff, having been injured in a collision due to the negligence of the defendant company, brought an action for damages. The company set up in defence that after the collision the plaintiff accepted money from an officer of the defendant company in satisfaction of his cause of action, and executed a release. In reply, the plaintiff alleged that the defendants' officer induced him to sign the document by fraudulently representing to him, for that purpose, that his injuries were of a trivial and temporary nature, and that if they should afterwards turn out to be more serious than he then anticipated, he would still, though he had executed the deed of release, be in a position to obtain further compensation from the defendants. As a matter of fact, his injuries did subsequently turn out to be of a more serious character than at first supposed. The court held that such a fraudulent misrepresentation debarred the railway company from setting up the deed of release in question as a defence to the action.

Effect of acceptance of money in satisfaction of damage to clothes.

Of course the acceptance of money for mere damage to clothes will not debar a person from subsequently bringing an action in respect of personal injuries. In the case of *Roberts* v. *Eastern Counties Railway Company* (*a*)—1859—which was an action for an injury sustained through a railway accident, it appeared that the plaintiff, at the time not supposing that he had sustained any serious injury, accepted 2*l.* as compensation for damage to his clothes. The court held that

(*a*) 1 F. & F. 460; and see also *Stewart* v. *Great Western Railway Company*, 13 L. T., N. S. 79.

this fact could not be set up by the railway company as an accord and satisfaction for a patent and serious injury to the brain or spine.

It is obvious that compensation for damage to clothing—the extent of which may with fair accuracy be immediately perceptible—can have nothing to do with a claim in respect of personal injuries, which may not develop themselves until some time after the accident.

Sect. 2. "Special Conditions."

Hitherto we have considered only the relative positions of company and passenger at common law, unmodified by special restrictions. It is now proposed to treat briefly of the effect of such modifications as are usually made by railway companies in order to limit their common law liabilities.

Power of company to restrict its liability by special terms.

A railway company may restrict its liability to a passenger by means of any express contract into which it can get him to enter. If a passenger chooses in this way to release the company from all liability, and to travel at his own risk, he loses all right to compensation in the event of injury, and the law cannot help him. Thus, on some lines, it is customary to issue to persons travelling in charge of cattle what are known as "drovers' tickets," which entitle such persons to travel free on the express condition that the railway company are exonerated from all liability for injury. In such cases the plaintiffs have been held disentitled to recover, even though the accident was due to the "gross negligence" of the defendants' servants (*a*);

"Drovers' tickets."

(*a*) *McCawley* v. *Furness Railway Company*, L. R., 8 Q. B. 57; 42 L J., Q. B. 4; 27 L. T., N. S. 485; 21 W. R. 140.

also where it happened after the plaintiff had left the train, but was still on the defendants' premises (*a*); and where the company on whose line the accident happened was not the company which had issued the ticket. (*b*)

When condition unusual strict proof of assent necessary.

In cases where the special condition is of an unusual nature, the law will look with great care to see whether it has been assented to by the passenger. Where, for instance, a company seeks to avoid its common law liability for injuries due to negligence on its own line, the fact that the passenger understood that there was such a condition—or at least that the company took every reasonable precaution to draw his attention to it—will have to be clearly proved. Thus, in the "drovers' ticket" cases referred to above, the plaintiff's assent to the special condition on which the ticket was issued was, in most instances, testified by his signature; where this was not so, the special form of the ticket, and the fact that the plaintiff travelled with his sheep without paying any fare, was treated as reasonable evidence that he knew the contract was unusual, and subject to exceptional conditions. (*c*) Where an ordinary passenger takes a ticket about the appearance of which there is nothing unusual, and the

(*a*) *Gallin* v. *London and North-Western Railway Company*, L. R., 10 Q. B. 212; 32 L. T., N. S. 550; 44 L. J., Q. B. 89; 23 W. R. 308.

(*b*) *Hall* v. *North-Eastern Railway Company*, L. R., 10 Q. B. 437; 44 L. J., Q. B. 164; 33 L. T., N. S. 306; 23 W. R. 860.

(*c*) *Hall* v. *North-Eastern Railway Company*, *supra*.

circumstances of the journey are not such as would naturally raise an assumption that it was to be performed on uncommon terms, it is very doubtful how far he can be held to be affected by special conditions —or a reference to them—which he did not in fact see.

The force of the statement of Baron Pollock in the case of *Stewart* v. *London and North-Western Railway Company* (*a*) (1864) that "every man must be taken to know that which he has the means of knowing, whether he has availed himself of those means or not," must be held to have been considerably modified by the decision of the House of Lords in the case of *Henderson et al.* (*Steam Packet Company*) v. *Stevenson* (*b*) (1875) a case which has a most important bearing on this question of "assent to conditions." The facts were as follows:—The plaintiff had purchased from the defendant company a ticket for his passage by steamer from Dublin to Whitehaven. The vessel was wrecked, and the passenger lost all his luggage, whereupon he brought an action against the company, claiming 71*l.* compensation. In defence the company set up that they were free from all liability for injury either to the plaintiff or his luggage on the ground that the ticket had on the back of it a printed intimation in the following words: "The company incurs no liability in respect of loss, injury, or delay to the passenger or to his luggage, whether arising from the

Conditions on back of ticket and not seen by passenger. Henderson v. Stevenson.

(*a*) 10 L. T., N. S. 302; 33 L. J., Ex. 199; 3 H. & C. 135; 12 W. R. 689.

(*b*) 32 L. T., N. S. 709; L. R., 2 Sc. App. 470.

act, neglect, or default of the company or their servants, or otherwise. It is also issued subject to all the conditions and arrangements published by the company." The front of the ticket only bore the words, "Dublin to Whitehaven." There was no evidence to show that the plaintiff's attention had been directed either to the notice on the back of the ticket or to a similar one which was displayed in the company's office. On appeal to the House of Lords the decision (in favour of the plaintiff) of the Scotch courts was affirmed, Lord Chelmsford remarking: "The Steam Packet Company was established for the carriage and conveyance of passengers, passengers' luggage, live stock, and goods. Their liability by law to a passenger is to carry and convey him with reasonable care and diligence, which implies the absence on the part of the company of carelessness or negligence. Of course any person may enter into an express contract with them to dispense with this obligation, and to take the whole risk of the voyage on himself. And this contract may be established by a notice excluding liability for the want of care or for negligence, or even for the wilful misconduct of the company's servants, if assented to by the passenger. But by a mere notice, without such assent, they can have no right to discharge themselves from performing what is the very essence of their duty, which is to carry safely and securely, unless prevented by unavoidable accidents. I think that such an exclusion of liability for negligence cannot be established without very clear evidence of the notice having been brought to the knowledge of the passenger, and of

Lord Chelmsford's judgment.

his having expressly assented to it. The mere delivery of a ticket with the conditions indorsed upon it is very far, in my opinion, from conclusively binding the passenger. . . . It may be a question whether, if a passenger were to read the indorsement and decline to agree to the terms, the company could refuse to take him as a passenger. Holding themselves out as undertaking to convey passengers by their vessels, it might be held that they are bound to carry upon the terms of their common law liability alone, unless a special contract be entered into with the passenger. . . . ."

Lord Hatherley says: "A ticket is in reality in itself nothing more than a receipt for the money which has been paid"; and Lord O'Hagan: "When a company desires to impose special and most stringent terms on its customers, in exoneration of its own liability, there is nothing unreasonable in requiring that those terms shall be distinctly declared and deliberately accepted; and that the acceptance of them shall be unequivocally shown by the signature of the contractor."

Lord Hatherley.

Lord O'Hagan.

It must be noticed that in this case the Steam Packet Company were, by their special conditions, seeking to evade the discharge of what Lord Chelmsford termed "the very essence of their duty." The condition was one which might well be deemed unreasonable and not such as a passenger would expect or look for; and the exceedingly strong view which the House of Lords took in this case must doubtless be largely attributed to that fact. In several subsequent decisions which, it must be confessed, are not

Real ground of this decision.

entirely in harmony with all the opinions on the effect of special conditions expressed by the distinguished lawyers who decided the above case, attempts have been made by different judges to distinguish *Henderson* v. *Stevenson* on various grounds. It is submitted that the real ground of distinction between this case and those which have reference to conditions on the back of cloak-room tickets, exemptions from liability for loss of luggage off the company's own line, and the like (*a*) is, that in the former case the company were endeavouring to impose a quite unusual and unlooked for liability upon the passenger, while in the latter class of cases the conditions introduced into the contracts were either reasonable in themselves and such as might be properly foreseen, or else the circumstances of the contract, as in the cloak-room ticket cases, were such as would naturally presuppose the existence of special terms. Adopting this view, we can quite understand the grounds of the decision in the case of *Burke* v. *South-Eastern Railway Company* (*b*) —1879—the facts in which were as follows: Outside the cover of a paper book of coupons, forming a railway ticket, issued to the plaintiff by the defendants, was printed the name of their railway, the words "Cheap Return Ticket, London to Paris and back, Second Class" and a statement of the period and journey for which the ticket was available, but no reference to the inside of the cover. On the inside,

Distinction between Henderson *v.* Stevenson and cases in which unread conditions have been held binding.

Burke *v.* South-Eastern Railway Company.

(*a*) See cases cited in Chapter VII., "Luggage" (*post*).

(*b*) 41 L. T., N. S., 554; L. R., 5 C. P. D. 1; 49 L. J., C. P. 107; 28 W. R. 306.

and apparent on turning the leaf, was a condition limiting the responsibility of the defendants to their own trains. The plaintiff having been injured while travelling by virtue of the ticket in a French train, sued the defendants. In defence they set up the condition. The plaintiff had not read and did not know of it. The Court of Appeal held, on these facts, that the whole book was the contract accepted by the plaintiff, and that he, therefore, could not reject the condition which was one of its terms, and that judgment should be entered for the defendants.

The view, which we expressed above, that proof of exceptionally clear notice to a passenger will be required where it is sought to bind him by an exceptional condition (such as he would not be likely to anticipate) is supported by a very recent decision (February, 1893) in the Court of Appeal. (*a*) The plaintiff was a passenger by the defendants' steamer from Philadelphia to Liverpool. Upon the upper part of the ticket issued to her were these words, in large type:—"Received in payment in full for steerage passage for one adult." Lower down, after some small print, were certain terms printed in small type, which, so far as material, were as follows:—It is mutually agreed, for the consideration aforesaid, that this ticket is issued and accepted under the following conditions: the company is not under any circumstances liable to an amount exceeding 100 dollars for loss or injury to the passenger or his luggage; no

(*a*) *Rowntree* v. *Richardson, Spence, and Co., and others*, reported in "Times" newspaper for Feb. 21, 1893.

claim shall be available against the company or its property under this ticket unless notice in writing thereof, with full particulars of the claim, be delivered to the company within forty-eight hours of the passenger being landed from the steamer at the termination of the voyage. Across the conditions the following words were stamped in red ink:—"American Line, Lord Gough, October 2, 1889. Peter Wright and Son, G. A., Philadelphia." During the voyage the plaintiff fell overboard, owing, as she alleged, to the defendants' servants not providing proper guard-rails to a gangway, and not properly lighting it. The steamer arrived at Liverpool on October 13, and written notice of the plaintiff's claim was sent to the company on October 17. The defence, *inter alia*, was that the defendants were relieved from liability by reason of the conditions on the ticket. The action was tried before Mr. Justice Bruce and a special jury at Liverpool, when the jury, in answer to questions put to them, found—(1) that there was negligence on the part of the defendants' servants, and no contributory negligence on the part of the plaintiff; (2) that the plaintiff knew that there was writing or printing on her ticket; (3) that she did not know that the writing or printing on the ticket contained conditions relating to the terms of contract for her carriage; (4) that the defendants had not done what was reasonably sufficient to give the plaintiff notice of the conditions. The jury assessed the damages at 100*l.*, and the judge, upon these findings, entered judgment for the plaintiff. The defendants appealed upon the ground that the above conditions

protected them. The decision in *Henderson* v. *Stevenson* (*supra*) was relied on by counsel for the plaintiffs. The defendants cited *Burke* v. *South-Eastern Railway Company.* The Court of Appeal (Lord Esher, M.R., Lindley, and Lopes, L.JJ.) delivered the following judgment *per* Lindley, L.J.: "If I had to try this case without a jury I should have decided it in favour of the defendants, upon the ground that the conditions contained in the ticket were part of the contract between the plaintiff and them. If the plaintiff never read the ticket I should have inferred that she was ready to assent, and did consent to the conditions upon it, whatever they might be, provided they were not tricky or so unfair that, if they had been pointedly brought to her attention, she might reasonably, and probably would, have objected to them. But the question is not how I should have decided the case. We all agree that, having regard to the small type in which the conditions are printed, to the absence of all words calling special attention to them, to the nature of some of them, and to the difficulty of reading them caused by the red ink print across them, we cannot say that the learned judge who tried the case was wrong in leaving to the jury the questions which he put to them, nor say that the verdict on the third question was one which ought to be set aside." The appeal was accordingly dismissed, but the defendants intimated that they should appeal to the House of Lords, as the case was of great importance. It will be interesting to see the result if that intention be carried out.

Principles deduced from foregoing cases.

After a careful study of all the cases on this point it would appear that the question whether such conditions are binding depends on the following considerations:

1. Did the passenger read the conditions?
2. If he did not read them, did he actually know of their existence?
3. If he neither read nor knew of them, did the company take reasonable precautions, considering the nature of the conditions, to bring them to his notice?

In any of these events the conditions would be binding against the passenger. If they were actually embodied in the ticket the presumption would probably be in favour of the railway company; if, however, they were contained in a separate book or document to which there was merely a reference on the ticket, *and the conditions were of an exceptional nature*, the presumption would doubtless be in favour of the passenger.

Conditions as to luggage.

The effect of special conditions on a company's liability for loss or injury in respect of passengers' luggage, while in transit or at the cloak-room, is considered in Chapter VII.

Conditions in connection with "workmen's trains."

By their special Acts of Parliament many railway companies undertake to run certain "workmen's trains" at special cheap fares. It is specially provided that compensation for injuries received when travelling by such trains shall be limited to a sum not exceeding 100*l.*, and further, that the amount of compensation to be awarded shall be determined by assessors appointed by the Board of Trade.

Sect. 3. Breach of Bye-laws.

A word or two is necessary as to the effect of a breach of bye-laws on what might otherwise be a valid claim for compensation.

Authority for making bye-laws.

By the Railway Clauses Consolidation Act, 1845, railway companies are authorised to make bye-laws for regulating the travelling upon or using and working of their railways. Such bye-laws must have the sanction of the Board of Trade, and when thus confirmed they must be exhibited in a conspicuous part of every station of the company; but it has been held by the Court of Common Pleas that there has been a sufficient publication of bye-laws, to sustain a conviction for breach of the same, if it be proved that a copy was displayed at the station from which the passenger departed and at that at which he alighted, and that it was unnecessary to prove the publication at all the stations on the line. (*a*)

Most railway companies use a common form of bye-laws in conformity with the model set issued by the Board of Trade. If these are used, they are confirmed by the Board of Trade as a matter of course, but such confirmation by no means prevents subsequent inquiry as to their validity. (*b*) Many of these "model bye-laws" have been

(*a*) *Mottram* v. *Eastern Counties Railway Company*, 7 C. B.; N. S. 58.

(*b*) *Bentham* v. *Hoyle* (1878), L. R., 3 Q. B. D. 289, at p. 292 (per Cockburn, C.J.), "The power of this court to inquire into the validity of such a bye-law can only be taken away by express enactment,"

simply pulverised by the High Court on appeals from convictions of magistrates who have relied upon their validity.

The only two customary bye-laws which would seem to have any direct bearing upon the question which we are now considering (claims to compensation for injury) appear to be those relating to "entering or leaving carriages when in motion" and "travelling on roof, steps, &c."

It may be taken as a general rule that a breach of either of these bye-laws will prevent a plaintiff from recovering compensation for a resulting injury, such a breach being held to constitute "contributory negligence." And even if the plaintiff has put himself into a dangerous situation by consent or direction of the defendant company's servants, this fact will not cover his own negligence in so acting. The case of *Whitehouse* v. *Midland Railway Company*, 1886, (*a*) clearly illustrates this. A commercial traveller, travelling from Wakefield to Sheffield, changed trains at Masboro' Junction. The train from Wakefield was rather late; a porter carried the plaintiff's luggage, and they arrived at the other platform just as the train to Sheffield was starting. The porter opened the door of a carriage and told the plaintiff to "look sharp and jump in." He tried to do so, but fell back and was injured. On seeking to recover compensation the plaintiff was non-suited on the grounds that the porter was not acting in the execution of his duty, but in contravention of orders, and that the plaintiff, by disobey-

Entering carriage in motion.

(*a*) 30 J. P. 760.

ing the bye-law as to entering a carriage in motion, was guilty of contributory negligence.

Travelling in guard's van.

Although the bye-law relating to "travelling on roof, steps, &c." contains a prohibition against travelling "on the engine and in the guard's van, or any portion of any carriage not intended for the conveyance of passengers," the particular circumstances of the case may, doubtless, justify a passenger in transgressing to the extent of travelling in the guard's van, under authority of the company's proper servants; at any rate, a passenger so travelling has, in spite of the technical breach of bye-law, been held entitled to recover compensation for injury received on such an occasion. In the case of *Stockdale* v. *The Lancashire and Yorkshire Railway Company* (*a*) the plaintiff was unable to obtain a ticket at the departure station, the crowd being so great that she could not reach the booking office. She thereupon got into the guard's van (with many other passengers) first asking the guard's permission; he assented, and told her where to sit. She informed him that she wished to alight at Marsh Lane Station. The train stopped there only a few moments; the van in which she travelled was not drawn up to the platform. While she was getting out, assisted by a friend, the train went on and jerked her to the ground, and injured her. The Court of Exchequer held that there was, on these facts, evidence of negligence on the part of the defendants to go to the jury.

In his judgment Bramwell, B. said, "It appears

(*a*) 8 L. T., N. S. 289; 11 W. R. 650.

the plaintiff got in with others into the guard's van by his permission; he got a light, and told her where to sit. She afterwards gave notice of it to the station master, and paid her fare. It may be said then that she was lawfully in the van (not ordinarily a place for passengers). . . ." Here then is an instance where the breach of the bye-law was considered to have been waived by the conduct of the company's officials.

CHAPTER V.

LIABILITY FOR ACCIDENTS WHERE MORE THAN ONE COMPANY IS INVOLVED.

It sometimes happens that an accident occurs to a passenger on a line, or in a carriage, belonging to a different company to the one from which he took his ticket. The development of the system of "through booking" has made this a by no means infrequent occurrence, and this being the case it is of great importance for an injured person to know against whom he ought to bring his claim. It must be remembered, however, that companies may, and frequently do, limit their liability, by special conditions, to accidents occurring on their own lines or through the negligence of their own servants; and such a condition will be valid, where the passenger can be affected with knowledge of it. (*a*)

Accident to train running over another company's line.

Assuming that no such condition exists, let us take the case of an accident happening to a passenger travelling in the train of the company from whom he took his ticket, when it has passed on to another company's line, over which the ticket-issuing company has running powers. Now if the accident be due to any negligence on the part of the persons managing

(*a*) *Burke* v. *South-Eastern Railway Company*, *ante*, p. 114.

the train, it is clear that it is against the company owning that train (*i.e.*, the ticket-issuing company) that action must be brought. But, even if the accident occur through the negligence of the other company's servants (*i.e.*, the company over whose line the train happens to be passing), the claim for compensation may still be brought against the company from whom the ticket was taken, they being the persons with whom the contract of carriage was made. This has been decided over and over again, the leading case on the point being that of *Blake* v. *Great Western Railway Company*—1862—(*a*). In that case the plaintiff took a ticket at the Paddington (Great Western) station to Milford, a station on the South Wales line. By arrangement between the Great Western Railway Company and the South Wales Railway Company, whose lines of rails were in connection, each company was to work both the lines, dividing the fares. After the Great Western train, in which the plaintiff was travelling, had passed from the Great Western line on to the South Wales line, it came (without any negligence on the part of those who managed the train) into collision with a locomotive engine left on the line by the negligence of some servants of the South Wales Company, and the plaintiff was injured. The Court of Exchequer Chamber (on appeal from the Court of Exchequer) held that the Great Western Railway Company were liable to the plaintiff for the injury; for a railway company impliedly contracts with a passenger to use

Blake *v.* Great Western Railway Company.

(*a*) 7 H. & N. 987; 31 L. J., Ex. 346; 10 W. R. 388.

due and reasonable care in keeping its line in a proper state for traffic, and the South Wales line became the line of the Great Western Railway Company in respect of their obligation to passengers.

Thomas v. Rhymney Railway Company.

The decision in this case was followed in *Thomas* v. *Rhymney Railway Company*—1871—(*a*) where the facts were similar to those in Blake's case, but the power of the defendant company to run their trains over the subordinate company's line was conferred by Act of Parliament instead of by private arrangement. Moreover, the Act of Parliament specially provided that the whole of the traffic arrangements of the subordinate company should be left in their own hands. The Court of Exchequer Chamber held that the ticket-issuing company were liable for the negligence of the subordinate company, for that the contract into which a railway company enters with a passenger, on giving him a ticket between two places, is the same, whether the journey be entirely over their own line, or partly over the line of another company; and whether the passage over another line be under an agreement to share profits, or simply under running powers, viz., that due care shall be used in carrying the passenger from one end of the journey to the other, so far as is within the compass of railway management.

Ticket-issuing company not liable for accident caused by company with merely collateral rights.

The two foregoing decisions have reference to cases, it will be observed, in which the defendant company made use of the subordinate company's line and

(*a*) L. R., 5 Q. B. 226; L. R., 6 Q. B. 266; 40 L. J., N. S., Q. B. 89; 24 L. T., N. S. 145; 19 W. R. 477.

servants in connection with the actual carrying of their passengers. This fact it was that made the contracting company liable for the negligence of those who were, for the purposes of this passenger-carrying, their agents. It must not, however, be supposed that the ticket-issuing company will be held liable for the negligent acts of a company with whose operations they have no real connection or interest, but who have merely a collateral right to run over a portion of their line. It was for this reason that the plaintiff failed in the case of *Wright* v. *The Midland Railway Company*—1873. (*a*) In that case the London and North-Western Railway Company had, it seemed, statutory authority to run over a portion of the defendants' line (Midland Railway), paying them a certain toll. The signals at the point of junction between the two lines were under the control of the defendants. Owing to the servants of the London and North-Western Company negligently disobeying those signals, a train of the London and North-Western Company ran into a train of the Midland Railway Company in which the plaintiff was seated, causing him damage. There was no negligence on the part of any of the *defendants'* servants. In an action for injuries sustained, brought by the plaintiff against the defendants, it was held that he was not entitled to recover compensation, and this decision was upheld on appeal to the Court of Exchequer, Baron Cleasby saying: "I cannot connect with the

Wright *v.* Midland Railway Company.

(*a*) L. R., 8 Ex. 137; 42 L. J., Ex. 89; 29 L. T., N. S. 436; 21 W. R. 460.

management of the railway something which is the direct effect, not of defective regulations of the company, not of any act to which they were parties, not of the neglect of any person whose services they use, but of the neglect of some persons over whom they have no control whatever, and of whose services they do not make use." This remark puts very clearly the grounds on which such cases as the foregoing are to be distinguished from *Blake* v. *Great Western Railway Company*. (*a*)

Primâ facie assumption that trains are controlled by company owning line.

In the absence of rebutting evidence, it will be assumed that a train is under the control of the company over whose line it may be running at the time the accident occurs. In *Ayles* v. *South-Eastern Railway Company* (*b*), a train belonging to the defendant company, whilst stationary on their own line, was run into by another train, the latter being in fault. It was held that, in the absence of evidence to the contrary, it must be presumed that the train which caused the accident was under the control of the defendants, although it was shown that several other companies had running powers over that part of the line.

Passenger carried in train of company other than that with whom he contracts.

It would seem that the mere fact of a plaintiff having a right, arising out of *contract*, to sue the company who issued him his ticket in such cases as we are here treating of, in no way lessens the right which he has to sue in *tort* the company who directly

(*a*) See also *Daniel* v. *Metropolitan Railway Company*, L. R., 5 H. L. 45, *ante*, p. 44.

(*b*) L. R., 3 Ex. 146; 37 L. J., Ex. 104.

caused the injury. Therefore, where a passenger is injured owing to the negligence of the company in whose train he is travelling, he can claim compensation from that company, although another company actually booked him. This was decided in *Foulkes* v. *Metropolitan Railway Company* (*a*)—1880.

Foulkes *v.* Metropolitan Railway Company.

In this case it appeared that the defendants, the Metropolitan District Railway Company, had running powers over the London and South-Western Railway between Hammersmith and the New Richmond station of the London and South-Western Railway Company. Above the booking-office at the New Richmond station were the words "South-Western and Metropolitan booking-office and District Railway." The plaintiff took from the clerk there, employed by the South-Western Railway, a return ticket to Hammersmith and back. The ticket was not headed with the name of either company, but bore on it the words "*via* District Railway." On his return journey from Hammersmith to Richmond the plaintiff travelled with this ticket in a carriage of a train belonging to the defendants (the Metropolitan Railway Company), and under the management of their servants. The carriage being unsuited to the New Richmond Station platform, the plaintiff, on alighting there, fell and was hurt. He brought an action against the defendants, and the jury found negligence in them. The Court of Common Pleas held (on appeal) that, having invited or permitted the plaintiff to travel in their train, the

(*a*) L. R., 4 C. P. D. 267; L. R., 5 C. P. D. 157; 42 L. T. N. S. 345; 28 W. R. 526; 49 L. J., C. P. 361.

defendants were bound to make reasonable provision for his safety; and that there was evidence of their liability, even assuming the ticket not to have been issued by or for them, but by the South-Western Company. This decision was affirmed by the Court of Appeal. In the course of their judgment Thesiger, L.J. says (*a*): "I think that the true principle in such a case as the present is that the company, so far as concerns its own line, in which term I include a line over which running powers are exercised, and its own acts and omissions, is under the same obligations in reference to the security of the passenger as it would have been if it had directly contracted with him." (*b*)

Judgment of Thesiger, L.J.

Another case (*Self* v. *London, Brighton, and South Coast Railway Company* (*c*), somewhat similar to the last, was decided at almost the same time (March 5th, 1880), and in the same manner by the Court of Appeal.

Self v. London, Brighton, and South Coast Railway Company.

The plaintiff's ticket was issued to him by the London, Chatham and Dover Railway Company, and he travelled in one of their trains running upon the defendant company's (London, Brighton and South Coast) line, over which the London, Chatham and Dover Company had running powers. At Peckham Rye, a station belonging to the London, Brighton and South Coast Company his hand was injured,

(*a*) L. R., 5 C. P. D., at p. 170.

(*b*) The decision in this case has been followed (expressly on it) in *Hooper* v. *London and North-Western Railway Company*, 43 L. T., N. S., 570; 50 L. J., Q. B. 104.

(*c*) 42 L. T., N. S. 179.

owing to the negligence of a porter in that company's employment in carelessly shutting the carriage door. The platform at which the train was standing was entirely reserved to the London, Chatham, and Dover Company's trains. The court held that the London, Brighton, and South Coast Railway Company were liable. "I do not see," said Bramwell, J., "why there should not be an action of contract against one company and an action of tort against the other." (*a*)

Principles from these cases.

The principles to be deduced from these decisions, then, seem to be :—

1. In the absence of special conditions to the contrary, (*b*) the company who issued the ticket may be held responsible for the safety of the passenger on his whole journey, though it may be partly on their own and partly on another company's line; and they are liable to compensate him for injuries caused by the negligence of railway servants, or defective construction of carriages or stations to whichever company they belong.(*c*) In such a case the action would really be founded on the contract to carry between the ticket issuing company and the plaintiff.
2. The company who are directly responsible for

(*a*) See also *Reynolds* v. *North-Eastern Railway Company*, Roscoe's Nisi Prius Evidence, edit. 14, p. 591.

(*b*) *Burke* v. *South-Eastern Railway Company*, *ante*, p. 114.

(*c*) See Lord Thesiger's judgment in *Foulkes* v. *Metropolitan Railway Company*, *ante*, p. 128.

the injury may be made liable on the simple ground of their negligent act or omission in which case the action would be founded in tort.(*a*)

(*a*) *Foulkes* v. *Metropolitan Railway Company*; *Self* v. *London, Brighton, and South-Coast Railway Company* (*supra*). But if the passenger had agreed with the ticket-issuing company to be carried at his own risk, this proviso would extend to protect any other company over whose line the journey might have to be performed (see *Hall* v. *North-Eastern Railway Company*, *ante*, p. 110).

CHAPTER VI.

DAMAGES FOR PERSONAL INJURIES AND COMPENSATION IN CASES OF DEATH (LORD CAMPBELL'S ACT).

The questions of "remoteness of damage" (*a*) and the effect of "compromise" on future claims (*b*) have already been considered. Assuming, therefore, that a cause of action exists, we will consider the principles on which the amount of compensation is usually determined.

Damages for personal injuries not calculated so precisely as for mere breach of contract.

Damages in cases of tort, and especially of personal injuries, are not usually calculated on the same strict lines as in cases of contract. Many factors which would not be considered in the latter carry great weight in estimating the measure of damages in the former class. For instance, it has been held that where a tortious act has been done wilfully or recklessly, the jury may, on that account, give exemplary damages (*c*).

Scope of damages where death is not caused.

Generally speaking, the scope of damages award-

(*a*) Chapter I., sect. 3.

(*b*) Chapter IV., sect. 1.

(*c*) *Bell* v. *Midland Railway Company*, 10 C. B., N. S. 287; 30 L. J., C. P. 273.

able in cases of personal injury not resulting in death embraces (*a*)—

1. Expenses consequent on injury.
2. Loss of time (measured by wages or salary, if plaintiff is in receipt of such).
3. Pain and suffering.
4. Any prospective or permanent ill effects.

Insurance policies not to be considered.

In awarding damages in respect of injuries *not resulting in death*, the fact of the injured party having received the benefits of an insurance policy must *not* be taken into consideration with a view to diminution of the sum payable; for the injured person "does not receive that sum of money [from insurance] because of the accident, but because he has made a contract providing for the contingency; an accident must occur to entitle him to it, but it is not the accident, but his contract, which is the cause of his receiving it." (*b*)

Loss through incapacity to carry on business or profession may be considered.

In the case of *Phillips* v. *London and South Western Railway Company* (*c*)—1879—in which the plaintiff was an eminent physician, it was held that the jury might properly take into their estimation, when computing the amount of damages to be awarded, the loss

(*a*) *Blake* v. *Midland Railway Company*, 18 Q. B. 93; 21 L. J., Q. B. 233. In connection with this subject see also the case of *Smith* v. *South-Eastern Railway Company*, reported in "Times" newspaper of Feb. 27, 1893.

(*b*) Per Pigott, B., in *Bradburn* v. *Great Western Railway Company*, L. R., 10 Ex. 1; 44 L. J., Ex. 9; 31 L. T., N. S. 464; 23 W. R. 48; but note the difference when the claim is under Lord Campbell's Act, *post*, p. 143.

(*c*) L. R., 5 Q. B. D. 78; L. R., 5 C. P. D. 280; 49 L. J., C. P. 233; 44 L. T., N. S. 217; 28 W. R. 10.

he had sustained in respect of his incapacity to carry on his practice, in addition to the amount they might award in consideration of pain and suffering, expenses, &c.; and, further, that the fact of the plaintiff being possessed of large independent means was not a matter which should affect the amount awarded. In this case the jury originally awarded the sum of 7000*l.* damages. The plaintiff (whose professional practice averaged 5000*l.* a year) appealed for a new trial, on the ground that the damages were inadequate.

Fact of plaintiff having large private income does not affect damages.

New trial where damages quite inadequate or excessive.

The Queen's Bench Division granted the new trial, in the belief that the jury could not have taken into consideration some important elements in the financial aspect of the case, and the Court of Appeal upheld this decision. At the fresh trial the plaintiff obtained a verdict for 16,000*l.*, whereupon the defendant company appealed, on the ground that the damages were excessive, but without success.

Damage to personal estate; action survives to representatives.

In *Potter* v. *Metropolitan District Railway Company* (*a*) the plaintiff sued, as executrix of her deceased husband, in respect of damage to his personal estate, caused by injury to her (and consequent expense) during his lifetime. The court held that the action was one of contract, and therefore survived to his representatives. (*b*)

(*a*) 30 L. T., N S. 765; 32 L. T., N. S. 36 (in Exchequer Chamber).

(*b*) *Bradshaw* v. *Lancashire and Yorkshire Railway Company* (L. R., 10 C. P. 180; 31 L. T., N. S. 847; 44 L. J., C. P. 148) is a very similar case; but where the injury in respect of which the expense was incurred resulted from an accident at a

Where death ensues, no claim at common law.

At common law no claim for compensation could be brought by the relative or representative of a deceased person whose death had been caused by the negligent or wrongful act of another. The legal maxim, "*Actio personalis moritur cum personâ*" applied. In 1846, however, an Act generally known as Lord Campbell's Act (*a*) was passed with a view to "compensating the families of persons killed by accidents," and it is only by this express enactment that their relatives can obtain any monetary redress for what frequently means the complete loss of their means of support.

Lord Campbell's Act.

By sect. 1 of this Act it is enacted that: "Whereas no action at law is now maintainable against a person who by his wrongful act, neglect, or default may have caused the death of another person, and it is oftentimes right and expedient that the wrongdoer in such case should be answerable in damages for the injury so caused by him, be it enacted, &c., that whenever the death of a person shall be caused by wrongful act, neglect, or default, and the act, neglect, or default is such as would (if death had not ensued) have entitled the party injured to maintain an action and recover damages in respect thereof, then and in every such case the person who would have been liable if death

---

level crossing it was held that, as the action was in *tort*, it could not be maintained: (*Pulling* v. *Great Eastern Railway Company*. L. R., 9 Q. B. D. 110.)

(*a*) The Act and Amendment Act are set out in Appendix A. They do not apply to Scotland.

had not ensued shall be liable to an action for damages, notwithstanding the death of the person injured, and although the death shall have been caused under such circumstances as amount in law to felony."

Action can only be brought if deceased could have maintained one.

It will be noticed that an action under this Act can only be brought if the circumstances were such as would have enabled the injured person (had he not died) to have maintained an action in respect of his injuries. In one of the earliest actions brought after the passing of the Act (*Armsworth* v. *South-Eastern Railway Company* (1847) (*a*) it was laid down by the court that "the proper question for the jury in such cases is whether the circumstances are such that if the deceased, instead of meeting his death, had been only wounded in consequence of the conduct of the defendants, he would have been entitled to damages for his injury. For instance, if the deceased person has been guilty of contributory negligence, which would have prevented him from recovering compensation, his representatives will be under the same disability.

Who may benefit?

The persons who can benefit by the action are the wife, husband, parents (including grandparents and step-parents) and children (including grandchildren and step-children) of deceased; and the jury are to apportion among such claimants what ever damages they may award (*b*). A child *en ventre*

(*a*) 11 Jur. 758.

(*b*) Sects. 2 and 5 of Act. See Appendix A.

sa mère can be a beneficiary (*a*) but not an illegitimate child. (*b*)

It is necessary to clearly understand the principle on which claims for compensation under this Act must be based. That principle is not a right given to the deceased's relatives to recover damages by way of consolation for the grief and suffering which the death may have occasioned them (*c*), nor is it a right transmitted by the deceased in respect of the personal loss and physical pain for which he, had he survived, might have claimed. The real principle was laid down as follows by Pollock, C.B. in *Gilliard* v. *The Lancashire and Yorkshire Railway Company* (*d*) (1848): "It is a pure question of pecuniary loss and nothing more, which is contemplated by the Act, no matter who or what the survivors may be. If a man's life be valuable to his family by reason of his possession of an annuity, his family have now a right to say, 'We have lost the life on which this annuity hung,' and they may claim compensation for that loss, but nothing more; they cannot enter into the question of the shock to their feelings."

Principle on which claims must be based.

Again, in a more recent case, *Bradburn* v. *Great Western Railway Company* (*e*) (1874), Baron Pigott

Rule as to damages, by Pigott, B.

(*a*) *The George and Richard*, 24 L. T., N. S. 717; L. R., 3 Adm. 466.

(*b*) *Dickinson* v. *North-Eastern Railway Company*, 33 L. J., Ex. 91; 2 H. & C. 735.

(*c*) *Blake* v. *Midland Railway Company*, 18 Q. B. 93; 21 L. J., Q. B. 233.

(*d*) 12 L. T., N. S. 356.

(*e*) *Ante*, p. 133; on authority of *Franklin* v. *South-Eastern*

points out that in actions under this Act the rule laid down is that the damages are to be "a compensation to the family of the deceased equivalent to the pecuniary benefits which they might have reasonably expected from the continuation of his life."

Real measure of damages is pecuniary loss suffered by relatives.

It is therefore quite clear that the measure of damages in claims under this Act must be based only on the pecuniary loss suffered by the deceased's relatives in consequence of his death; and that such loss has been or will be suffered must be definitely proved. (*a*) In addition to the loss involved in the immediate withdrawal of the customary support or assistance given by the deceased, the jury may also take into consideration any reasonable expectation of future pecuniary benefit from the continuance of the life. For example, the loss of the benefit of a superior education which children might fairly have anticipated, but for their father's death, has been taken into account in estimating the amount of damages (*b*). It is not intended that the amount of compensation should be mathematically calculated on the basis of the value of the deceased's life according to annuity tables, but the jury should give a fair and reasonable

---

Railway Company, 3 H. & N. 211; 4 Jur., N. S. 565; also followed in *Dalton* v. *South-Eastern Railway Company*, 27 L. J., C. P. 227; 4 C. B., N. S. 296; and *Pym* v. *Great Northern Railway Company*, 32 L. J., Q. B. 377; 4 B. & S. 403; 6 L. T., N. S. 537; 11 W. R. 922.

(*a*) *Franklin* v. *South-Eastern Railway Company* (*supra*).

(*b*) *Pym* v. *Great Northern Railway Company* (*supra*).

sum, taking the general circumstances of the case into consideration. (*a*)

Mere relationship not sufficient ground for claim.

The mere fact of the claimant being child, parent, &c., of the deceased will not alone be sufficient to base an action upon. As said above, the fact of real pecuniary loss—immediate or reasonably prospective—must be proved. Where a parent proved that his son, a boy of fourteen, on account of whose death he was claiming, had for two or three years past earned 4*s.* a week, which sum he had handed to his parents, the jury awarded the plaintiff 20*l.* damages, although at the time of his death the boy was out of employment. (*b*)

Past or prospective pecuniary help must be shown.

An even weaker claim than this was where the son, whose death was the subject of the action, had contributed to his father's support while the latter was out of work some five or six years previously. This was held to be a sufficient loss of reasonable expectation of future assistance sufficient to support a verdict for the plaintiff. (*c*)

If the expectation of future benefit is reasonably founded, it does not seem that it is necessary to support such belief on past experiences; thus in the case of *Franklin* v. *South-Eastern Railway Company* (*d*) Pollock, C.B. in his judgment says: "We do not say that it was necessary that actual benefits should have

(*a*) *Armsworth* v. *South-Eastern Railway Company*, 11 Jur. 758.

(*b*) *Duckworth* v. *Johnson*, 4 H. & N. 653; 29 L. J., Ex. 25.

(*c*) *Hetherington* v. *North-Eastern Railway Company*, 9 Q. B. D. 160; 51 L. J., Q. B. 495; 30 W. R. 797.

(*d*) 3 H. & N. 211; 4 Jur., N. S. 565.

been derived; a reasonable expectation is enough, and such reasonable expectation might well exist; though from the father not being in need, the son had never done anything for him." This is probably the extreme limit to which the principle of "reasonable expectation" can be stretched—and, indeed, it may be doubted whether it is not going rather too far. No doubt, however, if the son, either from his training or natural ability, were a person to whom the parent might reasonably expect to turn for assistance in case of necessity, the court would hold that evidence of past help was not essential. *Quære*, however, the result in the case of a ne'er-do-well who had never displayed either the disposition or ability to help his parent. The facts of each particular case must decide whether the expectation of the claimant is reasonably founded. No doubt that is really the gist of the whole matter. If the expectation of the bereaved relative is based simply on his relationship with the deceased, he cannot recover compensation—at least provided the real intention of the Act be followed.

In a case decided in the Irish courts (*a*) the parent, claiming in respect of his son's death, was a well-to-do tradesman, who had not been, and probably never would have been, dependent on any future earnings of his son, who had up to his death contributed nothing to the father's funds.

It was held that the plaintiff had shown no reasonably founded expectation of financial help, and that, therefore, he was not entitled to recover.

(*a*) *Bourke* v. *Cork and Macroom Railway Company*, 4 L. R., Ir. C. P. 682 (1879).

Though the necessary relationship and assistance may have existed between the plaintiff and the person in respect of whose death he claims, there will be no cause of action *quoad* the assistance, if it was rendered under such circumstances as to make it an ordinary contract. Thus, in the case of *Sykes* v. *North-Eastern Railway Company* (*a*), a parent was not permitted to recover damages in respect of the death of his son, who had assisted him in business, but had received wages at the ordinary rate for so doing; for, without any increase of expenditure, it is to be presumed that the parent could fill his deceased son's place—so far as his position of assistant was concerned.

Assistance cannot be considered where it was rendered on business terms.

A wife living in adultery, apart from her husband, has not been permitted to recover compensation for his death, although there was some evidence of a resulting pecuniary loss to her (*b*); and so a husband who was, under an agreement, living apart from his wife, was held not to be entitled to claim damages in respect of her death, although the husbands expectations of a contingent reversion were extinguished by his wife's decease. (*c*)

Husband and wife living apart.

This last decision depends on the same principle as that in *Sykes* v. *North-Eastern Railway Company* (*d*), viz., that the damages must arise from the loss of benefits springing from the relationship between the

(*a*) 32 L. T., N. S., 199; 44 L. J., C. P. 191; 23 W. R. 473 (1875).

(*b*) *Stimpson* v. *Wood*, 57 L. J., Q. B. 484; 4 Times L. R. 489.

(*c*) *Harrison* v. *London and North-Western Railway Company*, 1 Times L. R. 519.

(*d*) *Supra.*

deceased and the claimant, and not from the extinction of a contract existing between them.

Funeral and mourning expenses not recoverable.

Expenses of funeral and mourning are not recoverable under the Act, for the subject-matter of the statute is compensation for injury by reason of the relative not being alive, and there is no language in the statute referring to the cost of the ceremonial of respect paid to the memory of the deceased in his funeral, and in putting on mourning for his loss. (*a*)

Injuries to personal estates of deceased.

As regards damage to a deceased person's personal estate, being the result, during his lifetime of the injuries which ultimately caused his death (*e.g.*, medical expenses and loss from inability to attend to business), such sums are not recoverable in an action under this Act; but it has been held (*b*) that the executor or administrator of the deceased may recover such damages in an action for breach of contract (provided the injury causing death occurred in connection with contract) but not in an action of tort (*c*); and the fact of a successful action under Lord Campbell's Act having been already maintained will not bar such further claim. (*d*)

(*a*) *Dalton* v. *South-Eastern Railway Company*, 4 C. B., N. S. 296; 27 L. J., C. P. 227.

(*b*) *Bradshaw* v. *Lancashire and Yorkshire Railway Company*, L. R., 10 C. P. 180; 31 L. T., N. S., 847; 44 L. J., C. P. 148; *Leggott* v. *Great Northern Railway Company*, L. R., 1 Q. B. D. 599; 35 L. T., N. S., 334; 45 L. J., Q. B. 557; 24 W. R. 784.

(*c*) *Lendon* v. *London Road Car Company*, 4 Times L. R. 448; *Pulling* v. *Great Eastern Railway Company*, L. R., 9 Q. B. D. 110.

(*d*) *Daly* v. *Dublin, &c., Railway Company*, 30 L. R., Ir., C. P. 514.

Insurance policies must be considered in claims under Act.

In computing damages in actions under this act the jury must take into consideration any sum which may accrue to the plaintiffs in respect of insurance policies, for in so far as such sum is a direct pecuniary advantage arising from the death, it should properly be set off against the pecuniary loss in respect of which the action is brought. A direct decision on this point is contained in a case of *Hicks* v. *Newport and Abergavenny Railway Company* (*a*) in which Lord Chief Justice Campbell instructed the jury that the whole amount due on an accident insurance policy should be deducted from the damages (*b*), but, as regarded a life policy, they should deduct only such sum as might be taken to represent the difference between the actual amount of the insurance money then receivable and the value of the same in prospective, based on what might be assumed to be the amount of the premiums payable up to the date of death under ordinary circumstances. (*c*) This seems a reasonable view to take of the matter, though it introduces a somewhat complicated factor into the calculation, and assumes a knowledge of mathematics on the part of the persons

(*a*) Referred to in note to *Pym* v. *Great Northern Railway Company*, 4 B. & S. 403.

(*b*) But only in cases of *death*; as previously stated an accident policy is not to be taken into account in an action in respect of *injuries*. The reason of the distinction in case of death is that, but for the fatal result of the accident, the relatives would never have benefited by the policy. It is, therefore, a net gain to them.

(*c*) This direction was approved and followed in *Grand Trunk Railway Company of Canada* v. *Jenning*, L. R., 13 App. Cases, 800; 59 L. T., N. S. 679; 58 L. J., P. C. 1; 37 W. R. 403.

which, it is to be feared, is not always to be found in practice. It may also be thought that it is "cutting matters rather fine," but where the amount of the policy is large and the deceased was young, no doubt the difference would be worth taking into account.

Distinction as regards insurance money between cases of injury and death.

It will be observed that as regards insurance money a distinction is made between claims under this Act (*i.e.*, in cases of death) and cases of injury. The purport of Lord Campbell's Act is to compensate the families of persons killed by accidents and the scope of such compensation, as already explained, is based on the idea of placing them as far as is reasonably possible in the same financial position as they would have occupied but for the death. Under these circumstances it is obvious that as the life insurance money which would, but for the death, have been merely a prospective benefit to the plaintiffs, now becomes a present advantage it must be dealt with accordingly. Where the benefits of such policy are specifically limited to particular individuals it is only against their share (if any) of the damages awarded that it must be set off *pro ratâ*.

If compensation given for injuries in lifetime, no further claim though death ensues.

If an injured person receives compensation during his lifetime, in full satisfaction of all his claims, and subsequently dies from the effect of his injuries, his representatives cannot then claim damages in respect of his death; for the death gives no fresh right of action (*a*).

(*a*) *Reed* v. *Great Eastern Railway Company*, L. R., 3 Q. B. 555; 9 B. & S. 714; 18 L. T., N. S. 82; 37 L. J., Q. B. 278; 16 W. R. 1040.

Who may bring action?

Actions under this Act must be brought by the executors or administrators of the deceased, but if there be no executor or administrator, or if he fail to bring the action within six months of the death, then it may be brought by any of the persons who are entitled to claim (*a*), but all actions must be brought within twelve months of the death (*b*).

Only one action may be brought.

By sect. 3 of the Act it is provided that not more than one action shall lie in respect of the same subject-matter of complaint, so that it is doubtful what remedy would remain to persons who might have legitimate claims, but had for some reason been omitted from the action. Whatever remedy they might have would be against the plaintiffs in the action; they would certainly be unable to bring any further claim against the defendants.

Arbitration.

By section 25 of the Regulation of Railways Act, 1868, (*c*) it is provided that any claim for damages in respect of injuries or death may be referred for arbitration to the Board of Trade, if the parties so agree.

(*a*) See amending Act, sect. 1, Appendix A.
(*b*) Sect. 3 of Act. See Appendix A.
(*c*) 31 & 32 Vict. c. 119.

CHAPTER VII.

LIABILITY IN RESPECT OF PASSENGERS' LUGGAGE.

Liability at common law.

THE scope of a railway company's liability in connection with the conveyance of passengers' luggage is much more extensive than as regards the carriage of passengers themselves. They are in the position of "common carriers," and therefore, at common law, their liability for luggage placed in their charge for carriage over their own line is that of insurers.

Statutory modifications.

This common law liability has, however, been somewhat modified, in the case of all carriers by land, by

Carriers Act, 1830.

the Carriers Act, 1830, and the Railway and Canal Traffic Act, 1854. The first of these Acts declares that carriers shall not be liable for loss or injury in the case of certain goods (*a*) where the value exceeds 10*l.*, unless their value be declared and an increased charge paid (the goods in question are not such as would come within the ordinary scope of passengers'

Railway and Canal Traffic Act, 1854.

luggage). In consequence of its having become customary for railway companies to make special conditions, exempting themselves from all liability

(*a*) For details see Appendix B., where the section is set out in full.

for negligence, the Railway and Canal Traffic Act, 1854, was passed, which provided (*a*) that in future every company should be liable for loss or injury due to the neglect or default of such company or its servants, notwithstanding any notice or condition to the contrary; that only such special conditions as to carriage as were just and reasonable would be allowed; and that the contract containing these conditions must be signed by the party whom they were to bind (*b*). It has been held that this Act applies to the conveyance of passengers' luggage. (*c*) A condition exempting a railway company from liability for loss of luggage *on their own line,* unless fully and properly addressed, was held to be unreasonable and within the above section; and it could not be enforced against the plaintiff, who was suing for the loss of his bag, which, though not addressed, he had seen labelled and put into the van by one of the company's servants (*d*); also a condition that a passenger's luggage should be conveyed at his own risk has been held bad for the same reason,

Special conditions must be reasonable.

(*a*) Sect. 7. See Appendix B.

(*b*) By sect. 16 of the Regulation of Railways Act, 1868, the provisions of this section are extended to the traffic on board steamere belonging to or used by railway companies authorised to have and use them.

(*c*) *Cohen* v. *South-Eastern Railway Company*, L. R., 2 Ex. Div. 253; 46 L. J., Ex. 417; 36 L. T., N. S. 130; 25 W. R. 475; overruling *Stewart* v. *London and North-Western Railway Company*, 3 H. & C. 135; 33 L. J., Ex. 199.

(*d*) *Cutler* v. *North London Railway Company*, L. R., 19 Q. B. D. 64; 56 L. J., Q. B. 648; 56 L. T. 639; 35 W. R. 575.

although the passenger had agreed to the condition. (*a*)

In absence of conditions, company entirely responsible for luggage in van.

In the absence, therefore, of special conditions to the contrary (which must be compatible with the above-quoted Act), railway companies are insurers of passengers' luggage conveyed in their vans, and are absolutely responsible for its safe carriage and redelivery to the passenger or his agent. (*b*)

Company bound to accept personal luggage in any form.

A company cannot avoid liability by declining to accept a passenger's personal luggage for carriage. A railway company had made a rule that passengers must see their luggage labelled or it would not be carried, and that porters were not to label or receive bundles as luggage. They therefore declined to accept personal luggage, consisting of bundles belonging to a passenger, but the court held that they had no power to limit their common law liability by any such rule, and were bound to accept personal luggage in any form (*c*).

Commencement of liability.

The company's responsibility commences from the moment the luggage is handed to their servants for conveyance to the van (*d*) or to be labelled (*e*); but the company were held not liable where a portman-

(*a*) *Cohen* v. *South-Eastern Railway Company, supra.*

(*b*) *Macrow* v. *Great Western Railway Company*, L. R., 6 Q. B. 612; 40 L. J., Q. B. 300; 24 L. T., N. S. 618; 19 W. R. 873.

(*c*) *Munster* v. *South-Eastern Railway Company*, 4 C. B., N. S. 676; 27 L. J., C. P. 308.

(*d*) *Richards* v. *London, Brighton, and South-Coast Railway Company*, 7 C. B. 839.

(*e*) *Lovell* v. *London, Chatham, and Dover Railway Company*, 45 L. J., Q. B. 476.

teau had simply been handed to a porter for custody, without any directions as to what he was to do with it (*a*). The court seemed to think that had there been any specific direction as to labelling the portmanteau or as to its intended destination, it might have been deemed to have come constructively into the company's possession, even though there was a notice to the effect that all luggage must be deposited at the cloak-room.

Termination of liability.

Where porters are, in the customary manner, employed by companies for the purpose of helping passengers to obtain their luggage on arrival of the train, the company's liability is conterminous with the complete discharge of the porter's duty; so when a passenger at the end of his journey gave his luggage to a porter for conveyance to a cab, the company were held to be liable until the articles were actually placed in the conveyance. (*b*) A passenger must claim his luggage within a reasonable time of the arrival of the train, it being the company's duty to have the luggage under their charge ready at the usual place of delivery till the passenger can, in the exercise of due diligence, call and receive it. (*c*) After the lapse of such reasonable period of time the railway com-

(*a*) *Agrell* v. *London and North-Western Railway Company* (in a note to *Leach* v. *South-Eastern Railway Company*, 34 L. T., N. S. 134).

(*b*) *Richards* v. *London, Brighton, and South-Coast Railway Company*, 7 C. B. 839; *Butcher* v. *London and South-Western Railway Company*, 16 C. B. 13; 24 L. J., C. P. 137.

(*c*) *Patscheider* v. *Great Western Railway Company*, L. R., 3 Ex. Div. 153.

pany seem to be responsible only as warehousemen, (*a*) and may even cease to be responsible altogether, as in the case of *Hodkinson* v. *London and North-Western Railway Company*, (*b*) the plaintiff, on arriving at her destination, saw her two boxes taken from the luggage van by a porter in the railway company's employ. She told him she would walk home and leave her luggage at the station for a short time, and send for it. The porter said, "All right; I'll put them on one side and take care of them." The plaintiff thereupon quitted the station, leaving her two boxes in the custody of the porter. One of them was lost. It was held that the transaction amounted to a delivery of the luggage by the company to the plaintiff, and a re-delivery of it by her to the porter as her agent, to take care of, and that consequently the company were not responsible for her loss.

Company only liable for *personal* luggage.

It must be noticed that a railway company is liable only for passengers' *personal* luggage, and not for anything in the way of merchandise. If anything not of the nature of personal luggage be taken by a passenger, without payment or notice to the company's servants, and the company do not waive their right by knowingly accepting such articles as personal luggage,

(*a*) *Chapman* v. *Great Western Railway Company*, L. R., 5 Q. B. D. 278; 49 L. J., Q. B. 420; 42 L. T., N. S. 252; 28 W. R. 566; *Mitchell* v. *Lancashire and Yorkshire Railway Company*, L. R., 10 Q. B. 256; 44 L. J., Q. B. 107; 33 L. T., N. S. 61; 25 W. R. 853.

(*b*) L. R., 14 Q. B. D. 228.

they will incur no liability for the safe carriage of such things. (*a*)

It is often a difficult matter to decide what things are embraced in the term "personal luggage," but decided cases have plainly indicated some articles which are *not* to be so deemed—to wit, a rocking-horse (*b*), title-deeds in a solicitor's custody (*c*), an artist's sketches (*d*), and a quantity of bedding intended for use when the traveller should have found a home. (*e*) "Personal luggage" seems to mean such articles as a traveller, according to his position, would require for his use, either in connection with his journey itself or the objects thereof. It would embrace commercial travellers' samples (within certain limits), weapons forming part of a soldier's equipment, and, doubtless, articles purchased by passengers, being such things as might reasonably, for the sake of convenience or safety, be carried with them from the place where they had been bought without unduly trespassing upon the space provided, or causing more incon-

What is personal luggage?

(*a*) *Cahill* v. *London and North-Western Railway Company*, 13 C. B. N. S. 818; 31 L. J., C. P. 271; 10 W. R. 321; *Great Northern Railway Company* v. *Shepherd*, 8 Ex. 30; 21 L. J., Ex. 286.

(*b*) *Hudston* v. *Midland Railway Company*, L. R., 4 Q. B. 366; 38 L. J., Q. B. 213; 30 L. T., N. S. 526; 17 W. R. 705.

(*c*) *Phelps* v. *London and North-Western Railway Company*, 19 C. B. N. S. 321; 34 L. J., C. P. 259; 12 L. T., N. S. 496; 13 W. R. 782.

(*d*) *Mytton* v. *Midland Railway Company*, 4 H. & N. 615; 28 L. J. Ex. 385.

(*e*) *Macrow* v. *Great Western Railway Company*, *ante*, p. 148.

venience than is usually the case with personal luggage. (*a*)

A master cannot sue for loss of luggage carried by his servant.

Where a servant carries as his ordinary luggage that of his master, the latter cannot sue for the loss of it (*b*); but the fact of the fare having been paid by, and the ticket issued to one person on another's behalf, does not prevent this latter person from recovering for the loss of his luggage; so that a servant was held to be entitled to sue in respect of such a loss, although the fare had been paid and ticket taken by his master. (*c*)

But a servant may sue though his master took his ticket.

Luggage lost off company's own line.

How far is a railway company liable for the loss of passengers' luggage occurring off their own lines? *If there is no special condition to the contrary,* they will be liable on their contract throughout the distance for which they have booked (as in the case of personal injury), although such journey may necessitate partial transit over the line or in the carriages of another company. But companies may, and frequently do, restrict their liability, by a special contract, to the limits of their own lines. (*d*) (As to the circum-

(*a*) On the general question of "What is personal luggage?" see *Macrow* v. *Great Western Railway Company*, *supra*.

(*b*) *Becher* v. *Great Eastern Railway Company*, L. R., 5 Q. B. 241; 39 L. J., Q. B. 122; 22 L. T., N. S. 299; 18 W. R. 627.

(*c*) *Marshall* v. *Yorkshire, &c., Railway Company*, 11 C. B. 655; 21 L. J., C. P. 34. See also *Austin* v. *Great Western Railway Company*, L. R., 2 Q. B. 442.

(*d*) It has been held that sect. 7 of Railway and Canal Traffic Act, "reasonableness of conditions" (*ante*, p. 147) only applies to a company's own line; so that they may make any conditions they like with regard to conveyance over the lines of other companies:

stances under which such a condition will be binding see Chap. IV., sect. 2.) In any case it will be for the company who issued the ticket to prove that the luggage was lost after it had passed from their control; so in a case of loss at a station which they use under agreement with another company they will still be liable. (*a*)

Company who actually lose luggage always liable in tort.

The company who actually have the luggage in their custody at the time it is lost will always be liable to an action in *tort* for negligently losing it, quite independently of any question of contract. Thus, in a case where a passenger had seen his portmanteau placed in the van of the London and North-Western train for Euston, and on the arrival of the train at that place it was not to be found (not turning up until three months afterwards), the North-Western Company were held liable, although the passenger was travelling with a through ticket issued by the Great Western Railway Company. (*b*)

Difficulty where actual losers not known.

The only difficulty as to whom to sue, therefore, would arise in the case of a passenger travelling over more than one line (under a ticket by which the issuing company had validly limited their responsibility to their own line), and not knowing at what

(*Zunz* v. *South-Eastern Railway Company*, L. R., 4 Q. B. D. 739; 38 L. J., Q. B. 209; 20 L. T., N. S. 873.)

(*a*) *Kent* v. *Midland Railway Company*, L. R., 10 Q. B. 1; 44 L. J., Q. B. 18; 31 L. T., N. S. 430; 23 W. R. 25. See also *Bromley* v. *Midland Railway Company*, 17 C. B. 372.

(*b*) *Hooper* v. *London and North-Western Railway Company*, 50 L. J., Q. B. 104; 43 L. T., N. S. 570; following *Foulkes* v. *Metropolitan Railway Company*, 5 C. P. D. 157 (*ante*, p. 128). See also *White* v. *South-Eastern Railway Company*, 2 Times L. R. 319.

stage of his journey the luggage was lost or injured. In such a case probably all he could do would be to put the issuing company to proof that it was not lost while in their possession, they having duly transferred it to the company responsible for the second stage of the journey; he would then have to trace it into the control of the next company, and so on, until he was fortunate enough to hit some company which was unable to deny its receipt or prove discharge. Arrived at this goal his labours should be rewarded by redress for his loss.

Liability for luggage not carried in van.

A widespread, though sometimes inconvenient custom exists among the travelling public of carrying some portion of their luggage with them in the carriage—from the person who cannot dispense with the modest comfort represented by a hand-bag and travelling rug to the good lady who habitually crams the compartment which she honours by her presence with a dozen or more parcels, bonnet-boxes, and satchels. It is well to understand that in these cases the traveller is assumed to retain his own personal control over such articles, and the railway company will only be responsible for loss or injury due to the negligence or wilful misconduct of their servants (*a*).

Bergheim *v.* Great Eastern Railway Company.

In a case of *Bergheim* v. *Great Eastern Railway Company* (*b*) (1878) this principle was carried, it would seem, too far. The plaintiff, arriving at the

(*a*) *Talley* v. *Great Western Railway Company*, L. R., 6 C. P. 44; 40 L. J., C. P. 9; 23 L. T., N. S. 413; 19 W. R. 154.

(*b*) L. R., 3 C. P. D. 221; 47 L. J., C. P. 318; 38 L. T., N. S. 160; 26 W. R. 301.

station some little time before his train started, handed his luggage into the charge of a porter while he went to the refreshment room to lunch. The porter placed a dressing bag (part of the luggage) on the seat of a first-class compartment, and locked the door. When the plaintiff arrived at the compartment the bag was missing and was never found.

Although the jury found that the carriage, and not the luggage van, was the proper place for such an article, the railway company were held not liable for the loss, there being no evidence of negligence on either side, and the article being presumed under the circumstances not to be under the company's control (*a*).

The correctness of this decision doubted.

This decision was certainly surprising, and cannot now be taken as law. It was agreed that the porter was acting properly in placing such a bag in the carriage, and it seems clear that, having done so, he should have continued to keep watch over it, if there was (as the event proved) any chance of its being removed. The fact of the bag being stolen was in itself a proof that there had been negligence on the part of the porter in his custody of it.

Not followed in Bunch *v.* Great Western Railway Company.

The case of *Bunch* v. *Great Western Railway Company* (*b*)—1888—must be taken as overruling *Berg-*

(*a*) See on this point *Richards* v. *London, Brighton, and South Coast Railway Company*, 7 C. B. 839, in which it was held that the fact of a porter placing luggage in the carriage with a passenger is not *per se* proof that the latter has re-assumed control over the articles.

(*b*) L. R., 13 App. Cas. 31; 57 L. J., Q. B. 361; 58 L. T., N. S. 128; 36 W. R. 785; 2 Times L. R. 356.

heim's case. The facts were very similar. Mrs. Bunch arrived at Paddington station at 4.20 p.m. on Christmas Eve, with a bag and two other articles of luggage, in order to travel by the 5 p.m. train. A porter labelled these two latter articles, and took them, together with the bag, to the platform, the train not then being in the station. Mrs. Bunch told the porter she wished the bag to be put into the carriage with her, and asked if it would be safe to leave it with him in the meantime. He replied that it would be quite safe, and that he would take care of the luggage, and would put it into the train. She then went to meet her husband and to get her ticket. Ten minutes afterwards she and her husband returned to the platform, and found that the two labelled articles had been put into the van of the train, but that the porter and the bag had disappeared. In an action in the County Court for the loss of the bag, the judge found that the time when the bag was intrusted to the porter was (considering the fact of its being Christmas Eve) a reasonable and proper time before the departure of the train, and that the porter was guilty of negligence in not being in readiness to put the bag into the carriage when the lady returned; and that the company was liable for the loss. The railway company appealed against this decision, and the case finally reached the House of Lords, who held (*a*) that there was evidence upon which the County Court judge might reasonably find, first, that the bag was in the custody of the railway company for the purpose of

Decision in County Court.

Decision in House of Lords.

(*a*) Lord Bramwell dissenting.

present, and not of *future* transit, from the time when it was delivered to their porter until its disappearance; and, secondly, that its loss was due to their negligence.

General rule in such cases (by House of Lords).

Their Lordships further laid it down that, where a railway company accepts luggage to be taken in the railway carriage with a passenger, their ordinary liability, as common carriers, is only affected in respect of the passenger's interference with their exclusive control of the luggage.

Practical effect of this decision.

Until, therefore, the passenger actually assumes control of his "carriage luggage," the company will now be held equally as liable for its safety as they are in respect of "van luggage."

If a passenger arrives at a station a not unreasonable period before the departure of his train, and hands his luggage over to the railway company's servants, the company will be liable for the "van luggage" until re-delivery to him at the end of the journey, and for "carriage luggage" until placed in his possession in the carriage. What is a reasonable time before the departure of the train must, of course, depend on various circumstances, such as the time of year, the quantity of luggage, &c. The only test suggested in Bunch's case seems to be, whether the period was such as to indicate that the luggage was intended for "*present*" transit as distinguished from conveyance at a "*future*" time, relative terms which do not give much practical information. In a case decided in 1885 (*Welsh* v. *London and North-Western Railway Company* (*a*), in which a passenger, who had

What is a "reasonable time" before departure of train?

(*a*) 2 Times L. R. 64.

missed his train, handed his bag to a porter to take charge of until the next train went, and then went off for an hour, it was held that the company were not liable for the loss of the bag. It is somewhat doubtful how far the decision in *Bunch* v. *Great Western Railway Company* affects this case. Probably it must still be regarded as correct, for the passenger was here clearly making use of the porter in lieu of a cloak-room, and could scarcely be deemed to have handed him the bag "for the purpose of present transit."

Liability for articles deposited in cloak-room.

With respect to articles deposited in the cloak-room the railway company's liability is not that of common carriers, but they are in the position of ordinary bailees for reward, and are not affected by any of the statutes applicable to carriers. In the absence of any conditions restricting their liability they will, of course, be liable for ordinary negligence to the extent of the injury or loss incurred.(*a*) They may, however, limit their responsibility by any special conditions they choose, and, in practice, special conditions are always made.

Effect of conditions on ticket. Van Toll v. South-Eastern Railway Company.

Thus, in the case of *Van Toll* v. *South-Eastern Railway Company* (*b*) the plaintiff, on arrival at the terminus, deposited her bag, value 20*l.*, in the cloak-room, paid 2*d.*, and received a ticket, on the back of which was printed: "The company will not be responsible for any package exceeding the value of 10*l.*"

(*a*) *Roche* v. *Cork, Blackrock, &c., Railway Company*, 24 L. R., Ir. 250.

(*b*) 12 C. B., N. S. 75; 31 L. J., C. P. 241.

The bag was lost, and the plaintiff brought an action against the company, but it was held that, though the article was lost through their negligence, the condition on the ticket exempted them from liability, as the Railway and Canal Traffic Act, 1854 (*ante*, p. 147), did not apply, the company not having received the bag as carriers.

There must be reasonable notice of conditions.

But the passenger depositing luggage is not to be bound, as it were blindfold, without knowledge, or the reasonable opportunity of knowing of the conditions by which the company limit their responsibility. To bind him by such conditions the company will have to prove that he either knew, or by the exercise of ordinary intelligence and prudence, might have known of their existence. Where the cloak-room ticket bore legibly printed on the front the words "left subject to the conditions on the other side," and the person depositing the luggage admitted that he knew that there were conditions, but had not read them, it was held that the luggage must nevertheless be taken to have been deposited subject to the terms on the back of the ticket. (*a*) So also, when a company had hung a notice in their cloak-room to the effect that they would not be liable for any package exceeding 10*l.* in value, and had printed the same condition on the back of the cloak-room ticket (with the reference "See back" on the front), although the plaintiff swore that he had not read, and

Harris v. Great Western Railway Company.

Parker v. South-Eastern Railway Company.

(*a*) *Harris* v. *Great Western Railway Company*, L. R., 1 Q. B. D. 515; 45 L. J., Q. B. 729; 34 L. T., N. S. 647; 25 W. R. 63.

did not know of the existence of the condition, the court held that, in such case, the question should be left to the jury as to whether the company had done that which was reasonably sufficient to give the plaintiff notice of the condition (*a*).

Skipwith v. Great Western Railway Company

This ruling was followed in *Skipwith* v. *Great Western Railway Company*—1888—(*b*). The plaintiff left his bag, exceeding 5*l.* in value, at Paddington station cloak-room. The defendant company were held exempt from liability for its loss (or rather delivery to a wrong person), on the strength of a condition on the back of the cloak-room ticket (referred to on the front, in the usual way, "subject to conditions on other side"). The condition ran thus: "The company are not to be answerable for loss or detention of, or injury to, any article or property exceeding the value of 5*l.*, unless at the time of its delivery to them the true value and nature thereof be declared by the person delivering the same, and a sum at the rate of 1*d.* for every 20*s.* of the declared value be paid for such article or property for each day or part of a day for which the same shall be left, in addition to the above mentioned charge." It did not appear that the plaintiff had actually seen the conditions in question. The jury found as facts that, but for the special conditions, the company were negligent; secondly, that reasonable notice of the conditions was given (though it might have been

(*a*) *Parker* v. *South-Eastern Railway Company*, 2 C. P. D. 416; 46 L. J., C. P. 768; 37 L. T., N. S. 540; 25 W. R. 564.

(*b*) 4 Times L. R. 589.

more distinct); thirdly, that "loss" did not cover misdelivery by the company's servants. On a motion before a divisional court that judgment might, on this verdict, be entered for the plaintiff (for an agreed sum of 50*l.*), the court held that, whatever the contract on the ticket was as to taking charge of the goods of the passenger, it was subject to the conditions at the back, the company being able to make what conditions they chose, as they were not obliged to take charge of parcels in the cloak-room, and that the misdelivery by the company's servants certainly constituted a loss. Judgment was therefore entered for the defendant company.

Principles as to validity of conditions summarised.

Although the subject of "special conditions" has been considered generally in a previous chapter (*a*), it may be convenient in this connection to restate briefly the principles on which their validity will depend.

(1) Where the depositor reads the conditions
(2) Where he knows there are conditions but does not read them (*b*)

} He will be bound by the conditions.

(3) Where he does not know there are conditions, it will be a question for the jury as to whether the company have taken reasonable steps to bring them to his notice (*c*), and it has been held that when there were conditions on the

(*a*) Chapter IV., sect. 2.
(*b*) *Harris* v. *Great Western Railway Company* (*ante*, p. 159).
(*c*) *Parker* v. *South-Eastern Railway Company* (*ante*, p. 159).

back of a ticket, but no reference to them on its face, and as a matter of fact the recipient was not aware of them, he was not bound by them. (*a*)

(*a*) *Henderson* v. *Stevenson* (*ante*, p. 111).

CHAPTER VIII.

LIABILITY FOR ERRORS IN TIME-TABLES AND UNPUNCTUALITY OF TRAINS.

It is a question of no small interest to railway travellers as to how far a company is responsible for delay and unpunctuality in running its trains, or for erroneous statements in its time-tables. The mere common law liability of a company as carriers of passengers is simply to convey persons to their destination within a reasonable time. The case of *Hurst* v. *Great Western Railway Company*—1864—(*a*) decided that the issue of a passenger ticket to convey from one station to another is only evidence of a contract to that effect, and does not guarantee that a train shall start or arrive at any definite time.

Liability at common law.

But the issue of time-tables and bills by the company considerably varies this common law liability, and, it has been held, amounts to an express contract with the public that a train will leave A. for B. as advertised, for the convenience of any person who conforms to the regulations as to applying for a ticket, and tenders the proper fare; and the company issuing such time-bills will be liable for damages occasioned

Effect of issue of time bills.

(*a*) 19 C. B., N. S. 310; 34 L. J., C. P. 264; 12 L. T., N. S. 634; 34 W. R. 950.

to a plaintiff by this representation, if such a train does not run, or runs only for a portion of the advertised journey, even though the uncompleted portion is over the line of another company.

Error in time-table.

This was definitely laid down in connection with the case of *Denton* v. *Great Northern Railway Company*—1856—(*a*). On the strength of a statement in the Great Northern Company's time-tables, that a train would leave Peterboro' at 7 p.m. and arrive at Hull about midnight, the plaintiff took a ticket and travelled by the train, which duly left Peterboro' as advertised. At Milford Junction the Great Northern line connected with that of the North-Eastern Railway Company, over whose railway the remainder of the journey to Hull had to be performed. On arrival at this station (Milford) the plaintiff found that the train which, according to the Great Northern time-table, ran on to Hull in connection with the Great Northern train, had been recently discontinued. The Great Northern company had received due notice of such discontinuance, but had omitted to make the necessary alteration in their next issue of time-tables, and had so misled the plaintiff, who failed to reach Hull in time to keep the appointment which was the object of his journey. The Great Northern Company were held liable (*b*), on the ground that there had been misrepresentation in their time-table, the issue of which

(*a*) 5 E. & B. 860; 25 L. J., Q. B. 129.

(*b*) Denton obtained 5*l.* 10*s.* damages; but on what basis they were calculated does not appear in the report. The loss of a business engagement must not, as a rule, be taken into account, *post*, p. 172.

amounted to a contract. Lord Chief Justice Campbell, in the course of his judgment, remarked: "It is all one, as if a person duly authorised by the company had, knowing it was not true, said to the plaintiff, 'There is a train from Milford Junction to Hull at that hour.' The plaintiff believes this, acts upon it, and sustains loss. It is well established law that where a person makes a certain statement, knowing it to be untrue, to another, who is induced to act upon it, an action lies. The facts bring the present case within that rule."

Railway companies are therefore liable for damages immediately resulting from an error in their time-tables, where such error amounts to misrepresentation.

Failure to keep time.

Where, however, it is merely a case of failure to keep time, a company's liability is much less extensive. However annoying or disappointing to a passenger the unpunctuality of his train may be, unless he can prove affirmatively (*a*) that the delay has been caused by distinct negligence, and that he has been put to real expense or substantial inconvenience in consequence, he will not be able to obtain compensation. As stated above, the common law liability is to convey within a "reasonable time," and though by issuing time-tables a company necessarily pins itself more closely to a definite period, all such time-tables

Negligence must be proved.

(*a*) Possibly if the delay were very considerable it might raise a presumption of negligence which the company would have to rebut. See judgment of Brett, J. in *Le Blanche* v. *London and North-Western Railway Company*, L. R., 1 C. P. D. 286 (at p. 302), *post*, p. 169.

nowadays contain conditions modifying, and often entirely annulling, their common law liability. Such conditions are perfectly valid, provided there is the usual reference to them on the tickets, for the provision of the Railway and Canal Traffic Act (*a*) against "unreasonable conditions" does not apply to passenger traffic. (*b*)

Validity of conditions in time-tables.

In *Woodgate* v. *Great Western Railway Company* (*c*) (1884), the plaintiff, a barrister, brought an action for delay and inconvenience inflicted upon him, while he was a passenger on the defendant company's line, under the following circumstances :—On Christmas Eve, 1881, at 10 a.m. he took a first class ticket at Paddington for Bridgnorth, which is on one of the company's lines, the junction being at a place called Hartlebury. The ticket was in the usual form, having a reference on the back to the "regulations contained in the company's time-tables," and on the front the words "see back." On the outside page of the company's time-tables there was printed, in very small type at the top, this notice: "Train Bills—The published train-bills of the company are only intended to fix the time at which passengers may be certain to obtain their tickets for any journey from the various stations; it being understood that the trains shall not start from them before the appointed time; but the directors give notice that the company do not undertake that the trains shall

Woodgate v. Great Western Railway Company.

(*a*) *Ante*, p. 147.

(*b*) *Woodgate* v. *Great Western Railway Company, infra.*

(*c*) 1 Times L. R. 133; 51 L. T., N. S. 826.

start or arrive at the time specified in the bills, nor will they be accountable for any loss, inconvenience or injury which may arise from delay or detention unless upon proof that it arose from the wilful misconduct of the company's servants." On the day in question at 6 a.m., four hours before the plaintiff took his ticket, there had been a collision, which caused a stoppage on the line, which was still existing, and would prevent the arrival of the train at Hartlebury in due time. In fact, it did not so arrive, but was late, and missed the junction train, and so the plaintiff was kept at Hartlebury some time, and at length was sent on in a second-class carriage attached to a goods train, which of course went slowly, with the result that he arrived at Bridgnorth at 7.25 p.m. instead of 3.21 p.m. The company, on being applied to, expressed regret, but repudiated all liability. In the County Court the plaintiff recovered 1*l.* damages—10*s.* for his delay at Hartlebury, and 10*s.* for the delay and annoyance caused by his being sent on in a second class carriage by a slow goods train.

The Company appealed, and the case came before a Divisional Court (Hawkins and A. L. Smith, JJ.), which came to the conclusion that the County Court judge was wrong. This decision was based on the grounds that the condition exempting the company from liability, except for "wilful misconduct," was valid, and bound the plaintiff, and that the facts proved did not constitute such wilful misconduct. (*a*)

(*a*) See also *Cooper* v. *Great Western Railway Company*, 1 Times L. R. 101; in which case also the same condition was held binding.

Conditions against liability for keeping time with "connecting trains."

It will easily be understood that, since a company can, by a special condition, exempt itself from liability for delay on its own line, it is equally competent for it to extend this proviso to the failure to keep time with a "connecting train" on the line of another company, although the passenger may have been "booked through." In *M'Cartan* v. *North-Eastern Railway Company* (*a*) (1885), the plaintiff had taken from the defendant company a through ticket from Durham to Belfast *viâ* Leeds, at which station the North-Eastern line terminates and the Midland Railway Company takes up the journey. The train by which the plaintiff travelled was shown in a page of the defendant company's time-table headed "Through communication between the North-Eastern line and Ireland." The defendant company issued their tickets subject to a condition that they were not to be responsible for any loss arising from the non-arrival of their trains in time for any nominally corresponding trains on any other line. Owing to a delay on the defendants' line, the plaintiff failed to catch the connecting train at Leeds, and had to stop there, together with his family, all night. In the County Court he recovered 3*l.* 13*s.* 6*d.* damages, the judge holding that there was an implied contract that the company would use reasonable efforts to insure punctuality. On appeal, however, a Divisional Court (Huddleston, B. and Wills, J.) set this judgment aside, on the ground that the contract was contained in the ticket and the conditions referred to thereon, and that the particular condition in question

(*a*) 1 Times L. R. 490; 54 L. J., Q. B. 441.

expressly excluded the company from the liability which the plaintiff sought to fasten upon them.

Effect of promise that "every attention will be given to insure punctuality."

It occasionally happens that some company—less wary or more magnanimous than its fellows—while adopting the usual formula about "not being responsible for delay," adds that "every attention will be given to insure punctuality." Where such an undertaking has been rashly given, it has been held that the company is liable, if it can be shown that the delay was distinctly due to their having neglected to pay "every attention" as promised. (*a*)

Passenger must not take unreasonable steps to remedy delay.

Although a company may, by the laxity of its conditions, have rendered itself liable for negligent delay, the elated passenger must not think that, having caught the company tripping, he can take any unreasonable steps he likes to repair the consequences of such unpunctuality. He must act only as a reasonable man would do, having regard to the circumstances and object of the particular journey. This was settled in *Le Blanche* v. *London and North-Western Railway Company* (*b*) a leading case on railway unpunctuality. The plaintiff in that case was a first-class passenger from Liverpool to Scarborough, whither he was going for a fortnight's holiday. He travelled by a train leaving Liverpool at 2 p.m., and, according to the time-table, he was due to arrive at Scarborough at 7.30 p.m. At both Leeds and York it was necessary to change into other companies'

Special trains: Le Blanche v. London and North-Western Railway Company.

(*a*) *Le Blanche* v. *London and North-Western Railway Company, infra.*

(*b*) L. R., 1 C. P. D. 286; 45 L. J., C. P. 521; 34 L. T., N. S. 667; 24 W. R. 808 (1876).

trains, but at Leeds the London and North-Western train, by which he had travelled from Liverpool, was 27min. late, in consequence of which he missed the train he ought to have caught, and did not arrive at York until 7 p.m., which was too late for him to catch the intended train, due at Scarborough at 7.30 p.m. The next train was timed to leave York at 8 p.m. and arrive at Scarborough at 10 p.m. On ascertaining this the plaintiff ordered a special train, and so reached Scarborough at 8.30 p.m. In an action against the London and North-Western Railway Company to recover the price (about 12*l.*) he had paid for the special train he was unsuccessful, although the unpunctuality of the defendant company's train was proved to have been the result of their negligence; for the Court of Appeal held that, in spite of the rule that if one party to a contract fails to perform his share of it the other party may do so for him as reasonably near as possible, and charge the defaulter with the reasonable cost of so doing, nevertheless he must not do so in an unreasonable or oppressive manner. In this case the court held that, looking to the circumstances and the object of the plaintiff's journey, it was unreasonable for him to take a special train in order to reach his destination an hour and a half earlier than he otherwise would have done.

Judgment in Court of Appeal.

Lord Justice Mellish suggested that one test which might be applied in such cases, as to the reasonableness of the expenditure incurred by the plaintiff, would be to consider whether a person in such a position would have been likely to incur it if the delay had been due to his own fault, and not to that of the company.

Test as to "reasonableness" suggested by Mellish, L.J.

Followed in Great Western Railway Company v. Lowenfeld.

In connection with the subject of taking "special trains" when delayed, the case of the *Great-Western Railway Company* v. *Lowenfeld* (*a*), decided in 1892, is of interest. The plaintiff left the train at Swindon, being told that it would stop there ten minutes. As a matter of fact it only stopped seven minutes, and he was left behind in consequence. His destination was Teignmouth, so he went on by the next train to Bristol, and there took a "special," giving a cheque for 31*l.* 17*s.* in payment of the cost of same. The County Court judge held that the passenger could not recover the cost of the "special" from the company, but awarded him 3*l.* damages—being 2*l.* for delay and inconvenience, and 1*l.* for expenses (which included 17*s.* as the cost of the portion of his ticket applying to the journey from Bristol to Teignmouth, which he had paid for, but been unable to use.) The ground of the decision was the test suggested in Le Blanche's case as to the reasonableness of the act under the circumstances.

Scope of damages in these cases.

As to damages generally, in connection with this subject, it is to be observed that, though a plaintiff may have a valid claim against a company in consequence of unpunctuality or error, a jury cannot award him *general* damages for consequent trouble, annoyance, and loss of business. They must base the amount on such reasonable expenses as can be proved to be *directly* attributable to the defendants' fault; (*b*)

(*a*) 8 Times L. R. 230.

(*b*) *Hawcroft* v. *Great Northern Railway Company*, 21 L. J. Q. B. 178.

but personal inconvenience may be taken into account (*a*), and of course hotel expenses may, under such circumstances, be recovered (*b*).

Hobbs *v.* London and South-Western Railway Company.

The line seems to have been somewhat finely drawn in the case of *Hobbs* v. *London and South-Western Railway Company* (*c*) (1874). A family party had taken tickets by the midnight train from Wimbledon to Hampton Court, but instead of conveying them to that station, the defendant company's train carried them along the main line to Esher. They could get neither accommodation, nor a conveyance to Hampton Court, and had to walk home, a distance of four miles, in the rain, in consequence of which Mrs. Hobbs caught cold, and was unable to assist in the carrying on of the family business, and was for some time under medical treatment. The husband and wife brought an action to recover damages, and it was held that, though they were entitled to some compensation (8*l.*) for the discomfort and inconvenience of their nocturnal ramble, Mrs. Hobbs's illness and its consequent effect on the business were too remote results to be the objects of practical sympathy.

Loss of business engagement may sometimes be considered, when object of journey within company's knowledge.

As a general rule the loss of a business engagement cannot be taken into account in awarding

(*a*) *Hobbs* v. *London and South-Western Railway Company*, *infra*.

(*b*) *Hamlin* v. *Great Northern Railway Company*, 1 H. & N. 408; 26 L. J., Ex. 22.

(*c*) L. R., 10 Q. B. 111. In a subsequent case (*Macmahon* v. *Field*, 7 Q. B. Div. 596) Brett, L.J. said that he could not see why the catching cold was too remote damage in *Hobbs's case*.

damages, (*a*) the possibility of such loss not being in the contemplation of both parties at the time of contracting. Where, however, a train was supposed to be run on particular days for the express purpose of enabling persons to attend the Mark Lane Corn Market, a miller who had taken a season ticket for that object, recovered 10*l.* damages for his loss of market consequent on the train not having been duly run (*b*). Here, of course, it was presumed that the object for which the plaintiff had taken his ticket was within the defendant company's knowledge at the time it was issued to him. So also, in a very recent case (December, 1892) a collier recovered 6*s.* 6*d.* for the loss of his day's wages. By an arrangement between the colliery owners and the railway company special tickets at reduced fares were granted to the colliers, who had to travel some distance from the place where they lived to their work. The train by which they always travelled was timed to start at 5.10 a.m. according to the special time bills issued to the men. On the day in question it did not arrive at the departure station until 8 a.m., too late, it was alleged, for the colliers to get to their work in time to be permitted to go down. In a test action brought by one of the men against the railway company the County Court judge held that there was an implied contract to run the train in reasonable time, and gave the damages claimed for loss of the day's wages.

Cook *v.* Midland Railway Company.

(*a*) *Hamlin* v. *Great Northern Railway Company*, *supra*.

(*b*) *Buckmaster* v. *Great Eastern Railway Company*, 23 L. T., N. S. 471.

This decision was upheld on appeal to the Divisional Court, and also by the Court of Appeal—though in the latter case not without some doubt being expressed (*a*).

Sleeping-car company or other independent agency not liable for unpunctuality.

A company or agency which is only associated with a railway company for a particular purpose, and has no control over the traffic, will not be held liable for delay to a passenger to whom they have issued a ticket, even though they have issued time-tables on their own account. So a statement in the official guide of a sleeping-car company which had sleeping cars in certain trains running between Paris and the south of France, that such trains corresponded with others leaving London at specified times, was held not to be a warranty of punctuality, but a mere representation that the proper times of arrival of the trains from London were those mentioned therein, and imposed no duty on the company to see that such trains did so arrive (*b*).

(*a*) *Cook* v. *Midland Railway Company*, 9 Times L. R., p. 10, and (in Court of Appeal), 9 Times L. R., p. 147.

(*b*) *Lockyer* v. *International Sleeping Car Company*, 61 L. J., Q. B. 501 (1892). In giving judgment in the Divisional Court (confirming that of the County Court), Charles, J. said: *Denton's case* really turned on a false representation. *Hamlin's case* was that of a contract to carry the plaintiff the whole way to Hull. In the present case the representation was only that the proper time of the arrival of the trains was that put down in the statement in question, but not that such trains must necessarily arrive in time.

APPENDIX A.

LORD CAMPBELL'S ACT

(9 & 10 Vict. c. 93).

An Act for Compensating the Families of Persons Killed by Accidents. [26*th August,* 1846.]

Whereas, no action at law is now maintainable against a person who by his wrongful act, neglect, or default, may have caused the death of another person, and it is oftentimes right and expedient that the wrong doer in such case should be answerable in damages for the injury so caused by him : 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, that whensoever the death of a person shall be caused by wrongful act, neglect, or default, and the act, neglect, or default is such as would (if death had not ensued) have entitled the party injured to maintain an action and recover damages in respect thereof, then and in every such

case the person who would have been liable if death had not ensued, shall be liable to an action for damages, notwithstanding the death of the person injured, and although the death shall have been caused under such circumstances as amount in law to felony.

2. And be it enacted, that every such action shall be for the benefit of the wife, husband, parent, and child of the person whose death shall have been so caused, and shall be brought by and in the name of the executor or administrator of the person deceased; and in every such action the jury may give such damages as they may think fit, proportioned to the injury resulting from such death to the parties respectively for whom and for whose benefit such action shall be brought; and the amount so recovered, after deducting the costs not recovered from the defendant, shall be divided amongst the before-mentioned parties in such shares as the jury by their verdict shall find and direct.

3. Provided always, and be it enacted, that not more than one action shall lie for, and in respect of the same subject-matter of complaint; and that every such action shall be commenced within twelve calendar months after the death of such deceased person.

4. And be it enacted, that in every such action the plaintiff on the record shall be required, together with the declaration, to deliver to the defendant or his attorney a full particular of the person or persons for whom and on whose behalf such action shall be brought, and of the nature of the

claim in respect of which damages shall be sought to be recovered.

5. And be it enacted, that the following words and expressions are intended to have the meanings hereby assigned to them respectively, so far as such meanings are not excluded by the context, or by the nature of the subject-matter; that is to say, words denoting the singular number are to be understood to apply also to a plurality of persons or things; and words denoting the masculine gender are to be understood to apply also to persons of the feminine gender; and the word "person" shall apply to bodies politic and corporate; and the word "parent" shall include father and mother, and grandfather and grandmother, and step-father and step-mother; and the world "child" shall include son and daughter, and grandson and granddaughter, and step-son and step-daughter.

6. And be it enacted, that this Act shall come into operation from and immediately after the passing thereof, and that nothing therein contained shall apply to that part of the United Kingdom called Scotland.

7. And be it enacted, that this Act may be amended or repealed by any Act to be passed in this session of Parliament.

LORD CAMPBELL'S ACT AMENDMENT ACT

(27 & 28 Vict. c. 95).

An Act to amend the Act ninth and tenth Victoria, chapter ninety-three, for compensating the Families of Persons killed by Accident.—[29*th July*, 1864.]

Whereas by an Act passed in the session of Parliament holden in the ninth and tenth years of Her Majesty's reign, intituled "An Act for compensating the Families of Persons killed by Accident," it is amongst other things provided that every such action as therein mentioned shall be for the benefit of the wife, husband, parent, and child of the person whose death shall have been so caused as therein mentioned, and shall be brought by and in the name of the executor or administrator of the person deceased; and whereas it may happen by reason of the inability or default of any person to obtain probate of the will or letters of administration of the personal estate and effects of the person deceased, or by reason of the unwillingness or neglect of the executor or administrator of the person deceased to bring such action as aforesaid, that the person or persons entitled to the benefit of the said Act may be deprived thereof, and it is expedient to amend and extend the said Act as hereinafter mentioned: 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. If and so often as it shall happen at any time or times hereafter in any of the cases intended and provided for by the said Act, that there shall be no executor or administrator of the person deceased, or that there being such executor or administrator, no such action as in the said Act mentioned shall within six calendar months after the death of such deceased person, as therein mentioned, have been brought by and in the name of his or her executor or administrator, then and in every such case such action may be brought by and in the name or names of all or any of the persons (if more than one) for whose benefit such action would have been, if it had been brought by and in the name of such executor or administrator; and every action so to be brought shall be for the benefit of the same person or persons, and shall be subject to the same regulations and procedure as nearly as may be, as if it were brought by and in the name of such executor or administrator.

2. And whereas by the 2nd section of the said Act it is provided that the jury may give such damages as they may think proportionate to the injury resulting from such death to the parties respectively for whom and whose benefit such action shall be brought, and the amount so recovered, after deducting the costs not recovered from the defendant, shall be divided between the before-mentioned parties in such shares as the jury shall by their verdict direct. Be it enacted and declared, that it shall be sufficient, if the defendant is advised to pay money into court, that he pay it

as a compensation in one sum to all persons entitled under the said Act for his wrongful act, neglect, or default, without specifying the shares into which it is to be divided by the jury ; and if the said sum be not accepted, and an issue is taken by the plaintiff as to its sufficiency, and the jury shall think the same sufficient, the defendant shall be entitled to the verdict upon that issue.

3. This Act and the said Act shall be read together as one Act.

APPENDIX B.

EXTRACTS FROM CARRIERS ACTS.

CARRIERS ACT, 1830 (11 GEO. 4 & 1 WILL. 4, c. 68), SECT. 1.

". . . From and after the passing of this Act no mail contractor, stage-coach proprietor, or other common carrier by land for hire, shall be liable for the loss of, or injury to, any article or articles or property of the descriptions following (that is to say), gold or silver coin of this realm, or of any foreign State, or any gold or silver in a manufactured or unmanufactured state, or any precious stones, jewellery, watches, clocks, or timepieces of any description, trinkets, bills, notes of the Governor and Company of the Bank of England, Scotland, and Ireland respectively, or of any other bank in Great Britain or Ireland, orders, notes, or securities for payment of money, English or foreign, stamps, maps, writings, title-deeds, paintings, engravings, pictures, gold or silver plate or plated articles, glass, china, silks in a manufactured or unmanufactured state, and whether wrought up or not wrought up with

other materials, furs, or lace, or any of them, contained in any parcel or package which shall have been delivered, either to be carried for hire, or to accompany the person of any passenger in any mail or stage-coach, or other public conveyance, when the value of such article or articles or property aforesaid, contained in such parcel or package, shall exceed the sum of ten pounds, unless at the time of the delivery thereof at the office, warehouse, or receiving-house of such mail contractor, stage-coach proprietor or other common carrier, or to his, her, or their book-keeper, coachman, or other servant, for the purpose of being carried, or of accompanying the person of any passenger as aforesaid, the value and nature of such article or articles or property shall have been declared by the person or persons sending or delivering the same, and such increased charge as hereinafter mentioned, or an engagement to pay the same be accepted by the person receiving such parcel or package."

Railway and Canal Traffic Act, 1854 (17 & 18 Vict. c. 31), sect. 7.

"Every such company, as aforesaid, shall be liable for the loss of, or for any injury done to any horses, cattle, or other animals, or to any articles, goods, or things in the receiving, forwarding or delivering thereof, occasioned by the neglect or default of such company or its servants, notwithstanding any notice,

condition, or declaration made and given by such company contrary thereto, or in anywise limiting such liability; every such notice, condition or declaration being hereby declared to be null and void: Provided always that nothing herein contained shall be construed to prevent the said companies from making such conditions with respect to the receiving, forwarding, and delivering of any of the said animals, articles, goods, or things as shall be adjudged by the court or judge before whom any question relating thereto shall be tried, to be just and reasonable. . . . Provided also that no special contract between such company and any other parties respecting the receiving, forwarding, or delivering of any animals, articles, goods, or things, as aforesaid, shall be binding upon or affect any such party, unless the same be signed by him or by the person delivering such animals, articles, goods, or things respectively for carriage. . . ."

By sect. 16 of the regulation of Railways Act, 1868, the provisions of this section are extended to the traffic on board steamers belonging to or used by railway companies authorised to have and use them.

INDEX.

LAW BOOKS, &c.,

PUBLISHED BY

HORACE COX,

"LAW TIMES" OFFICE,

WINDSOR HOUSE, BREAM'S BUILDINGS, LONDON, E.C.

*** *Orders for any of the following works, with Post-Office Order for the amount, should be sent to* MR. HORACE COX, *Publisher,* LAW TIMES *Office, Windsor House, Bream's-buildings, London, E.C., by whom they will be sent carriage paid, or they may be obtained by order of ANY BOOKSELLER.*

Price 5*s.*, crown 8vo., boards.

THE LIABILITY of RAILWAY COMPANIES for NEGLIGENCE TOWARDS PASSENGERS. With a Copious Index. By ALBERT PARSONS, Middle Temple and Western Circuit, Barrister-at-Law. [1893.

Crown 8vo., price 3*s.* 6*d.*

REMINDERS for CONVEYANCERS, with References to some of the best Precedents. By HERBERT M. BROUGHTON, of the Inner Temple, Barrister-at-Law. [1892.

CONTENTS:—Abbreviations—Advising on Title—Conditions of Sale—Conveyances—Disentailing Deeds — Leases — Mortgages — Partnership Articles — Releases — Settlements: Personalty; Realty; Voluntary—Wills.

Cloth boards, price 3*s.* 6*d.*

THE EMPLOYERS' LIABILITY ACT 1880, as applicable to England, Ireland, and Wales, with Decisions, Notes, and Explanations. By R. M. MINTON-SENHOUSE, Barrister-at-Law, of the Inner Temple. [1892.

8vo., price 7*s.* 6*d.*

THE LAW RELATING to the REMUNERATION of COMMISSION AGENTS, with numerous Cases relating thereto. By W. EVANS, B.A., Oxon., of the Inner Temple. [1892.

In limp cloth, price 1*s.* 6*d*

THE SMALL HOLDINGS ACT 1892. With General Sketch of the Act, and Forms. By J. THEODORE DODD, Barrister-at-Law, of Lincoln's-inn. [1892.

Demy 12mo., price 5*s.*

NEWTON'S PATENT LAW and PRACTICE, including the Registration of Designs and Trade Marks. This work is designed to serve as a reference manual for Patent Agents, with respect to the practice established under the Patents, Designs, and Trade Marks Acts; as a compendium of the Patent Laws for the use of Solicitors; and as a legal and commercial guide to inventors and manufacturers interested in Patent Rights.

Wharton's Maxims.

LEGAL MAXIMS, with Observations and Cases. In Two Parts. Part I. One Hundred Maxims, with Observations and Cases. Part II. Eight Hundred Maxims, with Translations. By GEORGE FREDERICK WHARTON, Solicitor. Second Edition, price 5*s.* cloth, complete. [1892.

Hallilay's Probate and Divorce Examination Questions.

A DIGEST of the QUESTIONS asked at the FINAL EXAMINATION of ARTICLED CLERKS on the Law and Practice of Wills, Probates, and Administrations, and on the Law and Practice of Divorce and Matrimonial Causes, from the Commencement of the Examinations in 1876 to the Present Time, with ANSWERS; to which is prefixed a Summary of the Law and Practice thereon; also the Mode of Proceeding, and Directions to be attended to at the Examination, with the Rules of the Honours Examination By RICHARD HALLILAY, Esq., of the Middle Temple, Barrister-at-Law, Late Holder of an Exhibition awarded by the Council of Legal Education, and also of the Studentship of the Four Inns of Court. Author of "The Law and Practice of Conveyancing," "The Proceedings in an Action," &c. Price 6*s.* post free. [1888.

THE ALLOTMENTS ACT, 1887, and the ALLOTMENTS COMPENSATION ACT, 1887, EXPLAINED, with Notes, Forms, and Precedents. By J. THEODORE DODD, M.A., Barrister-at-Law of Lincoln's-inn, Standing Counsel to the Allotments and Small Holdings Association, Author of "The Agricultural Holdings Act Explained," "Burial and other Church Fees," "The Local Rights and Interest of Farm Labourers," &c. Price 3*s.* 6*d.* post free. [1888.

Price 3*d.*, post 8vo.

ALLOTMENTS: How to Obtain them under the Allotment Act 1887, with a General Sketch of the Act. By J. THEODORE DODD, M.A., Barrister-at-Law, Standing Counsel to the Allotment and Small Holdings Association, Author of "The Settled Land Act Explained." [1887.

DODD'S THE SETTLED LAND ACT 1882, with Explanation, Notes, and Precedents. Also with the Rules and Forms for Proceedings in Court, and an Appendix containing the Settled Estates Act, 1877, the Conveyancing and Married Women's Property Acts, 1882, and the Rules and Forms under the Conveyancing Acts. By J. THEODORE DODD, M.A., Barrister-at-Law. Price 7*s.* 6*d.* [1883.

DODD'S THE SETTLED LAND ACT, 1884, Explained, with a Summary of the Cases decided on the Act of 1882, the extension of the Act by the Agricultural Holdings Act, 1883, and with Forms. By J. THEODORE DODD, M.A., Barrister-at-Law. Price 2*s.* 6*d.* [1884.

DODD'S AGRICULTURAL HOLDINGS (ENGLAND) ACT, 1883, with Explanation, Notes, Forms, and Precedents, including Precedents of Agreements for "Specific" and "Fair and Reasonable" Compensation, and the "Farmer's Agreement," and an Appendix containing the Act of 1875 (where it differs from the new Act). By J. THEODORE DODD, M.A., Barrister-at-Law. Price 5*s.* [1883.

Paterson's Practical Statutes (Annually).

THE PRACTICAL STATUTES of the SESSION 1892 (55 & 56 Vict.), with Introductions, Notes, Tables of Statutes repealed and Subjects altered, and a Copious Index. By J. S. COTTON, Barrister-at-Law. Forty-fourth issue of the Series. Cloth, 10*s.* 6*d.*; half-calf, 12*s.* 6*d.*; calf, 13*s.* 6*d.* [1892.

N.B. The Vols. from 1858 to 1891 may also be had. Price 5*s.* a volume if complete set is taken.

LAW and PRACTICE APPERTAINING to ORIGINATING SUMMONS, with Forms. By GEORGE NICHOLS MARCY and J. THEODORE DODD, of Lincoln's-inn, Barristers-at-Law. Price 12*s* [1889.

Hallilay's Examination Questions.

A DIGEST of the QUESTIONS asked at the FINAL PASS EXAMINATION of ARTICLED CLERKS on ALL THE SUBJECTS, from the commencement of the Examinations to the Present Time, with ANSWERS; also a Time Table in an Action; and the mode of proceeding, and directions to be attended to at the Examination, with the Rules of the Honours Examination. By RICHARD HALLILAY, Esq., of the Middle Temple, Barrister-at-Law, late Holder of an Exhibition awarded by the Council of Legal Education, and also of the Studentship of the Four Inns of Court. Author of "The Law and Practice of Conveyancing," "The Proceedings in an Action," &c. Fifteenth Edition, price 18*s.* [1889.

Saunders's Practice of Magistrates' Courts.

Fifth Edition, post 8vo., pp. 800, price 16s.

THE PRACTICE of MAGISTRATES' COURTS, including the Practice under the Summary Jurisdiction Acts, 1848, 1879, 1881; The Indictable Offences Act, 1848; The Quarter Sessions Procedure Act, 1849; and The Reformatory and Industrial Schools Acts, 1866, 1872; The Criminal and Civil Practice of Quarter Sessions; Appeals and other Proceedings in relation to Convictions and Orders in Courts of Summary Jurisdiction, together with an Appendix containing the foregoing and other Statutes relating to Magisterial Proceedings; the Rules and Forms under the Summary Jurisdiction Act, 1879; and the Regulations as to Payment of Costs in Indictable Cases. By THOMAS WILLIAM SAUNDERS, Esq., Metropolitan Police Magistrate. Fifth Edition. By JAMES A. FOOT, M.A., of the Middle Temple, Barrister-at-Law. [1882.

A PRACTICAL GUIDE TO THE BAR. Crown 8vo., cloth, price 2*s.* 6*d.* By T. BATEMAN NAPIER, LL.D. Lond., First Class Law Honours London University, 1881; Incorporated Law Society's First Prizeman, Trinity Term 1876; Scott Scholar, 1876; Conveyancing Gold Medallist, 1876; Inner Temple Equity Scholar, Hilary Term 1881; Senior Student in Jurisprudence and Roman Law at the Inns of Court Examination, Hilary Term 1882; First Prizeman at Professors' Lectures on Roman Law, &c., Hilary Term 1882; Honours at Bar Call Examination, Trinity Term 1882; Joint Editor of "The Jurist," &c., and RICHARD M. STEPHENSON, LL.B., Lond., Honours in Common Law and Equity, Final LL.B. London University; Honours in Jurisprudence and Roman Law, Intermediate LL.B., Solicitors' Final, &c., Examinations; Holder of Inner Temple Equity Scholarship; Joint Editor of "The Jurist," &c.

CROCKFORD'S CLERICAL DIRECTORY for 1893. (Published Annually.) Being a Statistical Book of Reference for facts relating to the Clergy in England, Wales, Scotland, Ireland, and the Colonies. It contains:

1. List of the ARCHBISHOPS and BISHOPS of ENGLAND and WALES, SCOTLAND, IRELAND, and the COLONIES, from the origin of their Diocese to the present time.
2. Full details of all CATHEDRAL, DIOCESAN, CAPITULAR, and COLLEGIATE ESTABLISHMENTS.
3. A complete ALPHABETICAL DIRECTORY of all ARCHBISHOPS, BISHOPS, and CLERGY of the CHURCH of ENGLAND at home and abroad, with the DATES of APPOINTMENT, VALUE of LIVING, POPULATION of PARISH or DISTRICT, particulars of SCHOLARSHIPS, FELLOWSHIPS, UNIVERSITY HONOURS, PREVIOUS APPOINTMENTS, and LITERARY WORK.
4. An Index to all Benefices and Curacies in England, Ireland, Wales, Scotland, and Chaplains abroad.
5. A coloured map of England and Wales divided into Dioceses.

CROCKFORD'S CLERICAL DIRECTORY is more than a Directory; it contains concise Biographical details of all the ministers and dignitaries of the Church of England, Wales, Scotland, Ireland, and the Colonies, and is a valuable book for general reference. Twenty-fifth Issue (published annually), price 15*s.*

In paper covers, price 6*d.*; in cloth, 1*s.*

SERVANTS and MASTERS. The Law of Disputes, Rights, and Remedies, in Plain Language. By a BARRISTER. [1892.

THE STUDENT'S GUIDE to the PRACTICE of the SUPREME COURT of JUDICATURE; embracing the new Rules of Procedure in the form of Question and Answer. By JOHN F. HAYNES, LL.D., author of "The Student's Statutes," "The Student's Leading Cases," &c. Cloth, price 10*s.* 6*d.* [1883.

THE STUDENT'S GUIDE to the LAW of BANKRUPTCY. Based upon the Bankruptcy Act 1883, and in the form of Question and Answer. Limp cloth, 2*s.* 6*d.* [1883.

THE STUDENT'S GUIDE to the LAW and PRACTICE of PROBATE and DIVORCE, especially designed for the use of Candidates for the Final and Honours Examinations of the Incorporated Law Society. SECOND EDITION. By JOHN F. HAYNES, LL.D., F.S.Sc., author of "The Student's Statutes." Price 6*s.* [1882.

THE STUDENT'S GUIDE to the JURISDICTION and PRACTICE of the ADMIRALTY SUB-DIVISION of the HIGH COURT of JUSTICE, especially prepared for the use of Candidates for the Final and Honours Examinations of the Incorporated Law Society By JOHN F. HAYNES, LL.D., Author of the "Student's Statutes," the "Student's Guide to the Probate and Divorce Courts," and the "Student's Leading Cases," &c. Demy 8vo., price 2*s.* 6*d.*; post free, 2*s.* 7*d.* [1880.

THE SUMMARY JURISDICTION ACT, 1879, with Analysis and Practical Notes; The Summary Jurisdiction Act, 1848 (Jervis's Act) incorporated therewith, to which are added The Criminal Justices Acts, The Summary Proceedings before Justices Act, The Larceny and Embezzlement Act, The Penal Servitude Act, The Prosecution of Offences Act, 1879, The Prisons Act, 1879, with the New Rules and Forms. By the late Mr. SERJEANT COX. Price 7*s.* 6*d.*

The NEW RULES can be had separately, price 6*d.*

Post 8vo., price 8s.

A CONCISE VIEW of the PROCEEDINGS in an ACTION in the CHANCERY DIVISION of the HIGH COURT of JUSTICE, including the PRACTICE on APPEAL. Also a Summary of the Proceedings in an Action in the Queen's Bench Division of the High Court of Justice, showing in what particulars the Practice in an Action in the Chancery and Queen's Bench Divisions differs. By RICHARD HALLILAY, Esq., of the Middle Temple, Barrister-at-Law, late Holder of an Exhibition awarded by the Council of Legal Education, and also of the Studentship of the Four Inns of Court. Author of "A Digest of the Examination Questions and Answers," "The Law and Practice of Conveyancing," &c. Second Edition. [1884.

Hallilay's Law and Practice of Conveyancing.

Post 8vo., cloth, price 8s.

A CONCISE TREATISE on the LAW and PRACTICE of CONVEYANCING. Together with the Solicitors' Remuneration Act, 1881 (44 & 45 Vict. c. 44), and the Orders on Conveyancing Fees and Charges. By RICHARD HALLILAY, Esq., of the Middle Temple, Barrister-at-Law, late Holder of an Exhibition awarded by the Council of Legal Education, and also of the Studentship of the Four Inns of Court. Author of "A Digest of the Examination Questions and Answers," &c. [1883.

Hallilay's Handbook for Articled Clerks.

HALLILAY'S ARTICLED CLERKS' HANDBOOK, containing a Course of Study for the Preliminary, Intermediate, Final, and Honours Examination of Articled Clerks, and the Books and Statutes to be Studied for each Examination; also the Law relating thereto, and all necessary Forms; being a complete Guide to the Candidate's successful Examination and his Admission on the Roll of Solicitors, to which are added Papers of Questions asked at each of the several Examinations, and a Glossary of Technical Law Phrases. By RICHARD HALLILAY, Esq., Barrister-at-Law, Author of "A Digest of Examination Questions and Answers." Fifth Edition. Price 4*s.* cloth. [1881.

Cox's Principles of Punishment.

THE PRINCIPLES of PUNISHMENT, as applied in the Administration of the Criminal Law by Judges and Magistrates. By the late Mr. SERJEANT COX. Price 7*s.* 6*d.* [1877.

CONTENTS.

SEVENTH EDITION.

FORD on OATHS. Handbook for use of Commissioners, Magistrates, and Solicitors in England, Ireland, Wales, Scotland, and the Colonies, containing Special Forms of Jurats, Oaths, &c.; Forms and Directions for use by Solicitors applying for Commissions; New Commissioners for Oaths Acts, 1888, 1889, 1890, and 1891; Powers and Jurisdiction of Commissioners and other persons as affected by English and Irish Judicature Acts, and by recent Oaths Acts. By CHARLES FORD, F.R.S.L., Examiner in Admiralty, S.S.C. (Eng.). Price 3*s.* 6*d.* by post.
[1892.

Haynes's Students' Statutes. Fourth Edition.

THE STUDENT'S STATUTES, being the Principal Provisions of some of the more general Acts of Parliament, with Notes of Important Decisions thereon, especially designed for the use of Students of English Law. By JOHN F. HAYNES, LL.D., F.S.Sc. Price 18*s.* cloth.
[1889.

Now ready, price 3*s.* 6*d.* by post.

THE LAW as APPLICABLE to the CRIMINAL OFFENCES of CHILDREN and YOUNG PERSONS. By THOMAS WILLIAM SAUNDERS, Esq. (Police Magistrate), and WILLIAM EDGAR SAUNDERS, Esq. (Barrister-at-Law). [1887.

TABLE OF CONTENTS

Wilkinson's Every-Day Precedents in Conveyancing.

EVERY-DAY PRECEDENTS in CONVEYANCING: a Collection of Practical Forms designed for Professional Use, and suited to the Emergencies of Actual Practice; with Notes, and a Table of Stamp Duties. By THOMAS WILKINSON, Esq., Solicitor of the Supreme Court. Third Edition, re-edited and enlarged. Price 12*s.* 6*d.* [1881.

TABLE OF CONTENTS.

COX'S ARTS of READING, WRITING, and SPEAKING. Letters to a Law Student. By the late Mr. SERJEANT COX. Re-issue (Sixth Thousand). Price 7*s.* 6*d.* [1881.

Price 3*s.* 6*d.*, post free, handy pocket size.

THE PRACTICE of INTERPLEADER by SHERIFFS and HIGH BAILIFFS, with Acts, Rules, and Forms. By DANIEL WARDE, of the Middle Temple, Barrister-at-Law; formerly Solicitor of the Supreme Court, and London Agent for the Officers of the Sheriff of Lancashire. [1887.

METROPOLITAN POLICE COURT JOTTINGS. By A. MAGISTRATE. Limp cloth, 8vo., price 2*s.*, by post 2*s.* 2*d.* [1882.

MARITIME LAW REPORTS (New Series; published Quarterly). By J. P. ASPINALL, Esq., Barrister-at-Law, in the Admiralty Courts of England and Ireland, and in all the Superior Courts, with a Selection from the Decisions of the United States Courts; with Notes by the Editor.

N.B.—This is a continuation of the "Maritime Law Cases," placed under responsible editorship, and is cited as "Aspinall's Maritime Cases" (Asp. Mar. Cas.). Quarterly, price 5*s.* 6*d.*

Vols. I. to V. of reprint now ready. Price £10 the five volumes, in half calf.

COX'S CRIMINAL LAW CASES; in the Court of Criminal Appeal, the Superior Courts, the Central Criminal Court, at the Assizes, and in Ireland. Published Quarterly. Price 5*s.* 6*d.*

The Parts and Volumes, which commenced in 1844, can be had. It is the only complete series of Criminal Cases published in England. An Appendix contains a valuable collection of *Precedents of Indictments.*

COUNTY COURTS, EQUITY, and BANKRUPTCY CASES, comprising the Decisions in Law and Equity administered in the County Courts; the Appeals from the County Courts; the Judgments in important Cases decided in the County Courts, and all the Cases in Bankruptcy in all the Courts, from 1864 to the present time.

Published Quarterly, price 4*s.*

ONE HUNDRED REMINDERS for DRAFTING WILLS. Reprinted from the LAW TIMES, on stiff cardboard, ready for suspension in the office. Price 1*s.*

REMINDERS for ADVISING on TITLE. Reprinted from the LAW TIMES, on stiff cardboard, ready for suspension in the office. Price 1*s.*

REMINDERS for DRAFTING MORTGAGES. Reprinted from the LAW TIMES, on stiff cardboard, ready for suspension in the office. Price 1*s.*

REMINDERS on DRAFTING MARRIAGE SETTLEMENTS. Pt. I. PERSONALTY. Reprinted from the LAW TIMES, on stiff cardboard, ready for suspension in the office. Price 1*s.*

REMINDERS on DRAFTING MARRIAGE SETTLEMENTS. Pt. II. REALTY. Reprinted from the LAW TIMES, on stiff cardboard, ready for suspension in the office. Price 1*s.*

Demy 8vo., price 10*s.* 6*d.*

A DIGEST of the LAW for the INTERMEDIATE EXAMINATION of the INCORPORATED LAW SOCIETY done into QUESTIONS and ANSWERS. By RICHARD M. STEPHENSON, LL.B., Lond., Honours in Common Law and Equity, Final LL.B., London University, Honours in Jurisprudence and Roman Law, Intermediate LL.B., Solicitors' Final, &c., Examinations, Holder of the Inner Temple Equity Scholarship, Joint Author of "A Practical Guide to the Bar," "A Modern Digest of the Law on the subjects of Bankruptcy, Criminal Law, Probate, Divorce, Admiralty, &c.," "A Digest of the Criminal Law," &c.

The above Digest contains not only all the questions of importance which have already been asked at the examination and answers to them, but also questions and answers on every point of importance not yet touched on by the Examiners, and in this respect differs from all others on the subject.

Post 8vo., price 1*s.*

SHERIFFS' OFFICERS and their FEES. The SHERIFFS ACT, 1887, and NOTES of USE to UNDER-SHERIFFS and their LONDON AGENTS, and also to SHERIFFS' OFFICERS. By CHARLES FORD, F.R.S.L., Solicitor, London, Examiner in Admiralty, Author of "Ford on Oaths," "The Solicitors Acts," &c., &c.

REPORTS of CASES in the COUNTY COURTS included in Circuits Nos. 45 and 46, heard and determined by Henry James Stonor, Esq., Judge of the said Courts, including recent Cases under the Employers' Liability Act, with Notes and full Index. By HENRY ANSELM DE COLYAR, Esq., of the Middle Temple. Author of a Treatise on "The Law of Guarantees." Reduced to 2*s.* 6*d.* [1883.

Cox's Law of Joint-Stock Companies.

The SEVENTH EDITION of the

LAW OF JOINT-STOCK COMPANIES and other Associations; comprising the whole of the new Law relating to the Abandonment of Railways and the Winding-up of Railway Companies, as contained in the Statutes relating to Joint-Stock Companies, the General Orders and Rules of the Court of Chancery, and Decisions of the Courts of Law and Equity; together with the Industrial and Provident Societies Acts, and County Court Orders thereon, the Stannaries Act, and Rules, with Notes as to the Mode of Procedure under them. By EDWARD W. COX, Serjeant at-Law, Recorder of Portsmouth. Seventh Edition, by Charles J. O'MALLEY, LL.B., Barrister-at-Law, of the Middle Temple. Published at £1 1*s.*, reduced to 10*s.* 6*d.* [1870.

Wilson's Bills of Sale Act.

THE LAW and PRACTICE under the BILLS of SALE ACTS, 1878 and 1882, comprising the Acts, Rules, and Forms, with Notes on the General Law of Bills of Sale. Second Edition, enlarged By DARCY BRUCE WILSON, M.A., of the Inner Temple, and North-Eastern Circuit, Barrister-at-Law. Price 5*s.*, by post, 5*s.* 3*d.* [1881.

THE BILLS of SALE ACT (1878) AMENDMENT ACT, 1882. Annotated by D. B. WILSON, M.A. Being a supplement to the above work. Price 1*s.* [1882.

Demy 8vo., price 15s.

AN ANECDOTAL HISTORY of the BRITISH PARLIAMENT, from the Earliest Periods to the Present Time. With Notices of Eminent Parliamentary Men, and Examples of their Oratory. Compiled from Authentic Sources by GEORGE HENRY JENNINGS. New Edition, with additions. [1892.

"As pleasant a companion for the leisure hours of a studious and thoughtful man as anything in book shape since Selden."—*Daily Telegraph.*

"Contains a great deal of information about our representative system in past and present times, which it behoves all persons to know, and not a few useful political lessons may be learned from its pages."—*Daily News.*

"It would be sheer affectation to deny the fascination exercised by the 'Anecdotal History of Parliament' now in our hands."—*Saturday Review.*

Saunders's Law of Warranties.

TREATISE on the LAW of WARRANTIES and REPRESENTATIONS upon the SALE of PERSONAL CHATTELS. By T. W. SAUNDERS, Esq., Police Magistrate. Price 6s. [1874.

New General Rules upon Municipal Election Petitions.

THE MUNICIPAL CORPORATIONS ACT, 1882, with Introduction, Notes, the New General Rules upon Municipal Election Petitions, a Copious Index, &c. By THOMAS W. SAUNDERS, Esq., Metropolitan Police Magistrate, and WILLIAM E. SAUNDERS, Esq., Barrister-at-Law. Price 7s. 6d. [1882-83.

Wharton's Law of Innkeepers, &c.

THE WHOLE LAW RELATING to INNKEEPERS, LICENSED VICTUALLERS, and other LICENSED HOLDERS; being a Complete Practical Treatise on the Liability of Innkeepers as Bailees, as well under the Licensing Acts; with an Appendix containing all the important Statutes in Force Relating to Innkeepers, a Complete Set of Forms, and a Copious Index. By CHARLES H. M. WHARTON, Esq., Barrister-at-Law. Post 8vo., price 10s. 6d. [1876.

Saunders's Law of Bastardy.

THE LAW and PRACTICE of AFFILIATION and PROCEEDINGS in BASTARDY; containing The Bastardy Law, and Amendment Acts, 1872, 1873, and 1880; including Appeals to the Sessions, reserving a case for the Court above, and Proceedings by *Certiorari*; with the Statutes and Forms issued by the Local Government Board, and all the decisions upon the subject. By THOMAS W. SAUNDERS, Police Magistrate. Ninth Edition. Price 6s. 6d. cloth. [1888.

PRECEDENTS OF INDICTMENTS; with a Treatise thereon and a Copious Body of FORMS. By THOMAS W. SAUNDERS, Esq., Police Magistrate. Price 7s. cloth. [1871.

COX'S MAGISTRATES', MUNICIPAL, and PARISH LAW CASES and APPEALS decided in all the Courts. (Published Quarterly.) Vols. I. to XIII., from 1860 to 1886, can be had at a reduced rate by taking the whole set.

This series is issued immediately before each Quarter Sessions.

SAUNDERS'S PUBLIC HEALTH ACT, 1875, 38 & 39 Vict.; including the Acts incorporated therewith, and the Artizans and Labourers' Dwellings Improvement Act, 1875. By T. W. SAUNDERS, Esq., Police Magistrate. 8vo., price 10*s.* 6*d.* [1875.

The Journal of the County Courts.

THE COUNTY COURTS CHRONICLE and GAZETTE of BANKRUPTCY (Monthly, price 1*s.* 6*d.*).

To enable it to treat more completely of the many matters on which the Judges, Officers, and Practitioners require to be kept regularly informed, and to give to it the importance which, as the Journal of the County Courts, and their long-established official organ, it is entitled to assume, it has been greatly improved and enlarged in accordance with the extension of the Jurisdiction of the County Courts under 30 & 31 Vict. c. 142, 46 & 47 Vict. c. 52, 51 & 52 Vict. c. 43, and 53 & 54 Vict. c. 63. The Reports of Cases relating to County Courts Law decided by the Superior Courts are in octavo form, as more convenient for citation in Court.

Communications are specially invited to the department of "Queries," which is designed to do for the County Courts what the *Justice of the Peace* does for the Magistrates' Courts.

N.B.—The COUNTY COURTS CHRONICLE was commenced with the County Courts. It is recognised as the official organ of the Courts.

General Indexes to the Law Times Reports.

A GENERAL INDEX to the SECOND TEN VOLUMES of the NEW SERIES of the LAW TIMES REPORTS (Vols. XI. to XX.) 1864 to 1869. It comprises: I. Index to Plaintiffs; II. Index to Defendants; III. Index to Subjects of Cases. Price 8s. 6d. cloth; 10s. 6d. half calf.

A GENERAL INDEX to Vols. XXI. to XXX. (1869 to 1874) of the NEW SERIES of the LAW TIMES REPORTS. It comprises: I. Index to Plaintiffs; II. Index to Defendants; III. Index to Decisions Reversed; IV. Index to Subjects of Cases. Price, 7s. 6d. cloth; 10s. half calf.

A GENERAL INDEX to Vols. XXXI. to XL. (1874 to 1879) of the NEW SERIES of the LAW TIMES REPORTS, comprising: I. Index to Plaintiffs; II. Index to Defendants; III. Index to Decisions Reversed; IV. Index to Subjects of Cases. Price 7s. 6d. cloth; 10s. half calf.

A GENERAL INDEX to Vols. XLI. to L. (1879 to 1884) of the NEW SERIES of the LAW TIMES REPORTS. It comprises: I. Index to Plaintiffs; II. Index to Defendants; III. Index to Decisions Reversed; IV. Index to Subjects of Cases. Price, 7s. 6d. cloth; 10s. half calf.

A GENERAL INDEX to Vols. LI. to LX. (1884 to 1889) of the NEW SERIES of the LAW TIMES REPORTS. It comprises: I. Index to Plaintiffs; II. Index to Defendants; III. Index to Decisions Reversed; IV. Index to Subjects of Cases. Price 7s. 6d. cloth; 10s. half calf.

The Law Times Reports.

PUBLISHED on a separate sheet, large 8vo., for the convenience of binding in portable separate volumes, with copious Indices. These Reports are the earliest and most complete. They are as follows:—

HOUSE OF LORDS, by C. E. Malden, Esq., Barrister-at-Law.

PRIVY COUNCIL, by C. E. Malden and Butler Aspinall, Esqrs. Barristers-at-Law.

SUPREME COURT OF JUDICATURE.

Court of Appeal, by W. C. Biss, E. A. Scratchley, E. Manley Smith, J. H Williams, and Butler Aspinall, Esqrs., Barristers-at-Law.

HIGH COURT OF JUSTICE.

Chancery Division—

Before *Mr. Justice Chitty*, by G. Welby King and H. M. Charters Macpherson, Esqrs., Barristers-at-Law.

Before *Mr. Justice North*, by J. R. Brooke and J. Trustram, Esqrs., Barristers-at-Law.

Before *Mr. Justice Stirling*, by L. S. Bristowe and W. Ivimey Cook, Esqrs., Barristers-at-Law.

Before *Mr. Justice Kekewich*, by F. E. Ady and J. H Bakewell, Esqrs., Barristers-at-Law.

Before *Mr. Justice Romer*, by G. Macan and R. H. Dean, Esqrs., Barristers-at-Law.

Queen's Bench Division—

By Henry Leigh, W. H. Horsfall, W. W. Orr, Mervyn Ll. Peel, T. R. Bridgwater, and G. H. Grant, Esqrs., Barristers-at-Law.

In Bankruptcy, by Walter B. Yates, Esq., Barrister-at-Law.

Probate, Divorce, and Admiralty Division—

Probate and Divorce Business, by H. Durley-Grazebrook, Esq., Barrister-at-Law.

Admiralty Business, by Butler Aspinall, Esq., Barrister-at-Law.

CROWN CASES RESERVED, by R. Cunningham Glen, Esq., Barrister-at-Law.

RAILWAY AND CANAL COMMISSION COURT, by W. H. Horsfall, Esq., Barrister-at-Law.

Two volumes of the Reports are published each year.

N.B.—The LAW TIMES is sent by Post to Subscribers paying in advance, or it may be had by order through all Booksellers and Newsmen.

The Reports in the LAW TIMES may be had separately if desired. The LAW TIMES, at *Ninepence* per week; the Reports, weekly, at *One Shilling*, or in monthly parts, in wrapper, on the first of the month, price 5*s.*

The Cost of Binding the VOLUMES of the LAW TIMES and REPORTS, in HALF-CALF is, 5*s.* 6*d.* for the LAW TIMES, and for the LAW TIMES REPORTS. 5*s.* per vol.

PORTFOLIOS for preserving the current numbers of the LAW TIMES and LAW TIMES REPORTS. Prices respectively 5*s.* 6*d.* and 3*s.* 6*d.*

The Law Times:

THE JOURNAL OF THE LAW AND THE LAWYERS.

PUBLISHED EVERY FRIDAY MORNING.

The Law Times, as the Journal of the Law and the Lawyers, has for over *Half a Century* supplied to the Profession a complete record of the progress of legal reforms, and of all matters affecting the legal profession and the administration of the law.

Notes of Unreported Decisions are supplied by the reporters in the Courts, so that the latest law is brought to the notice of the profession.

Notes for Noting-up.

Important cases in the County Courts, corrected by the judges, are regularly reported.

The interests of Solicitors, which are a matter of much importance, receive special attention.

The Reports of the Law Times are now recognised as the most complete and efficient series published, containing, as they do, many decisions of practical utility which are to be found in no other publication. Their accuracy was on more than one occasion remarked upon by that great lawyer Sir George Jessel.

Mr. Justice Field remarked that he often failed to find cases, which would have been valuable to him, reported in the Law Reports. He found that cases in the Divisional Courts were not generally reported in the Law Reports, except when they went to the Court of Appeal, and were reported there. It appeared as if the reporters thought cases in the Divisional Courts were not worth reporting. He found such cases sometimes in the *Law Journal*, but most frequently they were only reported in the Law Times, or in *The Times*. Mr. Justice Manisty concurred in these observations. (See *Wright* v. *The Midland Railway Company*.)

TERMS OF SUBSCRIPTION TO THE "LAW TIMES,"

Which may be commenced from any time.

WITH REPORTS.

For one year (paid in advance)	£2 14 0
For half-a-year (paid in advance)	1 7 0

WITHOUT REPORTS.

For one year (paid in advance)	£2 2 0
For half-a-year (paid in advance)	1 1 0

The above terms include Inland postage. The postage for Foreign and Colonial Countries charged extra, according to the amount paid.