THE INDIAN RAILWAYS ACT, 1890.
ACT IX OF 1890.

Received the G.-G.'s Assent on the 21st March, 1890

An Act to consolidate, amend, and add to the Law relating to Railways in India.

Whereas it is expedient to consolidate, amend, and add to the law relating to railways in India; It is hereby enacted as follows:—

CHAPTER I
PRELIMINARY.

1. (1) This Act may be called the Indian Railways Act, 1890 1

(2) It extends to the whole of British India 3 inclusive.

. . . (in so far as it has been or may be extended under the provisions of the Sindh-Pishin Railway Act, 1887 3 of British Baluchistan, and applies also to all subjects of Her Majesty within the dominions of Princes and States in India 4 in alliance with Her Majesty, and to all native subjects of Her Majesty without and beyond British India and those dominions 5; and

(3) It shall come into force on the first day of May, 1890.

N.B.—The words "of Upper Burma and" after the word "inclusive," were repealed by the Burma Laws Act, 1898 (XIII of 1898), Burma Code.

(Old Acts)
Act IV of 1879. . . . . . . . S. 1 (Corresponding to S. 1 (1) (2) & (3), present Act).
Act XVIII of 1854. . . . . No corresponding provision.

(Notes).
1.—"Indian Railways Act, 1890."

(1) Preparation of an Indian Railway Code.

The—consistent, so far as public interests permit, with the letter of the contracts subsisting between the Government and Railway Companies, has been under consideration for many years, and the Indian Railways Bill has been drawn with special reference to the objections to which the drafts prepared in 1866 and in 1884 were considered both in India, and in England to be open. (See Statements of objects and Reasons).
Act IX of 1890 (INDIAN RAILWAYS ACT).

I.—"Indian Railways Act, 1890"—(Continued).

(2) Public General Acts of Parliament applicable to Railway Companies in India.

(a) 31 and 32 Vict. C. 26.

(b) 36 and 37 Vict. C. 43.
This statute enables all Railway Companies to issue and register shares and securities in India.

(c) 42 and 43 Vict. C. 11. THE INDIAN GUARANTEED RAILWAYS ACT (1879).
This Act enables the Guaranteed Railway Companies in India and the Secretary of State for India in Council to enter into agreements with respect to the working of Railways and with respect to telegraphs, and confers upon those companies additional powers with respect to their undertakings.

(d) 46 and 47 Vict. C. 30.
This Act authorises companies registered under the English Companies' Act, 1862, to keep local registers of their members in British Colonies (including India).

(c) 57 and 58 Vict. C. 12.
This Act enables Indian Railway Companies (registered under the English Companies' Act 1862—1890), to pay interest out of capital during construction.

(3) Special Acts of Parliament applying to or which have applied to Railway Companies in India.

(a) Assam Railways and Trading Co.—
60 and 61 Vict. ch. xviii.

(b) B. B. and C. I. Ry. Co.—
(i) 18 and 19 Vict. ch., cxiii;
(ii) 22 and 23 Vict. ch., cu;
(iii) 61 and 62 Vict. ch., xlix.

(c) Calcutta and South-Eastern Ry. Co.—
20 and 21 Vict. ch. xxii.

(i) E.I. Ry. Co.—
(i) 12 and 13 Vict. ch. xcm,
(ii) 16 and 17 Vict. ch. cxxvi,
(iii) 18 and 19 Vict. ch. xxxvii,
(iv) 19 and 20 Vict. ch. cxxi;
(v) 27 and 28 Vict. ch. clxii;
(vi) 42 and 43 Vict. ch. 43. ch. ccvi
(vii) 43 Vict. ch. 10;

(viii) 53 and 54 Vict. ch. 53;
(ix) 48 and 49 Vict. ch. 25,
(x) 55 and 56 Vict. ch. x,
(x) 58 and 59 Vict. ch. xx.
S. 1] Act IX of 1890 (Indian Railways Act).

I.—"Indian Railways Act, 1890"—(Conc. uted).

(c) E. B. Ry. Co.—
(i) 20 and 21 Vict., ch. clix;
(ii) 29 and 30 Vict., ch. cxxxvi;
(iii) 47 and 48 Vict., ch. cciv.

(f) G.I.P. Ry. Co.—
(i) 12 and 13 Vict., ch. lxxxiii;
(ii) 17 and 18 Vict., ch. xli;
(iii) 69 and 71 Vict., ch. cxxxviii;
(iv) 1 Edw. viii., ch. 25.

(q) Great Southern India Ry. Co.—
(i) 21 and 22 Vict., ch. cxxxviii;
(ii) 23 and 24 Vict., ch. xxix;
(iii) 37 and 38 Vict., ch. cxxi.

(h) Madras Railway Co.—
(i) 16 and 17 Vict., ch. xli;
(ii) 17 and 18 Vict., ch. xxix;
(iii) 18 and 19 Vict., ch. xi.

(i) O. and R. Ry. Co.—
(i) 21 and 22 Vict., ch. lxxxiii,
(ii) 51 and 52 Vict., ch. 1.

(j) Scinde Ry. Co.—
(i) 14 and 19 Vict., ch. cxv,
(ii) 20 and 21 Vict., ch. clx;
(iii) 32 and 33 Vict., ch. lxxx.

(k) South Indian Ry. Co.—
(i) 21 and 22 Vict., ch. cxxxviii,
(ii) 37 and 38 Vict., ch. cxxi;
(iii) 51 and 52 Vict., ch. v;
(iv) 53 and 54 Vict., ch. 6.

2.—"Extends to the whole of British India."

(1) "British India" meaning.

The term—shall mean "all territories and places within Her Majesty's dominions, which are for the time being governed by Her Majesty through the Governor-General of India, or through any Governor or other Officer subordinate to the Governor-General of India. See S. 3, cl. (7), General Clauses Act (X of 1897).

(2) Scope of the term "British India."

By Acts XIV and XV of 1874, not only Aden,* but the Laccadive Islands in the Indian Ocean, the Andaman and Nicobar Islands, and Ajmere and Merwara in the centre of Rajputana, are declared to be parts of British India, which shows that the Indian Legislature has given to the words "British India" a much more extended meaning than, at first sight, they would appear to indicate. 9 B. 244 (249).
Act IX of 1890 (Indian Railways Act).

2. — "Extends to the whole of British India" — (Concluded).

(3) Railway station in Native State — Cession of jurisdiction — Cession of territory.

The applicant was charged with having imported bhang into the Presidency of Bombay, inasmuch as a parcel containing the bhang and bearing his name and address was received at Kalol, a railway station in a Native State. It appeared that the criminal jurisdiction along the line of railway was ceded to the Government of India, but there had been no cession of territory. Held, that no offense was committed unless the importation was into the Presidency of Bombay, that is, into the territories which formed part of British India, and if the land on which the offense was alleged to have been committed had not actually been ceded, it could not form part of British India. 5 Bom.L.R. 873.

3. — "Extended ... Sind Pishin Railway Act, 1887."

Application of the Railway Acts:

See S. 3, Sind Pishin Railway Act, XI of 1887 and S. 150, infra.

4. — "India."

(1) India — Definition in General Clauses Act.

(a) "India" shall mean British India, together with any territories of any Native Prince or Chief under the Soverainty of Her Majesty, exercised through the Governor-General of India or through any Governor or other Officer subordinate to the Governor-General of India (See S. 3, cl. 27, General Clauses Act, X of 1897).

(b) "India," as distinguished from British India, includes the territories of Native States. 24 and 25 Vict., C. 67, S. 22; 28 and 29 Vict., C. 15, S. 3, etc., cited in Ilbert’s Government of India, 2nd Ed., p. 264.

(2) Penal Code, applicability of, to such parts of railways as run through Native States.

The Penal Code has been extended, or rendered applicable to such parts of the following railways as pass through Native States—

(a) Bhaunagar — Gondal.

Bhaunagar — Gondal — Junagad — Porbander Railway.

Jetalsar Viraval section — Dhoraji — Porbander section.

Jetalsar — Rajkot section.

(b) Bombay, Baroda and Central India Railway.

(c) Great India Peninsula Railway.

(d) Madras Railway.

(e) Mysore.

Kolar Gold Fields Railway.

Mysore section of Southern Maharatta Railway.

Mysore State Railway.

(f) Western Rajapatana Railway.

Rajapatana — Malwa Railway.

Rewari — Fezarpur section.

(g) Indian Midland Railway.
4.—"India"—(Concluded).

(h) Morvi State Railway.
(i) Bengal-Nagpore Railway.
(j) Delhi-Umballa-Kalka Railway.
(k) North-Western (formerly Sind-Punjab and Delhi) Railway.
(m) Nizam's Guaranteed State Railway.
(n) Southern Maharatta Railway.

South Deccan section.
West Deccan line
East Deccan line.
Harishar Branch.

(o) Drangadhra Railway.
(p) Jamnagar Railway.
(q) Kolhapur State Railway.
(r) Ahmedabad-Parantij Railway.
(s) Koti-Rohri Railway.
(t) Mehsana-Virangam Railway.
(u) Palanpur-Dusa Railway.
(v) Rajpura State Railway.
(w) Tapti Valley Railway.

(x) Oudh and Rohilkund State Railway—
    Bareilly-Rampore-Moradal section

(y) Southern Punjab Railway—
    Bharatpur and Bikanir section.

(z) Cawnpore-Achnera State Railway.

(aa) Goona-Bawan Railway.

(bb) Barsi Light Railway.

(cc) Dhond Manmad Railway.

(dd) Hyderabad Godavery Valley Railway.

(ee) Godhra—Rudlam Nagda Railway, etc., etc.

5.—"Beyond... dominions."

Power to exempt Railways from Act
Soc S. 147, infra.

2. (1) On and from that day the enactments specified in the first schedule are repealed to the extent mentioned in the third column thereof.

(2) But all rules, declarations, and appointments made, sanctions and directions given, forms approved, powers conferred, and notifications published under any of those enactments, or under any enactment repealed by any of them, shall, so far as they are consistent with this Act, be deemed to have been respectively made, given, approved, conferred, and published under this Act 1.
(3) Any enactment or document referring to any of those enactments, or to any enactment repealed by any of them, shall, so far as may be, be construed to refer to this Act, or to the corresponding portion thereof.

**Old Acts**

Act IV of 1879 ... S. 2 Corresponding to (1) and (2).
Act XVIII of 1854 ... No corresponding provision.

**N.B.**—Sub-section (3) is new.

**Note.**

1.—"Made, given, etc., Act."

*Cf. S. 57 (5), infra.*

**Definitions.**

(1) "tramway" means a tramway constructed under the Indian Tramways Act, 1886, or any special Act relating to tramways:

(2) "ferry" includes a bridge of boats, pontoons, or rafts, a swing-bridge, a flying bridge, and a temporary bridge, and the approaches to, and landing places of, a ferry

**Old Act.**

Sub-ss (1) and (2) are new.

(3) "inland water" means any canal, river, lake, or navigable water in British India:

**Old Act.**

This sub-section is new.

**Note.**

1.—"Inland water."

**Analogous provision.**

*Cf. S. 5 (3), Act VI of 1881 (Inland Steam Vessels).*

(1) "railway" means a railway, or any portion of a railway, for the public carriage of passengers, animals, or goods, and includes—

(a) all land within the fences or other boundary-marks indicating the limits of the land appurtenant to a railway;

(b) all lines of rails, sidings, or branches worked over for the purposes of, or in connection with, a railway;

(c) all stations, offices, warehouses, wharves, workshops, manufactories, fixed plant and machinery, and other works constructed for the purposes of, or in connection with, a railway; and
(d) all ferries, ships, boats, and rafts which are used on inland waters for the purposes of the traffic of a railway, and belong to, or are hired or worked by, the authority administering the railway:

**Old Acts.**

| Act IV of 1879 | S. 3. |
| Act XVIII of 1854 | S. 1. |

(Notes).

1.—"Railway."

(1) **Sources of sub-sec.**


(2) Cl. (4), sub-cl. (d).

Sub-cl (d) of the definition of "railway" has been restricted to such vessels as are used on inland waters within the local extent of the Act. It has been held that the corresponding clause in Act IV of 1879, must be read in this restricted sense, as, apart from the local extent of that Act, a wider construction of the clause might bring the Railways Act into collision with the Merchant Shipping Acts, and the provisions of the general law relating to the carriage of passengers and goods by Sea. (See Statement of Objects and Reasons.)

(5) "Railway company" includes any persons, whether incorporated or not, who are owners or lessees of a railway, or parties to an agreement for working a railway:

**Old Acts.**

| Act IV of 1879 | No corresponding provision. |
| Act XVIII of 1854 | |

(Notes).

1.—"Railway Company."

(1) **Analogous provision.**

Cf. the Regulation of Railways Act, 1871 (31 and 32 Vict. c. 73, S. 2).

(2) "Railway"—To what it refers.

For the purpose of S. 3, cl. (5) (6) and (7), the word 'railway' whether it occurs alone or as a prefix to another word, has reference to a railway or portion of the railway under construction, and a railway not used for the public carriage of passengers, animals or goods, as well as to a railway within the definition of that word in S. 3 (4). (See S. 148 (1) infra, and Statement of Objects and Reasons.)

(6) "railway administration" or "administration," in the case of a railway administered by the Government or a Native State means the Manager of the railway, and includes the Government or the Native State, and, in the case of a railway administered by a railway company, means the railway company:
Act IX of 1890 (INDIAN RAILWAYS ACT).

Old Acts.

Act IV of 1879 .... S. 3.
Act XVIII of 1854 ... No corresponding provision.

(Note).

1. "Railway Administration."

Railway Administration—Necessity for the definition.

(a) For the purpose of Ch. VII, infra, relating to the responsibility of railway administrations as carriers, it is proper to define the expression "railway administration," in the case of a railway administered by the Government or a Native State, to include the Government or State as the case may be (See Statement of Objects and Reasons).

(b) In the Indian Railways Act, 1879 the expression, "railway administration—was defined as meaning in the case of a railway worked by Government, the manager of such railway and the expression did not include Government 4 O.C. 193 (196).

(c) The same expression in such a case, although it still means the manager, now includes the Government, so that wherever the expression is used in the present Act, it must, unless there is something repugnant in the subject or context, also mean the Government. (Ibid).

(d) In the case of a railway administered by the Government, if a railway administration is liable for compensation, it is the Government which has to make compensation. (Ibid).

(e) It was probably for this reason that the expression "railway administration" was defined in the Act of 1890, so as to include the Government (Ibid).

(f) The definition suggests that the framers of the Act contemplated that a suit, in which compensation was claimed under Ch. VII infra, should, where the railway is administered by the Government, be brought against the Government. (Ibid).

(7) "railway servant 1" means any person employed by a railway administration in connection with the service of a railway:

Old Acts.

Act IV of 1879 .... S. 3.
Act XVIII of 1854 ... No corresponding provision.

(Note).

1. "Railway servant."

Goods clerk.

A—employed by a railway administration is a railway servant within the meaning of S. 3 (7) of the Act. 9 P. R. 1898 (Cr.)

(8) "inspector" means an Inspector of Railways appointed under this Act.

Old Act.

This definition is new

(9) "goods" includes 2 inanimate things of every kind:
Act IX of 1890 (INDIAN RAILWAYS ACT).

Old Acts.

Act IV of 1879
Act XVIII of 1854 } No corresponding provision.

(Notes).

1.—“Goods.”

Analogous provision.

Cf. the Railway Clauses Act 1845 (8 & 9 Vic., c. 20), S. 3.

2.—“Includes.”

“Include”—Meaning.

(a) “When, in an interpretation clause, it is stated that a certain term ‘includes’ so and so, the meaning is that the term retains its ordinary meaning, and the clause enlarges the meaning of the term, and makes it include matters, which the ordinary meaning would not include. Per Lord Esher in Rodger v. Harrisson, 1 Q.B. (1893), p. 107.

(b) The use of the term, ‘includes’, shows that the term indicated is not meant to be defined. 9 B.H.C. 99 (106).

(c) The word “include” in the General Clauses Act is intended to be enumerative, not exhaustive. 2 M. 5 (7).

(d) When the Legislature intends to exhaust the signification of the word interpreted, the word “mean” is used. (Ibid).

(e) Where a definition “include” certain persons or things, it does not necessarily exclude other persons or things not so included; for, when a definition is intended to be exclusive, it would seem that the form of the words is “means and includes”. 4 C. 492.

(10) “rolling-stock" includes locomotive engines, tenders, carriages, wagons, trucks, and trolleys of all kinds:

Old Acts.

Act IV of 1879
Act XVIII of 1854 } No corresponding provision.

(Notes).

1.—“Rolling stock.”

Analogous provision.

Cf. S. 2, the Rolling Stock Protection Act, 1872 (35 and 36 Vic. c. 50, S. 2).

(11) “traffic” includes rolling-stock of every description as well as passengers, animals, and goods.

Old Acts.

Act IV of 1879
Act XVIII of 1854 } No corresponding provision.

(Notes).

1.—“Traffic.”

Analogous provision.

Cf. S. 1, the Railway and Canal Traffic Acts, 1864 (17 and 18 Vic., c. 31).
2.—"Animals."

(a) Nowhere in the Act is the term "animal" defined.

(b) Ghose, J., in deciding that a crab was an "animal" as defined by S. 2, Act XI of 1890, viz., "domestic or captured animal", said, "there can, I think, be no doubt whatever on the point, for the word "animal" ordinarily means an organised or living being having sensation and power of voluntary motion, an inferior or irrational being as distinguished from man," Ghose, J., in 24 C 881 (885).

(12) "through traffic" means traffic which is carried over the railways of two or more railway administrations:

Old Act.

This definition is new.

* (13) "rate" includes any fare, charge, or other payment for the carriage of any passenger, animal, or goods:

Old Acts.

Act IV of 1879
Act XVIII of 1854

No corresponding provision.

This clause is new.

(Note).

1.—"Rate."

Analogous provision.

Cf. S. 2, the Railways Rolling Stock Protection Act, 1872 (35 and 36 Vic., S. 3, The Railways Clauses Act, c. 50) and (8 Vict., c. 20).

(14) "terminals" includes charges in respect of stations, sidings, wharves, depots, warehouses, cranes, and other similar matters, and of any services rendered thereat:

Old Acts.

Act IV of 1879
Act XVIII of 1854

No corresponding provision.

This clause new.

(Note).

1.—"Terminals."

Analogous Provision.

Cf. S. 55, the Railway and Canal Traffic Act, 1888 (51 and 52 Vict., c. 25).

(15) "pass" means an authority given by a railway administration, or by an officer appointed by a railway administration in this behalf, and authorizing the person to whom it is given to travel as a passenger on a railway gratuitously:

Old Act.

This definition is new.

(16) "ticket" includes a singleticket, a return ticket, and a season ticket:
Old Act.
This definition is new.

(17) "maund 1" means a weight of three thousand two hundred tolas, each tola being a weight of one hundred and eighty grains Troy: and

Old Act.
This definition is new.

(Note).

I.—"Maund."

"Maund."

\[
\begin{align*}
82.29 \text{ lbs} & = 1 \text{ Maund;} \\
27.22 \text{ Maunds} & = 1 \text{ Ton.}
\end{align*}
\]

(18) "Collector" means the chief officer in charge of the land revenue administration of a district, and includes any officer specially appointed by the Local Government to discharge the functions of a Collector under this Act.

Old Acts.

Act IV of 1879 | No corresponding provision.
Act XVIII of 1854

(Note).

I.—"Collector."

Collector—Definition.

See also the definition in S. 3 (10), Act X of 1897 (General Clauses Act).

CHAPTER II.

INSPECTION OF RAILWAYS.

4. (1) The Governor-General in Council may appoint persons, by name or by virtue of their office, to be Inspectors of Railways.

(2) The duties of an Inspector of Railways shall be—

(a) to inspect railways with a view to determine whether they are fit to be opened for the public carriage of passengers, and to report thereon to the Governor-General in Council as required by this Act;

(b) to make such periodical or other inspections of any railway or of any rolling-stock used thereon as the Governor-General in Council may direct;

(c) to make inquiry under this Act into the cause of any accident on a railway;
(d) to perform such other duties as are imposed on him by this Act or any other enactment for the time being in force relating to railways.

Old Acts.

Act IV of 1879 ... S. 5-A (corresponding to sub-S. 1 of the present Act).
Act XVIII of 1854 ... No corresponding provision. Sub-S. (2) is new.

Notes.

1. — "Appointment ... Inspectors."

(1) Analogous provision.

Cf. — S. 3, the Regulation of Railways Act, 1871 (34 and 35 Vic., c. 78).

(2) Persons appointed to be Inspectors of Railways.

For ——, see Government of India (Railway) Circular No. XV, dated 4th December 1888.

Consulting Engineers.

— for Railways, etc., to be inspecting officers. See Government of India (Railway) Circular No. XV, dated 4th December, 1888.

5. An Inspector shall, for the purpose of any of the duties which he is required or authorized to perform under this Act, be deemed to be a public servant within the meaning of the Indian Penal Code, and, subject to the control of the Governor-General in Council, shall, for that purpose, have the following powers, namely:—

(a) to enter upon and inspect any Railway or any rolling-stock used thereon;

(b) by an order in writing under his hand addressed to the railway administration, to require the attendance before him of any railway servant, and to require answers or returns to such inquiries as he thinks fit to make from such railway servant or from the railway administration;

(c) to require the production of any book or document belonging to, or in the possession or control of, any railway administration (except a communication between a railway company and its legal advisers) which it appears to him to be necessary to inspect.

Old Acts.

Act IV of 1871 ... See S. 5 (d) (1).
Act XVIII of 1854 ... No corresponding provision.
Act IX of 1890 (Indian Railways Act).

(Notes).

1. "Power of Inspectors."

Analogous provision.

Cf.—S. 4, the Regulation of Railways Act 1871 (34 and 35 Vic., c. 78).

2. "Deemed to be a public servant."

(1) Public servant defined.

See S. 21, I. P. C.

(2) Offences by, or, relating to public servants.

For——, see Chapter IX, I. P. C.

(3) Contempts of the lawful authority of public servants.

For——, see Chapter X, I. P. C.

3. "Except a communication...legal advisers"

Reason for the exception.

In accordance with a suggestion made by one of the railway companies with reference to the draft Bill (Railway) of 1884, communication between railway companies and their legal advisers have been expressly excepted from the documents of which an Inspector of Railways may require production. (See Statement of Objects and Reasons).

6. A railway administration shall afford to the Inspector all reasonable facilities for performing the duties and exercising the powers imposed and conferred upon him by this Act.

Old Acts.

Act IV of 1879...S. 5 (d) (2).

Act XVIII of 1854...No corresponding provision.

CHAPTER III.

CONSTRUCTION AND MAINTENANCE OF WORKS.

7. (1) Subject to the provisions of this Act and, in the case of immovable property not belonging to the railway administration, to the provisions of any enactment for the time being in force for the acquisition of land for public purposes and for companies, and subject also, in the case of a railway company, to the provisions of any contract between the company and the Government, a railway administration may, for the purpose of constructing a railway or the accommodation or other works connected therewith, and, notwithstanding anything in any other enactment for the time being in force,—
(a) make or construct in, upon, across, under, or over, any lands, or any streets 2, hills, valleys, roads, railways, or tramways, or any rivers 3, canals, brooks, streams, or other waters, or any drains, water-pipes, gas-pipes, or telegraph lines, such temporary or permanent inclined planes, arches 4, tunnels 5, culverts, embankments, aqueducts, bridges 6, roads 7, lines of railway 8, ways, passages, conduits, drains, piers, cuttings, and fences 9, as the railway administration thinks proper.

(b) alter the course of any rivers, brooks, streams 10, or water-courses for the purpose of constructing and maintaining tunnels, bridges, passages or other works over or under them and divert or alter, as well temporarily as permanently, the course of any rivers, brooks, streams, or watercourses, or any roads, streets, or ways, or raise or sink the level thereof, in order the more conveniently to carry them over or under, or by the side of, the railway, as the railway administration thinks proper.

(c) make drains or conduits into, through, or under any lands adjoining the railway for the purpose of conveying water from or to the railway;

(d) erect and construct such houses, warehouses, offices, and other buildings, and such yards, stations 11, wharves, engines, machinery, apparatus, and other works and conveniences as the railway administration thinks proper.

(e) alter, repair, or discontinue such buildings, works, and conveniences as aforesaid or any of them, and substitute others in their stead; and

(f) do all other acts necessary for making, maintaining, altering or repairing, and using the railway 12.

(2) The exercise of the powers conferred on a railway administration by sub-section (1) shall be subject to the control of the Governor-General in Council.

Old Acts.

Act IV of 1879.
Act XVIII of 1854. } No corresponding provision.
Act IX of 1890 (Indian Railways Act).

General.

(1) Analogous provision.

This section corresponds to § 16 of the Railway Clauses Act, 1845 (8 and 9 Vict., c. 20).

(2) Nature of section.

This section follows generally the terms of an English enactment, but supersedes any local enactments which prohibit the construction of railways over gas-pipes and the like, without the previous permission of Municipal Commissioners. The expense of diverting the course of a railway for the purpose of avoiding a gas pipe, would usually be out of all proportion to any damage which might possibly be caused by the railway passing over the pipe. (See Statement of Objects and Reasons)

Powers conferred.

(a) It confers on railway administrations certain statutory powers; and a statutory power is a power conferred by statute to do something which could not be lawfully done without it. *Bensley v. North-Eastern Ry. Co.*, (1896) 1 Ch. 418 (428).

(b) But these powers are to be taken as cut down and qualified by the provision that it must be an act “necessary for making, maintaining, altering or repairing and using the railway.” *Pugh v. Golden Valley Ry Co.*, (1877) 15 Ch. D. 330.

(c) See also cl. (f), infra.

Exceeding the statutory powers.

In *Funk v. London and S. W. Ry. Co.*, (1890) 44 Ch. D. 330, a question of—- in widening a railway was discussed.

Section does not introduce, in the case of railways, any special principle.

The—- as to injurious affecting, different from that applied in the case of other works. *Att.-Gen. and Hare v. Metropolitan Ry Co.*, (1894) 1 Q.B. 184.

I.—“Provisions of . . . Companies.”

Acquisition of land—Provision.

See the Land Acquisition Act (I of 1894).

Right of way.

—- does not exist on land acquired by a Railway Company under Act VI of 1857, except when the Company, by its own acts, lays itself under legal obligation to provide a way. *3 W.R. 27*

Payment of compensation for damages caused by lawful exercise of powers under this section.

As to—- , see S. 10, infra.

2.—“Streets.”

Street, meaning of.


(b) It also means a thoroughfare with houses on both sides. *Galloway v. Mayor of London*, L.R. 1 H.L. 34.
2.—"Streets"—(Concluded).

(2) Right of owner of land adjoining public highway to erect gates.

The owner of land adjoining a public highway, is legally entitled to erect gates or open doors so as to give him access to the highway at any point he pleases, whether the soil of the highway be his or not. *London and North-Western Ry. Co. v. Mayor, etc., of the City of Westminster*, 67 L.T. 93, cited in 25 M. 635 (551).

3.—"Rivers."

"Rivers"—Scope of the term.

Navigable as well as non-navigable rivers are included in this term *Abraham v. G. N. Ry. Co.*, 16 Q. B. 586.

4.—"Arches."

Purchase by Railway Company.


5.—"Tunnels."

# Railway Company to purchase land.

When a Railway Company desires to enter on a certain land in order to have a permanent tunnel constructed, it must purchase the site *Sparrow v. Oxford Ry. Co.*, 2 De G. M. and G. 94.

6.—"Bridges."

(1) Authority to construct a temporary bridge.


(2) Bridges and inclines.

In addition to the power given by this section to the railway administration, S. 14, *infra*, gives the Governor-General in Council power to require the administration, at any time, to make over or under-bridges, ascents and descents, and to remove or diminish the danger of level-crossing. (See S. 14 of the Act).

(3) Railway Company agreeing to make approach to bridge with certain slope.

Where a Railway Company agreed to make the approach to a bridge with certain slope, it was held to the agreement. *Attorney-General v. Mid. Kent, etc., Ry. Co.*, (1867) 3 Ch. 100.

(4) Line crossing public footpath—Obligation imposed by English Statute.

In *Dartford Rival Council v. Beasley, etc. Ry. Co.*, H. L. (1898) A. C. 210, it was held that the English statute did not impose on a Railway Company, whose line crossed a public footpath, the obligation of carrying the footpath by means of a bridge.

7.—"Roads."

A Railway Company diverting road.

7.—“Roads”—(Concluded).

(b) Such diversion may be to a spot where there is level crossing provided the same is more convenient than a bridge. Attorney-General v. Ely and Ry. Co., L. R. 4 Ch. 194.

(c) Such acts only as are necessary for constructing the Railway or the accommodation of other works connected therewith, can be executed, and not those done merely for the saving of expense. Rey v. Wycombe Ry. Co., L. R. 2 Q. B. 310.

8.—“Lines of railway.”

The words ——, were added by the Indian Railways Act, Amendment Act (IX of 1890), S. 1.

9.—“Fences.”

(1) Power to require administration to provide boundary marks.

In addition to the power here given to the Railway administration, S. 13, infra, gives the Governor-General in Council power to require the administration to provide boundary marks or fences, works in the nature of screens, gates, chairs, barns, etc.

(2) Under English Statute, Railway Company is bound to maintain sufficient fences.


(3) Railway Company is not bound in duty to its passengers or other persons to maintain fences.

But a——, sufficient to keep cattle off the line in all circumstances, but is bound to use every reasonable care to prevent them from straying upon the line. Buxton v. North-Eastern Ry. Co., (1868) L. R. 3 Q. B 540, Llewlwan v. Great Western Ry. Co., (1890) 2 Q. B. 315.

10.—“Rivers, brooks, streams.”

(1) Power conferred by sub-section (1) clause (b).

The —— is to be taken as qualified by cl. (f), infra, and it only authorises a diversion, when the river or road presents an actual obstacle to the construction of the line, and not where the diversion is merely to save expense. Pugh v. Golden Valley Railway Co., (1887), 15 Ch. D. 380.

(2) Diversion of stream.


(3) Diversion—Company to keep within authority given.

The Company, in making the diversion, must keep within the authority given them. Queen v. Wycombe Ry. Co., (1867) 2 Q. B. 310.

(4) Diversion of public footpath not permitted.

But, the Statute does not authorise a Railway Company to divert a public footpath, so as to place it on land of which the Company had not acquired the ownership. Rangeley v. Midland Ry. Co., (1866) L. R. 3 Ch. 806.
10.—"Rivers, brooks, streams"—(Concluded).

(5) Railway Company diverting a road.

(a) Where a Railway Company diverted a road ultravires, but with a bona fide view to the convenience of the public, a Court of Equity would not compel them to replace the road so as to make their work ultravires, if the result will be to cause greater inconvenience to the public. Attorney-General v Fy Haddenham, etc., Ry Co., (1869), L. R. 6 Eq. 106.

(b) On appeal from the above, held, that the Company had not exceeded its powers. (Ibid.) (1869) 4 Ch. 191.

II.—"Stations."

What constitutes a station.


12. "Do all other acts... railway."

(1) Nature of this clause

This clause is in reality a proviso on the whole section.

(2) Reason for the above view.

See Queen v. Wycombe Ry. Co., and Pugh v. Golden Valley Ry. Co., supra, where it was held that the works authorised by the section must be works "necessary for the making, maintaining, altering, or repairing, and using the railway." See also, Emsley v. North-Eastern Ry. Co., (1896) 1 Ch. 418 (434).

(3) Work convenient on ground of economy.

(a) Works which are only convenient to a Railway Company on the ground of economy, are not necessary within the meaning of this section Fenwick v. East London Ry Co., (1879) L. R. 20 Eq. 514

(b) Where a Railway wished to build a temporary railway to save the trouble and expense of carrying materials from a highway, the mere saving of expense in construction did not constitute necessity. Morris v. Tottenham, etc., Ry Co., (1892) 2 Ch 17.

(4) Railway Company making a line constructing burrow pits.

A Railway Company, which, in making a line constructs the burrow pits in such a manner as to be continuous, thus acting as channels for water to pass along the line, will be liable if any damage is caused thereby to the owner of land adjacent to the line. 2 Bom. L. R. 537.

(5) S. 394, Act III of 1888 (Bombay Municipality)—Railway Company storing sleepers on their premises—License from Municipality.

The G.I.Ry. Co., used certain plots of land in Bombay for storing sleepers (timber) for the use of their line. In the Presidency Magistrates' Court, the Company was charged under S. 394 (1) (d), Bombay Act III of 1888, with having used the plots for storing timber without a license from the Municipal Commissioner. Held, (1) that no license was necessary as S. 7 (1) of the Act (IX of 1890) enabled the Ry Co., to do all acts necessary, for making, maintaining, altering or repairing,
12.—"Do all other acts...? railway"—(Concluded).

and using the railway " notwithstanding anything in any other enactment for the time being in force; and (2) that the storing of sleepers was necessary for the maintenance, repairing, etc. of the railway line. 11 Bom. L.R. 1181.

(6) Removal of trees dangerous to or obstructing the working of a railway.

See S. 15, infra.

(7) Acquisition of land—Use for purposes of Acts.

(a) When lands are compulsorily acquired by a Railway Company, they must be used only for purposes mentioned in the Act. Bostock v. North Staff Ry. Co., 3 Sm. and G. 288.

(b) On a Railway Company erecting a hoarding for preventing the plaintiff from acquiring a right to the access of light across the Railway, the Company was restrained from erecting the same by injunction. Norton v. L. and N. W. Ry. Co., L. R. 9 Ch. D. 623.

(c) A Railway Company, which had bought land from a man and had covenant-ed with him in the purchase deed not to erect any building on it to a greater height than eighteen feet within the distance of 80 ft. from certain other property of his, was restrained according to the terms of the covenant. Lloyd v. London, Chapel and Dover Ry. Co., 2 De G.J. and S 568.

8. A railway administration may, for the purpose of exercising the powers conferred upon it by this Act, alter the position of any pipe for the supply of gas, water, or compressed air, or the position of any electric wire, or of any drain not being a main drain:

Provided that—

(a) when the railway administration desires to alter the position of any such pipe, wire, or drain, it shall give reasonable notice of its intention to do so, and of the time at which it will begin to do so, to the local authority, or company having control over the pipe, wire, or drain, or, when the pipe, wire, or drain, is not under the control of a local authority or company, to the person under whose control the pipe, wire, or drain is;

(b) a local authority, company, or person receiving notice under proviso (a) may send a person to superintend the work, and the railway administration shall execute the work to the reasonable satisfaction of the person so sent, and shall make arrangements for continuing, during the execution of the work, the supply of gas, water, compressed air, or electricity, or the maintenance of the drainage, as the case may be.
Act IX of 1890 (INDIAN RAILWAYS ACT).

Old Acts.

Act IV of 1870
Act XVIII of 1854
{No corresponding provision

(Notes).

N.B.—See also notes to S. 12, infra.

General.

(1) Analogous provision.

Cf.—S. 14, the Railway Clauses Act, 1815 (8 Vict. c. 20), and S. 14 (Act 111 of 1885).

(2) Scope of section.

This section confers on a railway administration, a power which the telegraph authority has under the Indian Telegraph Act, 1885 (see Statement of Objects and Reasons).

1.—"Alteration of pipes, wires and drains."

Payment of compensation for damages caused by lawful exercise of powers under this section.

As to —, see S. 10, infra.

2.—"Reasonable notice"

(1) Services of notice by railway administration.

For—, see S. 141, infra.

(2) Presumption where notice is served by post.

As to —, see S. 142, infra.

3.—"Local authority."

"Local authority." shall mean a municipal committee, district board, body of post commissioners or other authorities, legally entitled to, or entrusted by the Government with the control or management of municipal or local fund (S. 3 (28), Act X of 1897).

9. (1) The Governor-General in Council may authorize any railway administration, in case of any slip or other accident happening or being apprehended to any cutting, embankment, or other work under the control of the railway administration, to enter upon any lands adjoining its railway for the purpose of repairing or preventing the accident, and to do all such works, as may be necessary for the purpose.

(2) In case of necessity the railway administration may enter upon the lands, and do the works aforesaid, without having obtained the previous sanction of the Governor-General in Council, but in such a case shall, within seventy-two hours after such entry, make a report to the Governor-General in Council, specifying the nature of the accident or apprehended accident, and of the works necessary.
to be done, and the power conferred on the railway administration by this sub-section shall cease and determine, if the Governor-General in Council, after considering the report, considers that the exercise of the power is not necessary for the public safety.

**Old Acts.**

Act IV of 1879 \} No corresponding provision.
Act XVIII of 1851 \} No corresponding provision.

**(Notes).**

Analogous provision.

Cf. S. 14, the Railway Regulation Act, 1842 (5 and 6 Vict., c. 55).

**1.** "Temporary entry... accident."

Compensation to persons affected by the lawful exercise of powers under this section.

As to—, see S. 10, *infra.*

10. (1) A railway administration shall do as little damage¹ as possible in the exercise of the powers conferred by any of the three last foregoing sections, and compensation shall be paid for any damage caused by the exercise thereof.

(2) ² A suit shall not lie to recover such compensation, but in case of dispute the amount thereof shall, on application to the Collector, be determined and paid in accordance, so far as may be, with the provisions of sections 11 to 15, both inclusive, and sections 18 to 34, both inclusive, and sections 53 and 54 of the Land Acquisition Act, 1894, and the provisions of sections 51 and 52 of that Act shall apply to the award of compensation.

**Old Acts.**

Act IV of 1879 \} No corresponding provision.
Act XVIII of 1854 \} No corresponding provision.

Sub-S. (2) is new.

**(Notes).**

**General.**

(1) Analogous provision.

Sub-S. (1) corresponds to the provision in S. 16 of the Railway Clauses Act, 1845.

(2) Source of section.


(3) Scope and applicability of section.

(a) This section can only apply to damage which is the result of the exercise of the powers conferred by Ss. 7, 8, and 9 and which can be foreseen.

² Bom. L. R. 357.
General—(Concluded).

(b) This section does not apply where the power exercised is the erection of an embankment and the making of a culvert which do no injury, but where the sole cause of the injury is that the side trenches of a line are allowed to become watercourses; because, this is quite unconnected with the exercise of any power conferred by Sec. 7, supra, and is the result of the negligence that cannot have been foreseen. (Ibid.)

1.—"Damage."

(1) Damage caused by exercise of powers conferred by Act.

"The statutory tribunal, which the Legislature has provided where losses are sustained in the formation of railways, is only established to give compensation for losses sustained in consequence of what the railway company may lawfully do under the powers which the Legislature has conferred on them, and for anything done in excess of those powers, or contrary to what the Legislature in conferring those powers has commanded, the proper remedy is a common law action in the common law Courts." (Caledon iun Ry. Co. v. Colt, 3 Macq. 338.)

(2) Damages caused to adjoining lands.

(a) The owner, whose land is acquire for a railway, should claim for all damages likely to be caused to the adjoining land by the works of the Company. 6 B. H. C. (A.C.) 116.

(b) No separate suit will lie for damages so caused, if it could have been reasonably foreseen. (Ibid.)

(3) Works executed without negligence—Suit for damages, right to maintain.

(a) "It is quite plain, that, if there had been no proof of negligence and the injury had been the unavoidable result of the proper exercise, by the Railway Company, of the powers vested in it by law, the defendants would have been protected from any civil suit, even if damage had resulted from the exercise of that power." Per Ranade, J. 2 Bom. L. R. 357 (373).

(b) "The case is, however, altered when the act, which has caused the damage, is not the result of a proper exercise of the powers conferred, but is due to the neglect or carelessness of the Railway Company in the execution of its powers." (Ibid.)

(c) "The distinction has been well illustrated in the case of accidental fires caused by a spark." (Ibid.)

(d) "Where the damage done by the spark was not shown to have been the result of negligence the Company was held not to be liable, the reason assigned being that, when the Legislature sanctioned and authorised the use of a particular thing and it is used for that purpose, the sanction carries with it the consequence that, if damage results from it, the Company is not responsible." (Ibid.) Vaughan v. Taff Ry. Co., 5 H. N. 679; 14 B. I. R. 1, F.

(e) "But, where negligence is proved in the matter of a fire caused by a spark, the damage done was held to be actionable. Action lies even for authorised acts if they are done negligently. If the damage could have been prevented by the reasonable exercise of powers conferred, it was held to be a case in which action could be maintained." (Ibid.)

(f) "The decision in Rylands v. Fletcher (3 H. L. 330) may also be consulted with advantage on this point." (Ibid.)
1. "Damage"—(Concluded).

(4) Damage caused by negligence—Civil suit for damages.

Where a Railway Company allowed the rain water to flow for some four miles by the sides of the railway line through gutters made up of the continuous burrow-pits, and then allowed it to discharge itself on to the lands of the plaintiff, the Railway Company was held not to have exercised the powers conferred by S. 7 (b) of the Act and was held liable for negligence. 2 Bom. L. R. 357.

(5) Action in excess of statutory powers in construction of railway—Suit for damages.

(a) If a person or a body of persons having statutory authority for the construction of works (whether those works are for the benefit of the public or for the benefit of the undertakers, or, as in the case of a railway, partly for the benefit of the undertakers, and partly for the good of the public), exceeds or abuses the powers conferred by the Legislature, the remedy of the person injured in consequence, is by action or suit, and not by a proceeding for compensation under the statute which has been so transferred. 27 B. 344 (352) (P.C.).

(b) Powers of this sort are to be exercised with ordinary care and skill and with some regard to the property and rights of others. (Ibid.)

(c) They are granted on the condition sometimes expressed and sometime understood—expressed in the Act of 1890, but if not expressly understood—that the undertakers „shall do as little damage as possible“ in the exercise of their statutory powers. (Ibid.) [Lawrence v. Great Northern Ry. Co., (1851) 16 Q. B. 613; Broadbent v. Imperial Gas Co., (1857) 7 De G. M. 436; Bagwell v. London and North-Western Ry. Co., (1861) 7 H. & N. 423; Dickie v. Metropolitan Ry. Co., (1867) L.R. 21 E. & I. App. 175 (392); Geddes v. Proprietors of the Burma Reservoir, (1878) 3 A. C. 480 (455), R.]

(6) Level crossing across a private land, injuriously affecting other property.

A person is entitled to compensation in respect of a Railway Company having made a level-crossing across his private road giving access to his house, if he can show that he sustained damages or loss by it, by reason of his other property having been injuriously affected. 6 C. W. N. 406.

(7) Acquisition of land for Railway Company—Nuisance caused by the Company.

A Railway Company for whose benefit certain lands were acquired by the Government, for the purpose of erecting workshops, could not justify a nuisance caused by such workshop, on the ground, that it was caused in the reasonable exercise of powers, conferred on them by the Legislature. 10 B.L.R. 241.

(8) Railway Company not liable for nuisance, when.

(a) Nuisance due to necessary working of line.

To absolve a Railway Company from liability for a nuisance, the nuisance must be due to the necessary working of the line. Fenwick v. East London Ry. Co., L. R. 20 Eq. 544; Smith v. Midland Ry. Co., 37 L.T. 224.
(b) ILLUSTRATIONS.

(i) Where a Railway Company worked a mortar mill to make mortar for being used in the construction of the railway, the company will be restrained from working the mortar mill. *Fenwick v. East London Ry. Co., L.R. 20 Eq. 544.*

(ii) Likewise, the Company will be restrained from allowing the emission of smoke and noxious vapour from a shed employed for the cleaning of the engines. *Smith v. Midland Ry. Co., 37 L. T. 224.*


On a—and causing electrical disturbance to plaintiff's wires, held that the company was not liable. *National Telephone Co. v. Baker,* (1893) 2 Ch. 1660. (See 10 B. L.R. 241.)

(10) Railway brought into use—Damage or annoyance.

(a) Where, after the railway is brought into use, damage or annoyance arises from vibration, noise or smoke (no negligence being imputed to the Company), the Company will not be made liable for such damages or annoyance. *Hawes v. Smith & City Ry. Co. Brand,* L.R. 4 H.L. 171.

(b) So also damage caused by frightening of horses by passing train will not make the Company liable. *Irex v. Pease,* 4 B. & Ad. 30.

(11) Railway Company acquiring land and using it as a dock for cattle traffic.

(a) Where a Railway Company, acting under the powers conferred by their special Act, bought some land adjoining one of their stations, and used it as a yard or dock for their cattle traffic, which proved a nuisance to the adjoining occupier owing to the noise of the cattle and their drivers, held that the adjoining occupiers are not entitled to an injunction against the Company. *L. & B. & S. C. Ry. Co. v. Truman,* L.R. 11 App. Cas. 45 (See 10 B. L.R. 241).

(b) A similar view has been adopted in the American Courts. *11 C. W. N. 356* (1863).

2.—“Sub-sec. (2).”

(1) Interference with private property—Strict compliance with law and authority necessary.

(a) Where the promoters of a public under taking have authority from Parliament to interfere with private property on certain terms, any person, whose property is interfered with by virtue of that authority, has a right to require that the promoters shall comply with the letter of the appointment, so far as it makes provision on his own behalf. *Hewin v. Rathmines,* (1892) A.C. 498 (521); see also, *North Star Ry. Co. v. Traun,* (1889), 14 App. Cas. 612 (629). Cited in *11 C. W. N. 356* (363)

2.—"Sub-section (2)—(Concluded).

(2) Acquisition of land for railway bridge.

(a) When a railway bridge has to be constructed across a river, the bed of which belongs to a private individual, a portion of the river bed under the water has to be acquired and compensation paid for it. 11 C. W. N. 356 (362). [Thames Conservators v. Wimbledon Ry. Co., (1863) L. R. 4 C. P. 59, F.]

(b) But such acquisition will not necessarily interfere, with an existing ferry unless the approaches to the ferry are also acquired, in which event the notice ought to specify that the ferry itself is intended to be acquired. (Ibid.)

(3) Mere construction of railway bridge.

(a) The taking of property, that merely injures a franchise, but does not interfere with the exercise of it, is not such a taking of property from the owners of the franchise, as to require compensation. 11 C.W.N. 356 (368).

(b) The —across a river, whereby the profits of the ferry are reduced, does not entitle the owners of the ferry to claim damages. (Ibid.)

(c) Where, however, lands on both banks of a river which were used as landing places for the ferry were acquired for the purpose of a railway bridge and the access to the river and with it the exercise of the franchise, were destroyed, the owner in consequence became entitled to compensation. (Ibid)

(d) The owner of a ferry cannot maintain an action for loss of traffic, caused by a new highway by bridge or ferry made to provide for a new traffic. Hopkins v. Great Northern Ry. Co., (1877) 2 Q. B. D. 224, referred to in 11 C. W. N. 356 (368).

(4) Suit for compensation in Civil Court

Sub-S (2), Sec. 10 of the Railways Act does not bar a suit for compensation in the Civil Court, when the Collector refuses to adjudicate on the claim put forward by the owner. 11 C. W. N. 356.

(5) Land taken by Railway Company—Compensation-money, division of.

Compensation money for land taken up by a Railway Company should be divided by the parties entitled to it, in the rate of their respective interests in the land. 18 W.R. 91.

3.—"With the provisions . . . compensation"

The words and figures comprising the above were substituted by the Indian Railways Amendment Act (IX of 1896).

11. (1) A railway administration shall make and maintain the following works for the accommodation of the owners and occupiers of lands adjoining, the railway, namely:
(a) such and so many convenient crossings, bridges, arches, culverts, and passages over, under, or by the sides of, or leading to or from, the railway as may, in the opinion of the Governor-General in Council, be necessary for the purpose of making good any interruptions caused by the railway to the use of the lands through which the railway is made, and

(b) all necessary arches, tunnels, culverts, drains, watercourses, or other passages, over or under, or by the sides of, the railway, of such dimensions as will, in the opinion of the Governor-General in Council, be sufficient at all times to convey water as freely from or to the lands lying near or affected by the railway as before the making of the railway, or as nearly so as may be.

(2) Subject to the other provisions of this Act, the works specified in clauses (a) and (b) of sub-section (1) shall be made during or immediately after the laying out or formation of the railway over the lands traversed thereby, and in such manner as to cause as little damage or inconvenience as possible to persons interested in the lands or affected by the works.

(3) The foregoing provisions of this section are subject to the following provisos, namely:

(a) a railway administration shall not be required to make any accommodation works in such a manner as would prevent or obstruct the working or using of the railway, or to make any accommodation works with respect to which the owners and occupiers of the lands have agreed to receive, and have been paid compensation in consideration of their not requiring the works to be made;

(b) save as hereinafter in this chapter provided, a railway administration shall not, except on the requisition of the Governor-General in Council, be compelled to defray the cost of executing any further or additional accommodation works for the use of the owners or occupiers of the lands after the expiration of ten years from the date on which the railway passing through the lands was first opened for public traffic;
(c) Where a railway administration has provided suitable accommodation for the crossing of a road or stream, and the road or stream is afterwards diverted by the act or neglect of the person having the control thereof, the administration shall not be compelled to provide other accommodation for the crossing of the road or stream.

(4) The Governor-General in Council may appoint a time for the commencement of any work to be executed under sub-section (1), and if, for fourteen days next after that time, the railway administration fails to commence the work, or, having commenced it, fails to proceed diligently to execute it in a sufficient manner, the Governor-General in Council may execute it, and recover from the railway administration the cost incurred by him in the execution thereof.

Old Acts.

Act IV of 1879
Act XVIII of 1854
No corresponding provision.

Sub-ss. (2) and (3) (c), are new

(Notes).

General.

(1) Analogous provision.

(a) Sub-ss. (1).

—— corresponds to S. 68 of the Railway Clauses Act, 1845 (8 and 9 Vic. c. 20).

(b) Sub-ss. (3) (a).

This clause corresponds to the provision in S. 68 of the Railway Clauses Act, 1845 (8 and 9 Vic. c. 20).

(c) Sub-ss. 3 (b).

This clause corresponds to S. 73 of the Railway Clauses Act, 1845 (8 and 9 Vic. c. 20).

(d) "Sub-S. 4."

—— corresponds to S. 70 of the Railway Clauses Act, 1845 (8 and 9 Vic. c. 20).

(2) Ss. 11 and 12—Distinction.

(a) The former of the sections (S 11) imposes on the railway administration the duty, subjected to certain exceptions, of constructing such accommodation works for the use of owners and occupiers of lands, as are proved to be necessary within ten years from the date on which the railway passing through the lands was first opened for public traffic. (See Statement of Objects and Reasons).

(b) Under the latter section (S. 12), an owner or occupier may require any reasonable accommodation work to be constructed by a railway administration at his expense, after the expiration of the ten years.
Act IX of 1890 (Indian Railways Act).

1. "Works for the accommodation of owners adjoining."

(1) Scope of section.

(a) The kind of accommodation works that the Railway Company is compellable to give to the land-owner, is defined in this section. Rhondda and Swansea Ry. Co. v. Talbot, (1897) 2 Ch. 131.

(b) An absolute and permanent obligation on the Company to make and maintain such works is created by the section. See Dixon v. Great Western Ry Co., (1897) 1 Q. B. 300.

(2) Accommodation works.

Clauses (1) (a) and (b) virtually define what the works for the accommodation of the owners and occupiers of lands adjoining are. See 23 B. 358 (867).

(3) Land-owner is entitled to convenient passage over the railway.

The - - - - sufficient to make good, so far as possible, any interruption which the construction of the railway causes by severance in the working or use of his land, including any alteration or extension of that working or use, which could or ought to have been contemplated by the parties when the accommodation works were made. Great Western Ry. Co. v. Talbot, (1902) 2 Ch. 759.

(4) Lands required for accommodation works

(a) Lands required by a Railway Company for accommodation works are lands required for the purposes of the "undertaking" or of "the railway." Wilkinson v. Hull, etc., Ry. and Dock Co., (1882) 20 Ch. D. 323.

(b) Every work which a Railway Company is empowered to do, not merely what it is compelled to do, is a purpose of the undertaking (Ibid.)

(c) See Sub S. (4), infra, which ensures that the works should be carried out.

(5) What further works should be made, when there is a difference of opinion

As to ---, see S. 12, infra.

(6) "Necessary."

The word--- in the corresponding English section refers to the obligation to make good the interruption. It does not confine the Company to any particular mode of doing the works. Wilkinson v. Hull, etc., and Dock Co., (1882) 20 Ch. D. 323.

(7) Several ways of constructing works.

(a) If there happen to be several ways of constructing works, the Railway Company which acts under its Engineer's advice, has the option to choose which method shall be followed, provided they act bona fide. (Ibid.)

(b) If their action is not bona fide, the Court has a right to interfere. (Ibid.)

(8) Effect of the section.

The --- is that the opinion of the executive, with reference to the sufficiency of accommodation works, is final. 25 C. 632.

(9) Right to accommodation work—Extinguishent.

(a) There is no duty cast on a Railway Company, which through a land-owner's land, is obliged to make a level crossing, to keep up such accommodation work, when the two parts of the lands, so sever'd, have passed into the hands of different owners, neither of whom having any right of passing over the other's land. Mid. Ry Co. v. Grubbe, (1895) 2 Ch. 827.
1.—“Works for the accommodation of owners adjoining”—(Concluded).

(b) When there is abandonment and final extinguishment of the right to such work, there will be no revival of such right even if the whole of the land afterwards belongs to one owner. (Ibid.)

(10) Level crossing—Road thereon—Approaches to road—Liability to repair.

(a) Both on principle and on authority, “railway companies, ought of right to be bound to repair and keep in repair the highways over level crossings, including the approaches on either side thereof” lying outside the gates of the level-crossings. Hertfordshire County Council v. G. E. Ry. Co., (1909) 1 K. B. 361.

(b) Whenever a body of persons for their own benefit are authorised by statute to cut through a public road, they are bound to do what is necessary to make and maintain and keep an equally convenient passage for the public,—“You are doing no good to the public by repairing the part of the highway within the gates, unless you also repair the part outside, which must be kept up to the same level as the raised part between the gates, so as to enable the public to get on to, and over that raised part, and to use the road as they did before you came across it and created what would otherwise remain an obstruction and a nuisance upon it.” (Ibid.)

(c) Similar is the liability of any public body constructing a bridge over a canal, etc. “You are doing no good at all to the public if you repair two arches in the middle of the stream, and show no way for the public to get at them.” (Ibid.)


(a) Where, under a statutory authority, a body of persons have interrupted a public highway, there is a duty imposed on them to make some means of communication for the purpose of restoring the continuity of the highway, and there is also involved a duty on the part of that body to keep the substituted means of communication in repair. Hertfordshire County Council v. Great Western Ry. Co., (1909) 2 K. B. 408.

(b) Therefore, where a Railway Company for its own purposes interrupts a highway by some work which renders it impossible for the public to use it, an obligation is imposed upon it to construct such works as may be necessary to restore to the public the use of the highway so interrupted, and the obligation so imposed is of a continuing nature, involving not only the construction of such works, but also their maintenance. (Ibid.)

2.—“Bridges.”

(1) Provision re “bridges.”

(a) The—means a bridge connecting those portions of land of the land-owner served by the railway. Rhonda and Swansea Ry., Co. v. Talbot, (1897) 2 Ch. 131.

(b) It does not refer to any more distant property. (Ibid.)

(2) Road carried over railway by means of bridge—Duty of Railway Company.

If a road is carried over a railway by means of a bridge, the Railway Company is bound to keep the roadway in repair as part of the bridge. Lancashire, etc., Ry. Co. v. Mayor, etc., of Busby, (1889) 14 App. 417.
3.—"Sub-S. (f) (b)."

(1) Sub-S. (f) (b)—Scope and effect.

(a) "Under this section, the purpose for which the accommodation works are to be constructed, is to convey water as freely as before, from or to certain lands and the aggrieved person is the owner of those lands." 2 Bom. L.R. 357.

(b) "There is, however, no provision in the Act for the recovery of compensation for damage caused by the construction or non-construction of the works enumerated in the section." (Ibid.) But see (S. 7 (1) wherein reference is made to the construction of "accommodation or other works").

(c) "If therefore persons who own lands other than those mentioned in the section are injured, their remedy must be the ordinary one by suit, and there is nothing in the Act which bars this remedy." (Ibid.)

(d) "There can be still less any bar to a suit in which the plaintiff alleges and proves injury, not so much by the construction or non-construction of accommodation works as by the construction of the railway line itself generally, and especially by negligence in that the line was allowed to become a channel for discharging on his land water which before the construction never came near it." (Ibid.)

(2) Duty of Railway Company to construct drains, etc.

A Railway Company is bound to construct drains and other water passages sufficient to convey away the water that would otherwise be dammed up by embankments, and be probably thrown back on the adjoining lands. London and N.W. Ry. Co. v. Runcorn Rural Council. (1898) 1 Ch. 34.

(3) Nature of such drains.

But such drains and water-courses are to be such as are required at the time when the land was taken, and not such as might be necessary at a subsequent time when the land might be applied to uses of a totally different kind. R. v. Fisher, (1862) 3 B. & S. 191.

(4) Construction of line—Neglect of Railway Company—Liability.

Although a Railway Company constructs its line according to the provisions of its Act, it will be taken to task if an unforeseen injury arises through its mode of constructing the railway. Lawrence v. G. N. Ry. Co., 16 Q.B. 643 (but see, Colley v. J. and N.W. Ry. Co., L.R. 5. Ex. Div. 277).

(5) Compensation for damage caused by railway works—Suit to enforce construction of a channel to irrigate land.

Where the plaintiff, who alleged that the execution of certain works by a railway company under S. 7 of the Act, had interfered with his right to the flow of water to his land, did not suggest that the company had exceeded powers conferred on them by that section, but claimed that they had failed to discharge the obligation imposed by S. 11 (b) of the Act to make the necessary accommodation works, and sought a decision of the Court that such works should be executed, held that he had no right of action. 25 C. 682.
4.—“Sub-S. (2).”

(1) What kind of accommodation works required?

Accommodation works which a company may be required to make, are such accommodation works as are required at the time the land is taken, having regard to its then use and not accommodation works which may be required when the character of the land and perhaps the nature of the neighbourhood is entirely altered years afterwards, i.e., the works must refer to the present use and exigencies of the land at the time of the interruption and not to the prospective use of it. R. v. Fisher, (1862) 3 B. and S. 191.

(2) Land used for agriculture, having prospective value for building purposes—Compensation tribunal, mode of valuation by.

When lands used for agriculture have a prospective value for building purposes, the compensation tribunal, value it as building land, should estimate the damages for severance, as if access had been cut off, because, accommodation works could only be ordered in reference to the land as then used for agriculture, and these would be useless as an access to building land. R. v. Brown, (1867) L.R. 2 Q.B. 630.

(3) Level-crossing—Land-owner not entitled to increase burden of easement.

A land-owner, for whose tramway over the line a Company has provided a level crossing, cannot increase the burden of the easement afterwards, by altering or enlarging its character, nature or extent. Great Western Ry. Co. v. Talbot, (1902) 2 Ch. 759.

5.—“Sub-S. 3 (b).”

(1) Meaning of Sub-S. (3).

(a) With railways under construction, a land-owner may not at first be fully cognizant of the amount of inconvenience which may be caused to his land by the interposition of the railway between certain different parts of it. See Rhondda and Swansea Ry. Co. v. Talbot, (1897) 2 Ch. 131.

(b) And so, he is allowed time, viz., 10 years, for consideration and determination in order, if necessary, that he may make further application and obtain further accommodation works than those which were originally asked for. (Ibid.)

(2) Scope of clause (3) (b).

(a) This clause expressly deals with “further or additional works.” Dixton v. Great Western Ry. Co., (1897) 1 Q.B. 300.

(b) If no accommodation works have been made, there cannot be further or additional works. (Ibid.)

(3) Objection not taken in due time.

If an owner of land does not object to the sufficiency of a culvert till after more than the prescribed period, no action would lie. Colley v. London and N.W. Ry. Co., (1880) 5 Ex. D. 277.

6.—“Years.”

“Year.”—shall mean a year reckoned according to the British calendar. (See S. 3 (59), (Act X of 1897, General Clauses Act).
7.—"Sub-S. (3) (c)."

**Sub-S. (3) (c), how introduced.**

Suggested at Railway Conference, 1888.

12. If an owner or occupier of any land affected by a railway considers the works made under the last foregoing section to be insufficient for the commodious use of the land, or if the Local Government or a local authority desires to construct a public road or other work across, under or over a railway, he or it, as the case may be, may at any time require the railway administration to make at his or its expense such further accommodation works as he or it thinks necessary and are agreed to by the railway administration or as, in case of difference, of opinion, may be authorised by the Governor-General in Council.

---

**Old Acts**

Act IV of 1879. | No corresponding provision.
Act XVIII of 1854. |

**(Notes).**

(1) **Analogous provision.**

This section corresponds to S. 71 of the Railway Clauses Act, 1845 (8 and 9 Vict. c. 20).

(2) **Ss. 11 and 12 are modifications of Ss. 68 and 71. Railway Clauses Consolidation Act 8 and 9 Vict. c. 20.**

——, though S. 71 (of the English Act) refers only to owners and occupiers, and not to local authorities desiring to construct public works. 23 B. 358.

(3) **Ss. 11 and 12—Distinction**

See under S. 11, *supra*.

---

**1—"Power for owner...made."**

(1) **Object of the section.**

The whole object of the section is to deal with certain accommodation works considered to be insufficient—insufficient, not at any future time, but at the time of the construction of the works. 23 B. 358.

(2) **Purpose of the section.**

(a) The section does not mean that, if a change takes place in the nature of the property, accommodation works are to be authorised such as would be convenient and commodious in the altered state of things, but which would never have been considered necessary or convenient in the state of things which existed at the time when the works were constructed. *(Ibid.)*

(b) It does not enable the land owner to make any works he thinks proper at any time for the commodious use of his land. *(Ibid.)*

(c) It does not mean that, when nothing has been done or ordered at the time, he can do what he likes under it when the whole nature of the property has been changed. *(Ibid.)*
I.—"Power for owner:...made"—(Concluded).

(d) It only authorises the construction of such accommodation works as might have been required under S. 68 of the English Act (corresponding to S. 11 of this Act). *Ibid.*

(e) And before he can invoke it, the conditions expressed in the early part of it must exist. *Ibid.*

(3) Nature and applicability of the section—Local authority, rights and powers of.

(a) This section is inapplicable unless accommodation works have been made or ordered. *Rhondda and Swansea Ry. Co. v. Talbot*, (1897) 2 Ch 131.

(b) S. 12 is purely enabling and permissive, and not prohibitive. *Per Strachey, J*, in 23 B 358 (366)

(c) It gives a particular right to a local authority as against a railway administration, but does not thereby impliedly abolish any independent right vested in the local authority by any other enactment. *Ibid.*

(d) The provisions of this section would only be obligatory on a local authority desiring further accommodation works and not having any independent power, such as the power created by Act III of 1888 (*Bombay Municipal*) for the purpose *Ibid.*

(e) That the view is correct follows from the wording of this section, which in terms only confers a power on the local authority and does not purport to take away any other power or duty existing *Ibid.*

(f) There is nothing inconsistent with it in S. 8, *supra*.

(g) It is reasonable enough that a local authority should be empowered, subject to certain conditions and for the purposes of its own Act, to lay pipes under railway as well as under other land, and that, nevertheless, the railway administration should be authorised for the purpose of exercising the powers conferred upon it by Act IX of 1890 to alter the position of any such pipe, subject to the local authority's superintendence. *Ibid.*

(h) In the case of a local authority desiring to construct a public road or other work across, under or over a railway, the accommodation works required, must obviously be works other than the public work to be constructed. 23 B 358 (367).

(i) There must be first, a public work whose construction is desired by the local authority and secondly, works required to be made for its commodious use. *Ibid.*

(j) A local authority desiring to make only a public road cannot require the railway administration to make the road as an accommodation work *Ibid.*

(k) What the local authority may require the railway administration to make, is not the road or other public work, but accommodation works for its commodious use. *Ibid.*

(l) The public work itself must be made by the local authority under some other statutory power. *Ibid.*
2. "Further accommodation works."

(1) "Further accommodation works."

(a) It is not "accommodation works" simply but "further accommodation works" that S. 12 provides for. 23 B. 358 (367).

(b) (i) The "further accommodation works" must mean the same thing throughout the section. (Ibid)

(ii) That expression must have the same meaning whether the requisition to the railway administration is made by the owner or occupier mentioned in the opening words of the section, or by the Local Government or a local authority. (Ibid)

(c) The word "further" in itself, and also in connection with opening words, obviously has reference to S. 11, supra, to which S. 12 is a rider, and in which the term "accommodation works" is virtually defined. (Ibid)

(d) It has been held that the "further" works contemplated by S. 71 of the English Act (corresponding to this section) do not mean any kind of works which would at any time be convenient for the landowners, but works additional to accommodation works already made by the Railway Company under S. 71 of the English Act (corresponding to S. 11, supra), and of the same kind as those which might be required under that section. Rhondda and Swansea Iy Co v. Talbot, (1897) 2 Ch. 131, cited in 23 B 358 (367)

(2) Ss. 222—265, Bombay Act III of 1888 (Municipal)—Right to enter on premises of Railway Company to lay pipes, etc.

(a) According to Bombay Act III of 1888 (Municipal), the Municipal Corporation of Bombay, for supplying the city with water, can enter on land belonging to others, make connections between the mains, and lay the pipes forming the connections through, or under such lands without the owner's permission, though not without giving them reasonable notice in writing. 23 B 358

(b) This section does not exclude the above right of the Bombay Corporation to enter on land belonging to the G I P Ry Co, to make the connections proposed. (Ibid)

13. The Governor-General in Council may require that, within a time to be specified in the requisition or within such further time as he may appoint in this behalf,

(a) boundary marks or fences, be provided or renewed by a railway administration for a railway or any part thereof and for roads constructed in connection therewith;

(b) any works in the nature of a screen, near to or adjoining the side of any public road constructed before the making of a railway be provided or renewed by a
railway administration for the purpose of preventing danger to passengers on the road by reason of horses or other animals being frightened by the sight or noise of the rolling-stock moving on the railway;  

(c) suitable gates, chains, bars, stiles or hand-rails be erected or renewed by a railway administration at places where a railway crosses a public road on the level;  

(d) persons be employed by a railway administration to open and shut such gates, chains or bars.

**Old Acts.**  
Act IV of 1879 
S. 52.  
,, XVIII of 1864 
S. 21.

**(Notes).**

**General.**

(1) **Analogous provision.**

(a) "Sub-S. (a)"  
Cf.—S. 10 of the Railway Regulation Act, 1842 (5 and 6 Vic., c. 55).  
(b) Sub-S. (b).  
Cf.—S. 63, the Railway Clauses Act, 1845 (8 and 9 Vic., c. 20).  
(c) Sub-S. (c).  
Cf.—S. 9, the Railway Regulation Act (5 and 6 Vic., c. 55)  
(d) "Sub-S. (d)".  
Cf.—S. 48, the Railway Clauses Act, 1845, (8 and 9 Vic., c. 20).

(2) **Sources of section.**

U. O. Register No. 2960 of 1881,  
Proos., P. W. D., May 1866, Nos. 12 to 17,  
------------- Jan. 1869, Nos. 62 to 64.  
------------- Oct. 1869, Nos. 318 to 343.  
------------- June 1874, Nos. 11 and 12

(3) **Scope of section**

(a) This section provides for the erection of fences in pursuance of express requisition by the Governor-General in Council, instead of under rules which can hardly be so drawn as to be applicable to all cases. (See Statement of Objects and Reasons).  

(b) It also empowers the Governor-General in Council to require the construction of screens in places, where there is danger of horses being frightened by the sight or noise of rolling-stock moving on a Railway. (Ibid.)
I.—"Fences."

(1) **Obligation of Railway Company to erect fence.**

Unless required by the Governor-General, a Railway Company is not bound to erect a fence. See *Conder v. Ballaprasad*, Bombay Printed Judgments, 1896, p. 92. L & M

(3) **Rules for fencing.**

As to ——, see G O. No. 908, Public Works Department, 6th April 1875. N

(3) **Rules for the demarcation of the lands.**

As to ——, permanently occupied for the use of Railways in India. See Government of India (Railway) Circular No. XIV, dated 6th Aug. 1890. O

(4) **Fence to ward off cattle.**

(a) It is only to ward off the cattle of the owners and occupiers of the adjoining lands, a Railway Company is bound to keep up the fences. *M. S. and L. Ry. Co. v. Wallis*, 14 C. B. 243. O 1

(b) The obligation to make and maintain fences for preventing cattle straying on the line is absolute as between a Railway Company and the owners and occupiers of the adjoining lands. *Buxton v. N. E. Ry. Co.*, L.R. 3 Q. B. 549. P

(c) A person, who, with the permission of the owner of the soil over which a highway adjoining a Railway passes, allows his cattle to stray on the highway, cannot be regarded as an owner or occupier of the adjoining lands. *Lawrence v. Great Western Ry. Co.*, (1899) 2 Q. B. 313. Q

(5) **Liability of Railway Company.**

Where a horse strayed from a field on to the line through the gate-yard, the yard not being fenced off the line, and was damaged, held, that the Railway Company was liable. *Midland Ry. Co. v. Daykin*, 17 Q.B. 126. R

(6) **Non-liability of Railway Company.**

(a) Where cattle trespass on lands adjoining the fence and belonging to the Railway Company, and the lands are damaged, through the defective condition of the fence the Railway Company cannot be held liable. *Marfell v. South Wales Ry. Co.*, 29 L. J. C. P. 315. S

(b) So, also, for damage caused to cattle brought to a station by a Railway, owing to their having strayed from the yard on to the line, the yard not being fenced off from the line. *Roberts v. G. W. Ry. Co.*, 27 L. J. C. P. 266. T

(c) So, also, for injuries caused to a passenger through a train coming into contact with a bullock straying on the line, it being proved, that the fences have been kept in good condition. *Buxton v. N. E. Ry. Co.*, L.R. 3 Q. B. 549. U

(7) **Obligation to fence as towards those off the line.**

Though the Railway Company is not bound to fence the line as towards passengers or those already on the line, yet a duty is cast on it, to fence as towards persons off the line for the purpose of preventing them from getting on to or straying on, the line. *Harrold v. G. W. Ry. Co.*, 14 L. T. 440. V
2. "Screen."

(1) Duty of Railway Company to erect screen.

A Railway Company is not bound to erect a screen unless required to do so by the Governor-General in Council. In the absence of evidence to establish an obligation on the part of a Railway Company to screen the Railway from the road, the Railway Company will not be held responsible to a plaintiff receiving injuries while leaving a station, through a horse in his carriage being frightened by the sight and sound of a locomotive engine at the station which was blowing off the steam. *Sankar v. L. and N. W. Ry. Co.*, L. R. 21 Q. B. D. 458. W

(2) Level crossing—Blowing off steam—Frightening of horse.

Where horses waiting to pass over the line at a level crossing are frightened by the blowing off of steam, *held*, that such an act amounts to culpable negligence on the part of the Railway Company. *Manchester South Junction Ry. Co. v. Fallerton*, 14 C. B. (N. S.) 54. X

3. "Gates... hand-rails"

(1) Evidence of negligence.


(2) Gates allowed to be left open.

(a) Failure to keep the gates of a level crossing closed, at the time a train passes, renders the Company liable. *N E Ry. Co. v. Wansell*, L. R. 7 H. L. 12. Z

(b) So, also, the permitting of persons on the line. *(Ibid.*) A

(c) Similarly, if the gate serves for a private road in addition to the public road. *Lunt v. L. and N. W. Ry. Co.*, L. R. 1 Q. B. 277. B


(3) Insufficiency of fence adjoining gate.

Where a fence adjoining a gate belonging to a level foot-path crossing the line is found to be insufficient, and as a result of this insufficiency some horses are killed, *held*, that the Railway Company is liable. *Charman v. S. F. Ry. Co.*, 57 L. J. Q. B. 597. D

(4) Porter informing plaintiff not to cross the line—Injury—Liability of Company.

Where, notwithstanding the protest of a porter not to cross the line, a plaintiff sustains injuries at night in going over a public footpath crossing a railway on the level, *held*, that there was no negligence on the part of the Company. *Ellis v. G. W. Ry. Co.*, L. R. 9 C. P. 551. E

(5) Accident while crossing a level crossing—Omission of person injured to take reasonable care.

Where accident to a person crossing a level crossing was brought about by his own omission to take such care as any reasonable man would use, *held*, that the Railway Company would not be liable for damage caused to him. *Davey v. L. and S. W. Ry. Co.*, L. R. 12 Q. B. D. 70. But see *Brown v. G. W. Ry. Co.*, 52 L. T. 622. F
(6) Level crossing—Company bound to repair.

It is the duty of a Railway Company to keep the road on a level crossing in repair, suitable for ordinary and regular traffic. Oliver v. N. E. Ry. Co., L. R. 9 Q. B. 409.

(7) Person crossing line by path at station end—Evidence of negligence.

(a) A Company can be said to be guilty of culpable negligence, if a passenger in crossing the line by a path at the end of a station—the path being allowed to be used by the passengers—is knocked down and killed by a passing train. Rogers v. Romney Ry Co., 26 L. T. 879.

(b) But not so, if the plaintiff could have crossed the line by going over a bridge outside the station, and if the railway officials did not invite the plaintiff to cross the line where he did. Wilby v. Mulland Ry Co., 35 L. T. 244.

(8) Company permitting persons to cross the line otherwise than by level crossing.

A Railway Company allowing persons to cross the line otherwise than by a level crossing, is not in duty bound to use care to protect such persons. Harrison v. N. E. Ry. Co., 29 L. T. 844.

(9) Notices of warning not given effect to

When notices warning persons against crossing the line at a particular spot, have been disregarded by the public and not enforced by the Railway officers, the Company cannot set up the existence of such notices in reply to a suit for damages. Subba, Wicklow and Wexford Ry Co v. Stalley, L.R. 9 C. P. 551.

(10) Right of way on Railway level-crossing—Obstruction—Injunction

Where a Railway Company closed a gateway at a level-crossing of the railway through which there was a public right of way, a person who had suffered special damage by the obstruction would be entitled to an injunction. 10 B. 390.

(11) Persons crossing line at place where there is no right of way.

Where persons cross a railway line at a certain place, the Company has to take reasonable precautions in the use of that spot, even though there is no right of way there. Barrett v. Mulland Ry Co., 1 F. and F. 361.

(12) Road and foot path crossing rail road by level-crossing—Absence of gate or stile

The fact of the absence of gate or stile at a place where a road and a foot path crossed a rail road by a level crossing, and the fact of a child being found with its foot cut off on the railway close to the footpath crossing, would be sufficient to render the Company liable. Williams v. G. W. Ry. Co., L. R. 9 Ex. 127.

4—"Persons....bars."

(1) Omission to keep a gate keeper.

The fact of a Railway Company's negligence cannot be inferred from its omission to open the level. Claff v. Mulland Ry Co., L. R. 5 Q. B. 258.

(2) Watchman at a footpath level-crossing.

(a) There is no general obligation on a Railway Company to keep a watchman. Stubley v. L. and N. W. Ry Co., L. R. 1 Ex. 13.

(b) But, whether such omission can be regarded as negligence on the part of a Railway Company, depends on the circumstances of the case. (Ibid.)
4.—"Persons...tars"—(Concluded).

(3) Gates of a level-crossing closed—Right to open.

(a) Under the English law, when a person finds the gates of a level-crossing closed, he is not entitled to open them. Wyntt v. G. W. Ry. Co., 6 B. and S. 709 (But see S. 124, infra).

(b) The same is the case even if there is no gate-keeper present. (Ibid.)

14. (1) Where a railway administration has constructed a railway across a public road on the level, the Governor-General in Council may at any time, if it appears to him necessary for the public safety, require the railway administration, within such time as he thinks fit, to carry the road either under or over the railway by means of a bridge or arch, with convenient ascents and descents and other convenient approaches, instead of crossing the road on the level, or to execute such other works as, in the circumstances of the case, may appear to the Governor-General in Council to be best adapted for removing or diminishing the danger arising from the level-crossing.

(2) The Governor-General in Council may require, as a condition of making a requisition under sub-section (1), that the Local authority, if any, which maintains the road shall undertake to pay the whole of the cost to the railway administration of complying with the requisition or such portion of the cost as the Governor-General in Council thinks just.

Old Acts.

Act IV of 1879. 
No corresponding provision.

(Notes).

General

(1) Analogous provision.

(a) "SUB-S. (1)".

Cf.—S. 7, the Railway Clauses Act, 1863 (26 and 27 Vic., c. 92).

(b) "SUB-S. (2)."

Cf.—S. 46, the Railway Clauses Act, 1845 (8 and 9 Vic., c. 20); and S. 16, the Railway Canal and Tariff Act, 1888 (51 and 52 Vic., c. 25).

(2) Nature and scope of section.

This section reproduces the substance of S. 7 of the Railway Clauses Act, 1863, and, following S. 16 of the Railway and Canal Tariff Act, 1888, reserves to the Governor-General in Council power to require, as a condition of an order being made on a railway administration for the construction of works at a level-crossing, that the local authority, if any, which maintains the road crossed on the level, shall undertake to pay the whole or a fair share of the cost of the works. (See Statement of Objects and Reasons.)
I.—"Over and under bridges."

(1) Option of Railway Company.

(a) Under S 46, of the Railway Clauses Act, 1845 (Cf. present section), it is
to the option of the Company to carry the railway over the road,
or the road over the railway. Reg. v. S E. Ry. Co., 4 H.L. Cas. 471. W

(b) Unless the impossibility to exercise the option is exhibited, the Court will
not grant a mandamus for compelling the Company to exercise the
option for carrying out one of these Courses. (Ibid.) X

(2) Carrying a public footpath over a railway or the railway over a footpath.

There is no obligation imposed on a Railway Company under S. 46 of the Rail-
way Clauses Act, 1845 (Cf. the present section) for——, Dartford

(3) Overbridges—Repairs.

On the construction of an over-bridge under S. 46, the Railway Clauses Act,
1845 (Cf. present section), it is the duty of the railway Company to
keep the bridge, with its approaches and the roadway on the bridge,

(4) Railway Company not liable to repair.

The Railway Company is not liable, in the case of the level of a highroad being
lowered for carrying the railway over a bridge, to repair the slope of
the road as being an approach to the bridge. L. and N.W. Ry. Co.
v. Sherston, 5 B and S 559 A

(5) Construction of bridge in lieu of level crossing—Want of funds—Effect.

When a Railway Company suffers from want of funds, and as such is not in a
position to construct a bridge in lieu of a level-crossing, the Com-
pany will not be compelled to construct the bridge In re Bristol and

Removal of trees

18. (1) In either of the following cases,
namely:

(a) where there is danger that a tree standing near a railway
may fall on the railway so as to obstruct traffic,

(b) when a tree obstructs the view of any fixed signal,
the Railway-Administration may, with the permission of any Magis-
trate, fell the tree or deal with it in such other manner as will in
the opinion of the Railway-Administration avert the danger or re-
move the obstruction, as the case may be.

(2) In case of emergency the power mentioned in sub-section
(1) may be exercised by a Railway Administration without the
permission of a Magistrate.

(3) Where a tree felled or otherwise dealt with under sub-
section (1) or sub-section (2) was in existence before the railway
was constructed or the signal was fixed, any Magistrate may, upon
the application of the persons interested in the tree, award to those
persons such compensation as he thinks reasonable.
(4) Such an award, subject, were made in a presidency-town by any Magistrate other than the Chief Presidency Magistrate or where made elsewhere by any Magistrate other than the District Magistrate, to revision by the Chief Presidency Magistrate, or the District Magistrate, as the case may be, shall be final.

(5) A Civil Court shall not entertain a suit to recover compensation for any tree felled or otherwise dealt with under this section.¹

Old Acts.

Act IV of 1879. No corresponding provision.
Act XVIII of 1854.

(Notes).

(1) Analogous provision.

Cf.—S. 24, the Regulation of Railways Act, 1869 (31 and 32 Vic., e. 119).
S. 18, Act III of 1885 (The Indian Telegraph Act, 1885).

(2) Object of section.

In permitting a railway administration to act in a case of emergency without the permission of a Magistrate, and sogoing beyond the provisions of the corresponding provision of the Indian Telegraph Act, 1885, this section confers a power which it is deemed essential that the railway authorities should possess. (See Statement of Objects and Reasons.)²

CHAPTER IV.

OPENING OF RAILWAYS.

16. (1) A railway administration may, with the previous sanction of the Governor-General in Council, use upon a railway locomotive engines or other motive power, and rolling-stock to be drawn or propelled thereby.

(2) But rolling-stock shall not be moved upon a railway by steam or other motive power until such general rules for the railway as may be deemed to be necessary have been made, sanctioned and published under this Act.

Old Acts.

Act IV of 1879 Sub-S. (1) of present Act corresponds to S. 4 of Act IV of 1879.
Act XVIII of 1854. No corresponding provision.

(Notes).

N.B.—See notes under S. 10, supra.
Act IX of 1890 (Indian Railways Act).

General.

(1) Analogous provision.

Cf.—S. 66, the Railway Clauses Act, 1845 (8 and 9 Vic., c. 20).

(3) Notification sanctioning the use of motive power and rolling-stock on railways.

For—

(a) Assam, see Gazette of India, 1888, Pt. I, p. 21;

———— ————, 1885, Pt. I, p. 588;

——— ————, 1893, Pt. I, p. 178;

(b) Bengal (including districts now under Eastern Bengal and Assam),

see Gazette of India, 1879; Pt. I, p. 428.


——— ————, 1885, Pt. I, p. 118, etc.

(c) Bombay, see Bombay Rules and Orders, Vol. I.

(d) Burma, see Burma Rules Manual, Vol. I.

(e) Central Provinces, see Gazette of India, 1885, Pt. I, p. 683.

(f) Madras, see Madras Rules and Orders, Vol. I.

(g) United Provinces of Agra, and Oudh,

see Gazette of India, 1879, Pt. I, p. 428;

——— ————, 1884, Pt. I, p. 322;

——— ————, 1895, Pt. I, p. 396,

(h) The Punjab, see Punjab list of Local Rules and Orders,

Gazette of India, 1879, Pt. I, p. 428;

——— ————, 1884, Pt. I, p. 322;

——— ————, 1885, Pt. I, p. 588;

I.—"Right to use locomotives."

(1) Right to use locomotive engines.

The—must be in express terms in order to entitle the Company to protection.


(2) Fire caused by spark from engine—Action for damages—Liability of Company.


(3) Fire from sparks—Onus.

(a) The fact that property is destroyed by fire caused by sparks from an engine is prima facie evidence of negligence on the part of the Railway Company.


(b) In that case the Company is bound to show that precautions had been adopted for preventing accidents. (Ibid.)

R

(c) But in Port Glasgow & Co. v. Cal. Ry. Co., H.L.R. (1893), W.N. 29, the onus was shifted on the appellants for proving that the Railway Company was negligent.

S

(4) Engines passing on railway—Horses frightened—Liability of Railway Company.

If engines pass on a Railway Constructed under statutory powers and horses are frightened, the Railway Company will not be held liable. Rex v. Pease, 4 B. and Ad. 30.

T

See in this connection Manchester South Junction Co. v. Fullarton, 14 C.B. (N.S.) 54, noted under S. 13, supra.
2.—"Sub-Section 2."

Sub-S. (2), designed for what purpose.

S. 16, Sub-S. (2), is designed to prevent the recurrence of the very serious accidents which have from time to time occurred from the unregulated use of locomotive power on railways under construction. See (Statement of Objects and Reasons).

17. (1) Subject to the provisions of sub-section (2), a railway administration shall, one month¹ at least before it intends to open any railway for the public carriage of passengers, give to the Governor-General in Council notice in writing of its intention.

(2) The Governor-General in Council may in any case, if he thinks fit, reduce the period of, or dispense with, the notice mentioned in sub-section (1).

Old Acts.

Acts IV of 1879 ... S. 5 corresponding to sub-S. 1 of the present Act.
,, XVIII of 1854 ... No corresponding provision.
Sub-S. (2) is new.

(Notes).

1.—"Month."

"Month," meaning of.

"Month" shall mean a month reckoned according to the British Calendar. See Ss. 3 (3) and 4 (1) General clauses Act (X of 1897)

Sanction of the Government a condition precedent to the opening of a railway.

18. A railway shall not be opened for the public carriage of passengers until the Governor-General in Council, or an Inspector empowered by the Governor-General in Council in this behalf has by order sanctioned the opening thereof for that purpose.

Old Acts.

Act IV of 1879 ... S. 5.
,, XVIII of 1854 ... No corresponding provision.

(Notes).

General.

Source of section.

See Pros., P. W. D, Jan., 1868, Nos. 60 to 64, E. I. R. 29-32

19. (1). The sanction of the Governor-General in Council under the last foregoing section shall not be given until an Inspector has, after inspection of the railway, reported in writing to the Governor-General in Council—
(a) that he has made a careful inspection of the railway and rolling-stock;

(b) that the moving and fixed dimensions prescribed by the Governor-General in Council have not been infringed;

(c) that the weight of rails, strength of bridges, general structural character of the works, and the size of and maximum gross load upon the axles of any rolling-stock are such as have been prescribed by the Governor-General in Council;

(d) that the railway is sufficiently supplied with rolling-stock;

(e) that general rules for the working of the railway when opened for the public carriage of passengers have been made, sanctioned and published under this Act; and

(f) that, in his opinion, the railway can be opened for the public carriage of passengers without danger to the public using it.

1 (2) If, in the opinion of the Inspector, the railway cannot be so opened without danger to the public using it, he shall state that opinion together with the grounds therefor to the Governor-General in Council, and the Governor-General in Council may thereupon order the railway administration to postpone the opening of the railway.

(3) An order under the last foregoing sub-section must set forth the requirements to be complied with as a condition precedent to the opening of the railway being sanctioned, and shall direct the postponement of the opening of the railway until those requirements have been complied with or the Governor-General in Council is otherwise satisfied that the railway can be opened without danger to the public using it.

(4) The sanction given under this section may be either absolute or subject to such conditions as the Governor-General in Council thinks necessary for the safety of the public.

(5) When sanction for the opening of a railway is given subject to conditions and the Railway Administration fails to fulfil those conditions, the sanction shall be deemed to be void and the railway shall not be worked or used until the conditions are fulfilled to the satisfaction of the Governor-General in Council.
Old Acts.

Act IV of 1879 ... S. 5 B. (1) (4) and (5) corresponding to sub-Ss. (1), (4) and (5) of the present Act.

Act XVIII of 1854 ... No corresponding provision

Sub-Ss. (2) and (3) are new

(Notes).

Analogous provision.

(a) Sub. S. (1) (c).

Cf.—S. 16, The Railway Regulation Act, 1842 (5 & 6, Vic. c. 55)

(b) Sub. S. (2)...

Cf.—S. 6 the Railway Regulation Act, 1842 (5 & 6 Vic. c. 55)

1.—“Sub. S. (2)”

Inspectors' report.

(a) The report of the Inspector that the opening of a railway would be attended with danger to the public by reason of the incompleteness of the works, (stating at the same time the reasons for his opinion), satisfies the requirement of the section See Attorney-General v. G. W. Ry. Co., L R 4 Ch D 735.

(b) Where the opening of a railway has been prohibited by the Board of Trade, the Court will, at the instance of the Attorney-General, restrain that act, without examining the grounds on which it was declared illegal. Attorney-General v. Orford, Worcester and Wolverhampton Ry. Co., 2 W. R. 380

20. (1) The provisions of sections 17, 18 and 19 with respect to the opening of a railway shall extend to the opening of the works mentioned in sub-section (2) when those works form part of, or are directly connected with, a railway used for the public carriage of passengers and have been constructed after the inspection which preceded the first opening of the railway.

(2) The works referred to in sub-section (1) are additional lines of railway, deviation lines, stations, junctions and crossings on the level, and any alteration or re-construction materially affecting the structural character of any work to which the provisions of Sections 17, 18, and 19 apply or are extended by this section.

Old Acts.

Act IV of 1879

XVIII of 1854

No corresponding provision.

(Note).

Analogous provision.

Cf.—S. 5, The Regulation of Railways Act, 1871 (34 & 35 Vic. c. 78).
21. When an accident has occurred resulting in a temporary suspension of traffic, and either the original-line and works have been rapidly restored to their original standard, or a temporary diversion has been laid for the purpose of restoring communication, the original line and works so restored, or the temporary diversion, as the case may be, may, in the absence of the Inspector, be opened for the public carriage of passengers, subject to the following conditions, namely:

(a) that the railway servant in charge of the works undertaken by reason of the accident has certified in writing that the opening of the restored line and works, or of the temporary diversion, will not in his opinion be attended with danger to the public using the line and works or the diversion; and

(b) that notice by telegraph of the opening of the line and works or the diversion shall be sent, as soon as may be, to the Inspector appointed for the railway.

Old Act.

This section is new.

(Note).

Scope of Ss. 21 and 22.

Provision has been made in Ss. 21 and 22 for the opening of a railway without the sanction of the Governor-General in Council or an Inspector, where there has been an accident resulting in a temporary suspension of traffic, or where works are of so unimportant a character that the application to them of the general law relating to the opening of railways is unnecessary. (See Statement of Objects and Reasons).

22. The Governor-General in Council may make rules 1 defining the cases in which, and in those cases the extent to which, the procedure prescribed in sections 17 to 20 (both inclusive) may be dispensed with.

Old Act.

This section is new.

(Notes).

General.

(1) Section, how introduced.

Suggested at Railway Conference, 1888.

(2) Scope of Ss. 21 and 22.

See under S. 21, supra.

I.—“Rules.”

For rules, see Gazette of India 1891, Pt., I, p. 150.
23. (1) When, after inspecting any open railway used for the public carriage of passengers, or any rolling-stock used thereon, an Inspector is of opinion that the use of the railway or of any specified rolling-stock will be attended with danger to the public using it, he shall state the opinion, together with the grounds therefor, to the Governor-General in Council; and the Governor-General in Council may thereupon order that the railway be closed for the public carriage of passengers, or that the use of the rolling-stock so specified be discontinued, or that the railway or the rolling-stock so specified be used for the public carriage of passengers on such conditions only as the Governor-General in Council may consider necessary for the safety of the public.

(2) An order under sub-section 1 must set forth the grounds on which it is founded.

Old Acts.

Act IV of 1879  ...  S. 5 E corresponds to Sub-S. 1 of the present Act.

Act XVIII of 1854  ...  No corresponding provision.

Sub-S. (2) is new.

(Notes).

Analogous provision.

Cf.—S. 6, the Railway Regulation Act, 1842 (5 and 6 Vic. c. 55) with Sub-S. 2 of this section.

I.—“Power to close an opened railway.”

Decision of the Governor-General in Council.

Sensible. —The—, is final, though come to, on an Inspector's report, which, on the face of it, might show that he, the Inspector, had come to a wrong conclusion. Attorney-General v. G.W.Ry. Co., L R. 4 Ch. D. 735.

24. (1) When a railway has been closed under the last foregoing section, it shall not be re-opened for the public carriage of passengers until it has been inspected, and its re-opening sanctioned, in accordance with the provisions of this Act.

(2) When the Governor-General in Council has ordered under the last foregoing section that the use of any specified rolling-stock be discontinued, that rolling-stock shall not be used until an Inspector has reported that it is fit for use and the Governor-General in Council has sanctioned its use.
(3) When the Governor-General in Council has imposed under the last foregoing section any conditions with respect to the use of any railway or rolling-stock, those conditions shall be observed until they are withdrawn by the Governor-General in Council.

Old Acts.

Act IV of 1879 ...Cf.—S. 5 F (1) and (2) with sub-S. (1) and (2) of the present Act.

Act XVIII of 1854 ...No corresponding provision

Sub-S. (3) is new.

25. (1) The Governor-General in Council may, by general or special order, authorise the discharge of any of his functions under this chapter by an Inspector, and may cancel any sanction or order given by an Inspector discharging any such function or attach thereto any condition which the Governor-General in Council might have imposed if the sanction or order had been given by himself.

(2) A condition imposed under sub-section (1) shall for all the purposes of this Act have the same effect as if it were attached to a sanction or order given by the Governor-General in Council.

Old Acts.

Act IV of 1879 ... ...S. 5-B (2) corresponds to Sub-S. (1) of the present Act.

Act XVIII of 1854 ... No corresponding provision.

Sub-S. (2) is new.

CHAPTER V

RAILWAY COMMISSIONS AND TRAFFIC FACILITIES.

(Notes).

I.—"Chapter V."

Scope and nature of this chapter.

(a) This chapter is the most important part of the Act, and in its preparation, careful regard has been had to the Railway and Canal Traffic Act, 1888, and to the Annual Reports of the Railway Commissioners. (See Statement of Reasons).

(b) Closely following the law in England, the Chapter imposes on railway administration, the general duty of arranging to receive, forward and deliver traffic without unreasonable delay and without partiality or undue preference, and the special duty of so treating through traffic at through rates. (Ibid)
I.—"Chapter V;"—(Concluded).

(c) If the Governor-General in Council is satisfied that any person has just ground of complaint against a railway administration for breach of either duties, he may refer the case to a Railway Commission for decision. (Ibid.)

(d) Such a commission is to be appointed only where there are cases to be referred to it, and it will be deemed to be dissolved as soon as it has decided those cases. (Ibid.)

(e) It is to consist of a Law Commissioner who is to be a Judge of the High Court, having jurisdiction in reference to European British subjects under the Crim.Proc. Code, in the place where the Governor-General in Council has ordered the Commission to sit, and of two Lay Commissioners, of whom one must be an expert in railway business and one may be a representative of the mercantile community or any other person whom the Governor-General in Council sees fit to appoint. (Ibid.) (For further particulars, see, also, S. 26 of the Act.)

(f) The commission so constituted may in any case referred to it, make any order by way of injunction, which may, in the circumstances, appear to the Commissioners to be suitable. (Ibid.)

(g) If two of the Commissioners concur on a question of fact, their decision on that question is to be conclusive. (Ibid.)

(h) From other decisions of the Commissioners an appeal will lie to a bench of not less than three Judges of the High Court of which the Law Commissioner is a member. (Ibid.) (For further particulars, see S. 31 of the Act.)

(i) Orders made by a Railway Commission are to be enforced by the High Court of which the Law Commissioner was a member, as if they were orders by the High Court in the exercise of its original Civil jurisdiction. (Ibid.).

Railway Commissions.

26. (1) For the purposes of this Chapter the Governor-General in Council shall, as occasion may in his opinion require, appoint a commission, styled a Railway Commission (in this Act referred to as the Commissioners) and consisting of one Law Commissioner and two Lay Commissioners.

(2) The Commissioners shall sit at such times and in such places as the Governor-General in Council appoints 1.

(3) The Law Commissioner shall be such Judge of the High Court having jurisdiction in reference to European British subjects 2 under the Code of Criminal Procedure, 1882, in the place where
the Commissioners are to sit as, in the case of a High Court established under the Statute 24 and 25 Victoria, Chapter 104, the Chief Justice or, in the case of the Chief Court of the Punjab, the Senior Judge or, in the case of the Court of the Recorder of Rangoon the Chief Commissioner of Burma may, on the request of the Governor-General in Council, assign by writing under his hand.

(4) The Lay Commissioners shall be appointed by the Governor-General in Council, and one at least of them shall be of experience in railway business.

**Old Acts.**

Act IV of 1879  
Act XVIII of 1854  

(Notes)

**Analogous provision**

Cf.—The Railway and Canal Traffic Act, 1854 (17 and 18 Vict. c. 31);
The Regulation of Railways Act, 1873 (36 and 37 Vict. c. 48)
The Railway and Canal Traffic Act, 1888 (51 and 52 Vict. c. 48)

1.—“Commissioners . . . appoints”

**Vacancy in the body of Commissioners.**

(a) **ENGLISH LAW.**

According to the . . . , the Commissioners are empowered to act, notwithstanding a vacancy in their body [See 51 and 52 Vict. c. 25, Ss. 2 & 5 (3)].

(b) **INDIAN LAW.**

The Railway Commissioners cannot act if there is a vacancy in their body.

**2.—“European British subjects.”**

**Jurisdiction over European British subjects.—Cr.P.C.**

Under the Crin.Pro Code, all Judges of the various High Courts—Calcutta, Madras, Bombay, Allahabad—, also of the Chief Courts of the Punjab, and Lower Burmah have jurisdiction over European British subjects [See Crin.Pro Code, S 4 (i) & (g)].

**Restriction of jurisdiction of Railway Commission to cases specially referred.**

27. The Commissioners shall take cognizance of such cases only as are referred to them by the Governor-General in Council.

**Old Act.**

This section is new.

**Reference of cases to Railway Commission.**

28. In any of the following circumstances, namely:— .
(1) where complaint is made to the Governor-General in Council of anything done or any omission made by a railway-administration in violation or contravention of any provision of this Chapter;

(2) where any difference which is under the provisions of any agreement required or authorized to be referred to arbitration arises between railway-administrations, and the railway-administrations apply to the Governor-General in Council to have it referred to the Commissioners;

(3) where any other difference, being a difference between railway-administrations or one to which a railway-administration is a party, arises, and the parties thereof apply to the Governor-General in Council to have it referred to the Commissioners;

the Governor-General in Council may, if he thinks fit, refer the case to the Commissioners for decision.

Old Acts.

Act IV of 1879 | No corresponding provision.
Act XVIII of 1854 |

(Notes).

General.

Analogous provision.

Of.—Ss 6, 8 and 9, the Regulation of Railways Act, 1873 (36 and 37 Vict. c. 48). W

1.—“Clause (a)”

Cases which may be referred to the Railway Commission.

(a) Failure on the part of any railway administration to afford all reasonable facilities for the receiving, forwarding and delivering of traffic upon and from the several railways belonging to, or worked, by it, and the return of rolling-stock. (Vide S. 42 (1), infra). X

(b) The making or giving any undue or unreasonable preference or advantage to, or in favour of any particular person or railway administration, or any particular description of traffic, in any respect whatsoever, or the subjecting of any particular person or railway administration or any particular description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever. (Vide S. 42 (2), infra). Y

(c) Omission on the part of a railway administration having or working railways which form a continuous line of communication, or having its terminus or station within one mile of the terminus or station of another railway administration, to afford all due and reasonable facilities for receiving, and forwarding, by one of such railways all the traffic arriving by the other at such terminus station, without any unreasonable delay, and without any undue or unreasonable preference or advantage or prejudice or disadvantage, so that no obstruction be offered to the public desirous of using the railways as a continuous line of communication. (Vide S. 42 (3), infra), Z
Act IX of 1890 (Indian Railways Act). [Ss. 28 to 30]

1.—"Clause (a)"—(Concluded).

(d) Objection by any such railway administration to a proposed rate, apportionment or route for receiving, forwarding and delivering through traffic at through rates. (Vide S. 42 (4) (d), infra.)

(c) Questions which may arise under S. 44, infra, in reference to the ferry, slip, boat or raft, so far as is used for the purposes of the traffic of the railway. (Vide S. 44, infra.)

(f) Any question or dispute which may arise with respect to the terminals charged by a railway administration, in respect of which the Commissioners may decide what is a reasonable sum to be charged. (Vide S. 46 (1), infra.)

2.—"Clauses (b) and (c)"

Scope of Clauses (b) and (c).

Clauses (b) and (c) of the section provide for the reference to the Railway Commissioners of other differences than such as relate to traffic facilities. (See Statement of Objects and Reasons.)

3.—"Clause (c)."

Rates—Disputes—Reference.

(a) According S. 9 of the Regulation of Railways Act, 1873 (Cf. Cl. (c) present section), dispute re rating of railways for poor rates, may be referred to the Commissioners. L. and N.W. Ry. Co v. Wigan Union, 2 Ry. and Ca. Ti Cas. 240.

(b) So also, disputes as to the rating of docks. M S and L. Ry Co v Canton Union, 2 Ry. and Ca. Ti Cas. 53.

4.—"May."

Referring cases simply optional.

It is simply optional to refer cases to the Commissioners. See Davies v. Evans, 1 R. 9 Q B 1 D 238 (243).

29. The three Commissioners shall attend at the hearing of any case referred to them for decision under this Chapter and the Law Commissioner shall preside at the hearing.

Old Acts.

Act IV of 1879
Act XVIII of 1854

No corresponding provision

(Note).

Analogous provision

Of.—S 5 (3), the Railway and Canal Traffic Act, 1888 (51 and 52 Vict. c. 25.)

30. (1) In hearing any such case the Commissioners shall have the powers which may be exercised in the hearing of an original civil suit by a High Court.
(2) The decision shall, if the Commissioners differ in opinion, be in accordance with the opinion of the majority and the final order in the case shall be by way of injunction¹ and not otherwise.

(3) At the hearing, the Commissioners may permit any party to appear before them either by himself or by any legal practitioner entitled to practise in any High Court.

Old Acts.

Sub-section 1 is new.

Act IV of 1879.  ) No Corresponding provision, as to sub-sections (2 and 3)  
Act XVIII of 1854.  )

(Notes).

General.

(1) Analogous provision.

Cf.—Sub-S. (2), with S. 5 (3), the Railway and Canal Traffic Act, 1888 (51 and 52, Vic., c 25)
Cf.—Sub-S. (3) with S. 50. (Ibid).

(2) Origin of section.

As to the——, see Twelfth Report, Railway Commissioners, p 6, and 11 App. Cas. 97.

1. —”Shall be by way of injunction.”

(1) Temporary injunction.

See O XXXIX, rr. 1—4 and S. 95, Act V of 1908 (Code of Civil Procedure).

(2) Perpetual injunctions.

See Ss. 54—57, Specific Relief Act (1 of 1877).

(3) Mandatory injunction.

See S 55, Specific Relief Act (1 of 1977).

(4) Agreement to work line of another under certain terms.

A Railway Company which had agreed to work the line of another railway, and during the continuance of the agreement to develop and accommodate the local and through traffic thereon, and to carry over a certain traffic particularly specified, was restrained by injunction from carrying over other lines belonging to them traffic which ought to have passed over the plaintiff’s line. Wolverhampton and Walsall Ry Co. v. London and N.W. Ry Co., L.R. 16 Eq. 127.

(5) Contract cannot be specifically enforced.

Where a——, owing to this inability, e.g., to superintend the working of the signals and points of a railway, an injunction cannot be granted. Powell Duffryn Steam Coal Co. v. Taff Value Ry Co., L. R. 9 Ch. Ap. 381.

Appeals from orders of Railway Commission².

31. (1) An appeal shall not lie from any order of the Commissioners upon any question of fact¹ on which two of the Commissioners are agreed.
Act IX of 1890 (Indian Railways Act).

(2) Subject to the provisions of sub-section (1), an appeal shall lie from an order of the Commissioners—

(a) Where the Law Commissioner was the Recorder or Additional Recorder of Rangoon, to the High Court of Judicature at Fort William in Bengal, and

(b) in any other case, the High Court of which the Law Commissioner was a member.

(3) Such an appeal must be presented within six months from the date of the order appealed from, and shall be heard by a bench of as many Judges, not being fewer than three, as the High Court may by rule prescribe.

(4) In the hearing of the appeal the High Court shall, subject to the other provisions of this Chapter, have all the powers which it has as an Appellate Court under the Code of Civil Procedure (XIV of 1882), and may make any order which the Commissioners could have made.

Act IV of 1879.  
Act XVIII of 1854.  
No corresponding provision.

(Notes).

General.

Analogous Provision.

Cf.—S. 26, the Regulation of Railways Act, 1873 (36 and 37 Vic., c. 48).  
S. 17, the Railway and Canal and Traffic Act, 1888 (51 and 52 Vic., c. 25).  

I.—"Question of fact."

Question of fact—Examples.

(a) Reasonableness is a question of fact and not of law. Watkinson v. Wrexham Mold, etc., Ry. Co., (No. I) 3 Ry. and Ca. Tr. Cas. 5.

(b) So, also, the question whether or not an undue prejudice has been caused. Palmer v. L and S. W. Ry Co., L R T. C. P. 53; Ry. and Ca. Tr. Cas. 248.

(c) So, also, that which determines undue preference, Diphways Casson State Co. v. Festiniog Ry. Co., 2 Ry. and Ca. Tr. Cas. 73 (81).

(d) So, also, the question whether a Railway Company is bound to run over a foreign railway, and collect traffic without receiving any further remuneration than the mileage rate chargeable on its railway. Watkinson v. Wrexham Mold, etc., Ry. Co. (1) 3 Ry. and Ca. Tr. Cas. 5.
2. "Appeals...Commission."

(1) Question of fact—Appeal.

(a) Where it was stated that a Railway Commission had erred in law, and that it had permitted through rate on the plea that it was enough for the applicant company to prove that the proposed route was in itself a reasonable one, without other evidence being given that the existence of another route would be advantageous to the public, appeal was refused on the ground that the question was one of fact. G. W. Ry. Co. v. Severn and Wye, etc., Ry. Co., 5 Ry. and Ca. Tr. Cas. 170 (190) Y

(b) Likewise, on a Railway Commission granting a through rate, an application for a case for the opinion of a superior Court was refused. Central Wales, etc., Ry. Co., v. G. W. Ry. Co., 2 Ry. and Ca. Tr. Cas. 191 (197) W

(c) Where an application for a case, on the question as to whether a railway company performed a "terminal service" in using or giving the use of sidings for shunting handling goods and other like services, was made, held that the application should be refused. Chattox Iron Co. v. North Staff and Ry. Co., 3 Ry. and Cas. Tr. Cas. 238. X

(i) But in Hall v. L. B. and S. O. Ry. Co. 4 Ry. and Ca. Tr. Cas. 398 (1920), a case was granted on a question of terminals. Y

(2) Question of law—Appeal.

(a) An order of the Railway Commissioners is appealable, if it is seen from their judgment, though not in the order itself, that in arriving at the result mentioned in the order they had primarily decided on a question of law. N.E. Ry. Co. v. N. B. Ry. Co., 10 Ry. and Ca. Tr. Cas. 82. Z

(b) So, also, on the Railway Commissioner's making an order for facilities for passenger traffic, a case was granted, on the question as to whether such an order complied with the requirements of some of the provisions specified in the applicant's and defendant's special Acts, since it did not order the facilities where the applicant company would be entitled. Great North of Scotland Co. v. Highland Ry. Co., 3 Ry. Ca. Tr. Cas. 103 (117). A

(c) Likewise, a case will be granted on the question whether or not a company was bound under the provision of its special Act to supply wagons to traders traffic. Wathnun v. Wrexham Mold, etc. Ry. Co. (No. 1) 3 Ry. and Ca. Tr. Cas. 5 B

(d) So, also, a case will be granted on the question, whether a Railway Company carrying and conveying traffic could, by a notice, relieve itself from the duty of carrying certain class of traffic except under special terms and special rates. Aberdeen Commercial Co. v. Gl. North. of Sc. Ry. Co. C

(3) Appeal—Procedure.

See O. XLI (Act V of 1908).

32. Notwithstanding any appeal to the High Court from an order of the Commissioners, the order shall, unless the Commissioners or the majority of them see fit to suspend it, continue in operation until it is reversed or varied by that Court.
Act IX of 1890 (INDIAN RAILWAYS ACT).

Old Acts.

Act IV of 1879.
Act XVIII of 1854.

No corresponding provision.

(Note).

Analogous provision

Cf.—S. 26, the Regulation of Railway Act, 1873 (36 and 37 Vic., c. 48). E

33. (1) The Commissioners, in the exercise of their jurisdiction under this Chapter, may, from time to time, with the general or special sanction of the Governor-General in Council, call in one or more persons of engineering or other technical knowledge to act as assessors.

(2) There shall be paid to such persons such remuneration as the Governor-General in Council upon the recommendation of the Commissioners may direct.

Old Act.

This section is new.

(Note).

Analogous provision

Cf.—S. 140, Act V of 1908 (The Code of Civil Procedure). F

I.—“Assessors.”

Assessors: meaning of the term

(a) Literally, those who sit by the side of another. F1

(b) The term is also frequently applied to persons associated with a Judge or Judges to advise them and to assist in their deliberations, but who take no part in giving the judgment. F2

(c) Until the contrary is shown, it must be presumed that persons who under the law are called upon to act as assessors will do their duty. A. W. N. 1887, p. 139. G

34 The Governor-General in Council may make rules regulating proceedings before the Commissioners and enabling the Commissioners to carry into effect the provisions of this Chapter and prescribing fees to be taken in relation to proceedings before the Commissioners.

Old Acts.

Act IV of 1879.
Act XVIII of 1854.

No corresponding provision.

(Note).

Analogous provision.

(Cf.—S. 20 (1), the Railway and Canal Traffic Act, 1888 (51 and 52 Vic., c. 25). H
(1) Rules made under the section.

For—, see Government of India Notification, No. 373, dated 25th Oct. 1892.

(2) Provision with respect to publication of rules.

For——, see S. 143, infra.

35. The costs 1 of and incidental to any proceedings before the Commissioners or the High Court under this Chapter shall be in the discretion of the Commissioners or the High Court, as the case may be, and the payment of costs awarded by the Commissioners may be enforced by the Court, of which the Law Commissioner was a Judge, as if the payment had been ordered by a decree of a High Court.

Old Acts

Act IV of 1879.
Act XVIII of 1854

(Notes)

Analogous provision.

Cf.—S. 28, the Regulation of Railways Act, 1873 (36 and 37 Vic., c. 48) and S. 19, the Railway and Canal Traffic Act, 1888 (51 and 52 Vic., c. 25).

J.—"Costs."

(1) Application for costs essential.

An application for costs is to be made, for enabling a party to get his costs. *Marriott v. L. and S W. Rly. Co., 1 R. and Ca. Tr. Cas. 47.*

(2) Costs not asked for—Effect.

Costs were refused on a rule being moved, costs not being asked for in the same. *(ibid.)*

(3) Defendant’s costs—Complaint made—Applicant asking for costs, unsuccessful.

Where a person, who makes a complaint and asks for costs, is unsuccessful, costs will be granted to defendants. *Oslade v. N E. Rly Co. (No. 3), 3 R., and Ca. Tr. Cas. 35.*

(4) Defendant’s costs—Costs, not applied for, in first instance.

It is doubtful whether the defendants would have no right at all for costs, when the same had not been applied for in the first instance. *(ibid.)*

(5) Case first of its kind—Costs.

(a) Where a case is the first of its kind, costs will be refused, though the applicant succeeds in his case. *Woodger v. G E. Rly. Co., 2 R. and Ca. Tr. Cas. 35.*

(b) Likewise in a through-rate case, the defendants being entitled to the judgment of the Commissioner prior to a through rate being put in force. *Central Wales Rly. Co., L. R. 10 Q. B.D. 281.*
I.—“Costs.” (Continued).

(6) Two Companies.

(a) Through Traffic Case—One of Two Companies, Obstruction by—Costs.

In a through traffic case against two companies, one of them placed obstruction in the way of through route. Held, that the obstructing company must pay the cost of the applicant, the other company paying its own costs. Victoria Coal and Iron Co. v. Neath and Brecon and Mid. Ry. Cos., 3 Ry. and Ca. Tr. Cas. 37.

(b) Successful Applicant.

A person succeeding in an action against two companies, was ordered to be paid his costs by both of them, in equal shares. Toomer v. I.R. and D and S. Ry. Cos., 3 Ry. and Ca. Tr. Cas. 79.

(7) Costs allowed.

Costs will generally be allowed, on a company acting in such a manner as to render it proper and necessary for the making of an application to the Court for redress. Hazendal v. L. and S.W. Ry. Co., 1 Ry. and Ca. Tr. Cas. 231.

(8) Cost disallowed.

Examples.

(a) Costs were disallowed, where there is success for each party on a material part of the case. Richardson v. Mid. Ry. Co., 4 Ry. and Ca. Tr. Cas. 1 (10).

(b) So, also, where the claim by the applicant is very much in excess of that to which they were found to have had a right and the offer made by the defendants was by far less than that for which they were found liable. Highland Ry. Co., v. Gt. North of Sc. Ry. Co., Ry. and Ca. Tr. Cas. 90 (98).

(c) So, also, in a question of terminal charges a sum was allowed in excess of the applicant’s offer, but far below the contention of the defendant company. Boron v. N.E. Ry. Co., (No 2), 4 Ry. and Ca. Tr. Cas. 284.

(d) So, also, when neither the appellants nor the respondents in an appeal succeeded entirely in their case. Denaby Main Colliery Co. v. M.S. and L. Ry. Co., 6 Ry. and Ca. Tr. Cas. 133.

(9) Application may be dismissed without costs.

An—, if the Commissioners are of opinion that, on the merits, the applicant is within his right in bringing the complaint. Skinnergrove Iron Co. v. N.E. Ry. Co., 5 Ry. and Cas. Tr. Cas. 244.

(10) Undue Preference—Injunction without costs.

In a case of undue preference brought against a Railway Company, an injunction was granted without costs, the Railway Company being found to have acted bona fide and without any intention of prejudicing the complainants as rivals in trade with each other. Thompson v. L. and N. W. Ry. Co., 2 Ry. and Cas. Tr. Cas. 115.

(11) Through route case—Partial success—Costs.

In a—Railway Company succeeding only partially was only allowed one moiety of its costs. Greenock v. Wemyss Bay Ry. Co. v. Oal. Ry. Co. (No.3), 2 Ry. and Ca. Tr. Cas. 136.
(12) Apportionment—Partial taxation.

In order to avoid the inconvenience of a partial taxation, apportionment is permissible, e.g., when the complainants were only successful in one half of the case. Hastings Town Council v. S. U. Ry. Co., 3 Ry. and Ca. Tr. Cas. 179.

(13) Chief ground of complaint is not made out.

Each party will be ordered to pay its own costs, if the—. Locke v. N E. Ry. Co., 3 Ry. and Ca. Tr. Cas. 44 (47).

(14) Appeal—Costs .

In appeal, the successful party is entitled to costs. Mansion House Assn., etc. v. G. W. Ry. Co., 9 Ry. and Ca. Tr. Cas. 58.

36. (1) The Court of which the Law Commissioner was a Judge may, if it appears on the application of any person who was a party to the proceedings before the Commissioners or on appeal before the High Court, or of the representative of any such person, that an injunction made under this Chapter by the Commissioners or by a High Court has not been obeyed by the party enjoined, order such party to pay a sum not exceeding one thousand rupees for every day during which the injunction is disobeyed after the date of the order directing such payment.

(2) The payment of such sum may be enforced by the Court which made the order as if that Court had given a decree for the same, and the Court may direct that the whole or any part of the sum shall be paid to the person making the application under sub-section (1) or to the Government.

Old Acts.

Act IV of 1879.
Act XVIII of 1854.

No corresponding provision.

(Notes).

Analogous provision.

Of.—S. 8, The Railway and Canal Traffic Act, 1854 (17 and 18 Vic., c. 31).

I.—"Decree"

Execution of decrees.

As to—, generally, see O. XXI, Act V of 1908, Code of Civil Procedure.

Evidence of documents.

37. A document purporting to be signed by the Commissioners, or any of them, shall be received in evidence without proof of the signature, and shall, until the contrary is proved, be deemed to have been so signed and to have been duly executed or issued by the Commissioners.
Act IX of 1890 (Indian Railways Act).

Old Acts.

Act IV of 1879.
Act XVIII of 1854. No corresponding provision.

(Notes).

Analogous provision.

Cf. - S. 30 of the Regulation of Railways Act, 1873 (36 and 37 Vic., c. 48).

38. The Commissioners shall, as soon as may be after the disposal of each case referred to them, submit to the Governor-General in Council a special report on the case, and the Governor-General in Council shall cause the report to be published in such manner as he thinks fit for the information of persons interested in the subject-matter thereof.

Old Act.

This section is new

39. Except for the purpose of the last foregoing section, a Railway Commission shall be deemed to be dissolved at the close of the last of the sittings of the Commissioners for the decision of the cases referred to them:

Provided that, on the application of any person who was a party to the proceedings before the Commissioners, or of the representative of any such person, the Governor-General in Council may, if he thinks fit, in any case in which the order passed by the Commissioners is not open to appeal, re-appoint the Commissioners for the purpose of hearing an application for a review of their decision and of granting the same and rehearing the case if they think that the case should be re-heard.

Old Act.

This section is new

40. Subject to the foregoing provisions of this Chapter and to any direction of Her Majesty in Council, an order of the Commissioners shall be final and shall not be questioned in or restrained by any Court.

Old Acts.

Act IV of 1879. No corresponding provision.
Act XVIII of 1854.

(Notes).

Analogous provision.

Cf. - S. 17 (6), the Railway and Canal Traffic Act (51 and 52 Vict. c. 25).
41. Except as provided in this Act, no suit shall be instituted or proceeding taken for anything done or any omission made by a railway administration in violation or contravention of any provision of this Chapter or of any order made thereunder by the Commissioners or by a High Court.

Old Acts.

Act IV of 1879  ) No corresponding provision
Act XVIII of 1854. )

(Notes)

Analogous provision
Of S 6, the Railway and Canal Traffic Act, 1854 (17 and 18 Vict. c. 31).

1 — "Bar of jurisdiction. . . commission"

(1) Suit to recover sums paid for terminals

The High Court will not allow a suit for the recovery of sums paid on account of terminals, to be filed. 15 H. 537

(2) Overcharges made by reason of undue preference—Damages

(a) English Law allowing damages

As regards overcharges made by reason of an undue preference no action will lie, nor can any counter claim be sustained, but yet, the Commissioners can now award damages under S 12 of the Railway and Canal Traffic Act (51 and 52 Vict. c. 25) See Phipps v. Land N.W. Ry. Co. 8 Ry. and Ca. Tr. Cas. 83

(b) Indian Law, contra

(i) Provisions similar to S 12 of the Railway and Canal Traffic Act, 1868, have not been inserted in the Present Act

(ii) According to S 90 (2), supra, the final order in a case must be by way of injunction and not otherwise

(iii) So, according to the Indian Law, when overcharges have been made to pay by reason of undue preference, no damage can be allowed.

Traffic facilities.

42. (1) Every railway administration shall, according to its powers, afford all reasonable facilities for the receiving, forwarding and delivering of traffic upon and from the several railways belonging to or worked by it and for the return of rolling-stock.

(2) A railway administration shall not make or give any undue or unreasonable preference or advantage to or in favour of any particular person or railway administration, or any particular description of traffic, in any respect
whatsoever, or subject any particular person or railway administration or any particular description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever ².

(3)³ A railway administration having or working railways which form part of a continuous line of railway communication, or having its terminus or station within one mile of the terminus or station of another railway administration, shall afford all due and reasonable facilities for receiving and forwarding by one of such railways all the traffic arriving by the other at such terminus or station, without any reasonable delay, and without any such preference or advantage or prejudice or disadvantage as aforesaid, and so that no obstruction may be offered to the public desirous of using such railways as a continuous line of communication, and so that all reasonable accommodation may by means of such railways be at all times afforded to the public in that behalf.

(4) The facilities to be afforded under this section shall include the due and reasonable receiving, forwarding and delivering by every railway administration, at the request of any other railway administration, of through traffic to and from the railway of any other railway administration at through rates:

Provided as follows:—

(a) the railway administration requiring the traffic to be forwarded shall give written notice of the proposed through rate to each forwarding railway administration, stating both its amount and its apportionment and the route by which the traffic is proposed to be forwarded. The proposed through rate for animals or goods may be per truck or per maund;

(b) each forwarding railway administration shall, within the prescribed period after the receipt of such notice, by written notice inform the railway administration requiring the traffic to be forwarded whether it agrees to the rate, apportionment and route, and, if it has any objection, what the grounds of the objection are;

(c) if at the expiration of the prescribed period no such objection has been sent by any forwarding railway administration, the rate shall come into operation at the expiration of that period;
(d) if an objection to the rate, apportionment or route has been sent within the prescribed period, the Governor-General in Council may, if he thinks fit, on the request of any of the railway administrations, refer the case to the Commissioners for their decision;

(e) if the objection is to the granting of the rate or to the route, the Commissioners shall consider whether the granting of the rate is a due and reasonable facility in the interests of the public, and whether, regard being had to the circumstances, the route proposed is a reasonable route, and shall allow or refuse the rate accordingly or fix such other rate as may seem to the Commissioners to be just and reasonable;

(f) if the objection is only to the apportionment of the rate, and the case has been referred to the Commissioners, the rate shall come into operation at the expiration of the prescribed period, but the decision of the Commissioners as to its apportionment shall be retrospective: in the case of any other objection the operation of the rate shall be suspended until the Commissioners make their order in the case;

(g) the Commissioners, in apportioning the through rate, shall take into consideration all the circumstances of the case including any special expense incurred in respect of the construction, maintenance, or working of the route or any part of the route, as well as any special charges which any railway administration is entitled to make in respect thereof;

(h) the Commissioners shall not in any case compel any railway administration to accept lower mileage rates than the mileage rates which the administration may for the time being, legally be charging for like traffic carried by a like mode of transit on any other line of communication between the same points, being the points of departure and arrival of the through route;

(i) subject to the foregoing provisions of this sub-section, the Commissioners shall have full power to decide that any proposed through rate is due and reasonable
notwithstanding that a less amount may be allotted to any forwarding railway administration out of the through rate than the maximum rate which the railway administration is entitled to charge, and to allow and apportion the through rate accordingly:

(j) the prescribed period mentioned in this sub-section shall be one month, or such longer period as the Governor-General in Council may, by general or special order, prescribe.

Old Acts.

Act IV of 1879.
Act XVIII of 1854. \{ No corresponding provision. \}

(Notes).

General.

Analogous provision.

(a) Sub-ss. (1), (2), (3)
Cf.—S. 2, the Railway and Canal Traffic Act, 17 and 18 Vic. c 31.

(b) Sub-S (4) WITH THE EXCLUSION OF CL. (i)
Cf.—S 11, the Regulation of Railways Act, 1873 (36 and 37 Vic. c 48) and S. 25, the Railway and Canal Traffic Act, 1888 (51 and 52, Vict. c. 25)

(c) Sub-S (4), CL (i)
Cf.—S. 12, the Regulation of Railways Act, 1873 (36 and 37 Vic. c. 48)

(2) Section, source of.
See, Eighth Report, Railway Commissioners, p 4,
—. Tenth Report, Railway Commissioners, p 6,
—. Thirteenth Report, Railway Commissioners, p 4

(3) Contravention of provision of section—Remedy.
No suit will lie against a railway administration for anything done, or any omission made, in violation or contravention of any provision of the section (See S. 41, supra)

(4) Enforcement of provisions of Sub-sections (1) (2) and (3) when justifiable.

(a) When a case of public inconvenience is made out. *Barett v. G N. and Mid. Rly Co*, 1 Ry and Ca Tr Cas 38.

(b) Occasional delay and inconvenience to the public will not suffice. *Cawood v. I. B and C Rly Co*, 1 Ry and Ca Tr Cas 58.

(c) Those who use the railway must put in a *bona fide* complaint on behalf of the public. *(Ibid)*

I.—"Afford all reasonable facilities...of traffic."

Question of price, no reference to.

The words "a railway administration...shall afford all due and reasonable facilities for receiving and forwarding...all traffic" seem to have no reference to the question of price. *(Ibid).*
1.—"Afford all reasonable facilities... of traffic"—(Continued).

RAILWAY ADMINISTRATION IS BOUND TO AFFORD ALL REASONABLE FACILITIES FOR RECEIVING, FORWARDING AND DELIVERING TRAFFIC.

A.—ACCOMMODATION RE STATION AND SIDING.

(1) Covered station, public entitled to, where.

A covered station is held to be a reasonable accommodation to which the public at large will be entitled, provided every other junction on the line of a Railway Company had a covered station. *Caterham Ry Co v L B. and S.C. Ry Co*, 1 Ry and Ca Tr Cas 32 (but see *S E Ry Co v. Railway Commissioners*, 3 Ry and Ca Tr Cas 505).

(2) Necessity for covering footpath leading to station from carriage road.

A station was situate 190 yards from any carriage road. No protection from the weather for passengers passing between the station and the road was afforded. *Hamp v. L B. and S C. and L. and S W Ry Cos*, 2 Ry, and Ca. Tr. Cas 155.

(3) Necessity for footpath between stations being covered.

When two stations are only ¼ a mile apart, facilities can be said to have been given for passenger traffic if a covered footpath between the two stations is made and if portage is provided for passengers with luggage. *Sunset Co. Council v. L B. and S C. and L. and S W Ry Cos*, 8 Ry, and Ca. Tr. Cas 17.

(4) Space and other arrangements—Duty of Railway Company.

A Company with sufficient powers must not keep its platforms, booking offices and other structures at any station in such a condition, as to space and other arrangements, as to cause dangerous or obstructive confusion, delay or other impediment to the proper reception, transmission, or delivery of the ordinary traffic of that station, whether consisting of passengers or goods. *S E Ry Co v. Railway Commissioners*, 3 Ry, and Ca. Tr. Cas 505 (507) per Selbourne, L. C. (but see *Harris v. L. and S W Ry. Co* 3 Ry, and Ca. Tr. Cas 331.)

(5) New station, establishment of.

(a) "With respect to stations, there is no objection to establish them at any particular place or places unless the Company thinks fit to do so." *S E Ry Co v. Ry Commissioners*, 3 Ry and Ca. Tr. Cas 505 (507), per Selbourne, L. C. (but see *Harris v. L. and S W Ry. Co* 3 Ry, and Ca. Tr. Cas 331.)

(b) "But, when the Company has, in fact, opened a station at a particular place, and invites the public to resort to it for the purposes of being received or delivered as passenger, etc., or from trains announce as, starting from or stopping at that station, or of having their goods received there for carriage or delivered there after carriage, it is bound to afford, at that station to the extent of its powers, all reasonable facilities for receiving, forwarding, and delivering such passengers and goods. (Ibid)"
Act IX of 1890 (Indian Railways Act).

1.—"Afford all reasonable facilities....of traffic"—(Continued).

RAILWAY ADMINISTRATION IS BOUND TO AFFORD ALL REASONABLE FACILITIES FOR RECEIVING, FORWARDING AND DELIVERING TRAFFIC—(Continued).

A.—ACCOMMODATION RE STATION AND SIDING—(Continued).

(6) Facilities, what are—Instances.

(a) Increase of accommodation for the delivery of tickets. See S. F. Ry. Co. v. Railway Commissioners, 3 Ry. and Ca. Tr. Cas. 505. B

(b) The providing of waiting room at a station S. F. Ry. Co. v. Railway Commissioners, 3 Ry. and Ca. Tr. Cas. 464. C

(c) Improving the accommodation for cattle. (Ibid) D

(d) A cloak room for the receipt and forwarding of traffic Singer Manufacturing Co. v. L. and S. W Ry. Co. (1894) 1 Q. B. 833. E


N. B.—The Railway Commissioners have power to order the above.

(7) Facilities, what are not—Instances.

(a) Reserving a portion of a station for a refreshment room, S. F. Ry. Co. v. Railway Commissioners, 3 Ry. and Ca. Tr. Cas. 505. G

(b) Extending a platform accommodation according to a specified plan, (Ibid.) H

(c) Covering platforms, a bridge and a portion of the carriage yard. (Ibid.) I

(d) Adding waiting rooms of a specified size (Ibid.) J

(e) The constructing of a branch line Beeston Brewery Co. v. Mid. Ry. Co. (No. 1) 5 Ry. and Ca. Tr. Cas. 53 (99) K

(f) Making a new siding, Beeston Brewery Co. v. Mid. Ry. Co. (No. 1) 5 Ry. and Ca. Tr. Cas. at p. 58. L

(g) A Railway Company is held not to afford all reasonable facilities, if it makes illegal or excessive charges for the conveyance of goods traffic. Chatterby Iron Co. v. North Staff Ry. Co.; 3 Ry. and Ca. Tr Cas. 238. M

N. B.—The Railway Commissioners are not empowered to order a Railway Company to attend to the above.

(8) Structural alteration.

Facilities may be ordered which necessitate--; but the same cannot be ordered to be executed according to a specified plan. (Ibid.) N

(9) Passenger station—Facilities for goods.

Quere.—Whether the Commissioners have power under S. 2 of the Railway and Casual Traffic Act, 1854 (Cf. present section) to order a Railway Company to construct a goods siding or conveniences for goods traffic at a passenger station. See Newry Nav. Co. v. Cl. Northern Ry. Co. (Ir.) 7 Ry. and Ca. Tr. 176. O

(10) Providing of water closets.

Quere:—Whether—for the use of passengers, is a reasonable facility. West Ham. Corp. v. G. E. Ry. Co. 9 Ry. and Ca. Tr. Cas. 7. P
1. "Afford all reasonable facilities . . . of traffic"—(Continued).

RAILWAY ADMINISTRATION IS BOUND TO AFFORD ALL REASONABLE FACILITIES FOR RECEIVING, FORWARDING AND DELIVERING TRAFFIC—(Contd.).

A.—ACCOMMODATION RE STATION AND SIDING—(Concluded).

(11) Disconnecting siding constructed under an agreement.

(a) On a Railway Company disconnecting a siding constructed under the terms of an agreement which gave the Railway Company power to disconnect the same at any time, held that, where other persons had sidsings, the refusal of the Railway Company to grant the same to the applicants would, if the circumstances were the same, constitute an undue and unreasonable prejudice. *Beeston Brewery Co v. Mid. Ry. Co. (No 1)* 5 Ry. and Ca Tr. Cas. 53.

(b) Likewise, the depriving an individual of the continuance of a siding, while competitors in trade of the applicants were not so deprived, would constitute an undue prejudice. *Ibid.*

(c) So, in *Portway v. Cole Valley and Ry Co*, 7 Ry. and Ca Tr. Cas. 102, held, that the Railway Company ought to reconnect at its own expense the applicants' siding with the main line.

(12) Siding accommodation—Connection severed—Working of siding on terms.

But, on a Railway Company disconnecting a siding under similar circumstances for compelling the payment by the applicants of "station rates" on payment of which the Company were willing to reconnect the siding, held the siding accommodation will be furnished on their entering into an agreement to pay the "station rates" without deduction. *Guardot Fliine & Co v. Mid Ry Co.* (No. 2) 5 Ry. and Ca Tr. Cas 60.

B.—ACCOMMODATION RE TRAIN

(1) Running of extra train.

(a) A line was worked under a working agreement. On a complaint of the working Company, the Commissioners ordered the working Company to run an additional third class passenger train daily each way, and further ordered that not less than two passenger trains should be run each way daily on the branch line of the owning Company, timed for convenient correspondence at the junction with the main line traffic. *Dublin and Meath Ry Co v. Mid. Gl. Western of L. Ry. Co.*, 3 Ry. and Ca Tr. Cas 379.

(b) On the amount of the traffic not being in proportion to the cost of carriage, the above order re the running of the third class passenger train was subsequently rescinded *Ibid.* (No. 2) 5 Ry. and Ca Tr. Cas 142.

(2) Discontinuing the use of a passenger station.

It is not within the power of a Railway Commission to prevent a Railway Company from pulling down and . . . *Darlaston Local Board v. L. and N.W. Ry. Co*, 8 Ry. and Ca Tr. Cas 216.
I.—"Afford all reasonable facilities...of traffic"—(Continued).

RAILWAY ADMINISTRATION IS BOUND TO AFFORD ALL REASONABLE FACILITIES FOR RECEIVING, FORWARDING AND DELIVERING TRAFFIC—(Contd.).

C.—TRAFFIC.

I.—Rates and fares not authorised.

1. Illegal or excessive charges.
   (a) Where a Railway Company makes excessive or illegal charges, and such charges are intended or calculated to prevent, and do prevent the conveyance of traffic on the railway, they are illegal. *Young v. Guerdon Valley Ry Co.* 4 Ry and Ca. Tr. Cas. 217.

   (b) The Railway Company, by making such charges, subjects such traffic to an undue prejudice within § 2, the Railway and Canal Traffic Act, 1854 (Cf. present section). *Aberdeen Commercial Co v. Great North of Scotland Ry. Co.* 3 Ry. and Ca. Tr. Cas. 205.

2. Question of excessive charges—Jurisdiction of Commissioners.
   (a) "The question of excessive charges is the subject of an action"—*Per Manisty, J. in Distington Iron Co., Ltd. v. L. and N.W. Ry. Co.* 6 Ry. and Ca. Tr. Cas. 108.

   (b) On a Railway Company insisting on the prepayment of illegal rates, threatening at the same time that it would cease to carry the traffic if the rates were not prepaid, *held, that the Commissioner had no jurisdiction to entertain the question, the complainants having ample remedy in a Court of law.* *Per Huddleston, J. in (Ibid.)*

3. Railway Commissioners' jurisdiction—Reason for the same.
   (a) "Many things in the shape of preference, undue advantage and so on, were not the subject of any proceeding, either criminal or civil." *Per Manisty, J. in Distington Iron Co., Ltd. v. L. and N.W. Ry. Co.* 6 Ry. and Ca. Tr. Cas. at p. 131

   (b) "And, in order to meet those cases, powers were given to the Railway Commissioners to arrange as to traffic, as to giving facilities for traffic, and as to preventing undue prejudice and undue favour to different parties." *Ibid.*

   (c) This has been done "to provide for cases in which there was no remedy. *Ibid.*

4. Passenger fares in excess of authorised fares.
   (a) "In a Railway Company charging... held that the Commissioners have no jurisdiction to decide the same. *Brown v. G.W. Ry. Co.* 3 Ry. and Ca. Tr. Cas. 523.

   (b) "If it can be shown that charges were made, either as regards a particular train or as regards a particular station to such an amount as to be calculated to prevent the use of those trains or the traffic to those stations, it would be refusing reasonable facilities for receiving and forwarding passengers by those trains, and, if it was stated and proved that it was done with the object of preventing the use of the accommodation, that might also give the Railway Commissioners power to entertain the question of the quantum, if it was shown either from the excess that it was calculated to have that effect, or that it was done for the purpose of having that result." *Ibid.*
I.—‘‘Afford all reasonable facilities... of traffic’’—(Concluded).

C.—TRAFFIC—(Concluded).

RAILWAY ADMINISTRATION IS BOUND TO AFFORD ALL REASONABLE FACILITIES FOR RECEIVING, FORWARDING AND DELIVERING TRAFFIC.—(Concluded).

II.—Traffic, collection and delivery of.

(1) Wagons on Company’s line—Charge for using the same not allowed.

(a) Where a Railway Company is not put to some special expense in supplying wagons, held that a rate ought not to be increased on that account; since the rate involves the delivery of wagons for use in the ordinary way. Hall v. L. B. & S. C. Ry. Co., 4 Ry., and Ca. Tr. Cas. 398. G

(b) On a Railway Company making a charge of 2 d. per ton on all traffic forwarded in their wagons from certain stations, for the reason that such wagons or a part of them would be returned empty, held that such charge was admissible as a terminal charge. (Ibid.) H

(c) But, on the use of wagons of defendant Company by the complainant, off the defendant Company’s line, the Railway Company has a right to make a charge of 1 d. per ton for such use. Aberdeen Commercial Co. v. Great North of Scotland Ry. Co., 3 Ry., and Ca. Tr. Cas. 205 (218). I

(2) Railway Company to give notice of arrival of goods.

(a) ENGLISH LAW.

According to the English law, it is the duty of a Railway Company to give notice of arrival of goods to those to whom the goods are directed, for, the time that they ought to call for the goods, is when the carrier is ready to deliver. Neston Colliery Co. v. L. & N. W. & G. W. Ry. Cos., 4 Ry., and Ca. Tr. Cas. 257. J

(b) RULE 5 OF THE RULES FOR THE WAREHOUSING AND RETENTION OF GOODS.

—, made under S. 47 (1) (f) provides that notice will be sent when practicable, but that the Railway Company will accept no responsibility for non-receipt thereof. K

(c) TIME WITHIN WHICH TO UNLOAD GOODS.

(i) According to the English law, 48 hours after receipt of notice is a reasonable time, within which to unload goods. Coxton v. N. E. Ry. Co., (No. 2) 4 Ry., and Ca. Tr. Cas. 284. L

(ii) "A wharfage charge may be levied in respect of all goods not removed from Railway premises before closing time of the day, following that on which they are made available for delivery." [Rule 3 (1) of the Rules for the warehousing and retention of goods made under S. 47 (1) (f), infra.] M

(3) Railway Company not making arrangement for carriage by road.

Where a Railway Company does not make arrangements for the prompt and punctual transport of goods by road to, and from their nearest station, held, the Company is not responsible for making carrying arrangement by road in addition to its proper business of carrying by railway. Dublin and Meath Ry. Co. v. Middle West of Ireland Ry. Co., 3 Ry. and Ca. Tr. Cas. 379. N
2.—"Shall not make or give any undue or unreasonable preference .... whatsoever."

RAILWAY ADMINISTRATION IS BOUND TO ABSTAIN FROM MAKING OR GIVING ANY UNDUE PREFERENCE OR ADVANTAGE, OR ANY UNDUE OR UNREASONABLE PREJUDICE OR DISADVANTAGE.

(1) Promise to afford facilities.

A ———, does not affect the parties' right, except so far as it testifies to the reasonableness of the applicants' demand. *Holyhead Local Board v. L. and N. W. Ry. Co., 4 Ry. and Ca. Tr. Cas. 37.*

(2) Reasonable facilities.

- The fact of a Railway Company charging beyond their authorized limits does not amount to a refusal to afford. *Brown v. G. W. Ry Co., 3 Ry and Ca. Tr. Cas. 523.*

(3) Removal of ground of complaint before the filing of the application.

Where there has been a removal of the ground of the complaint before the filing of the application, held, an injunction will be granted to the applicants for securing their interests in the future. *Macfarlane v. North British Ry. Co. (No. 2) 4 Ry. and Ca. Tr. Cas. 269.*

(4) "Undue and unreasonable preference or advantage, and prejudice or disadvantage"—Scope of the expression.

"The words——, must be a preference or prejudice with reference to competing parties, an inequality, an unreasonableness with reference to others, or a prejudice to other works, and cannot apply to the suggestion which has been made that, because there are excessive charges, a prejudice arises to the applicants." Per Huddleston, B. in *Distinguishing Iron Co., Ltd. v L. and N. W. Ry. Co., 6 Ry. and Ca. Tr. Cas. 108 (124).*

(5) Undue preference, or undue and unreasonable prejudice—Instances.

(a) It is an undue preference if a Company allow their agent to receive goods without a forwarding note being signed by the consignors, which note the consignors would have had to sign if they had delivered their goods to the complainants or other carriers. *Bazendale v. Bristol and Exeter Ry. Co., 1 Ry and Ca. Tr. Cas. 229.*

(b) So also, where a Company, receiving goods from one carrier up to 8 P.M., refuses to receive goods from the public at the station to go by the same train after 5 15 P.M. *Gaston v. Bristol and Exeter Ry. Co., 1 Ry. and Ca. Tr. Cas. 218.*

(c) So also, where the complainants had to deliver goods collected by them before 6-30 P.M., while the Railway Company accepted goods collected by its own van up to 8 or 9 P.M. *Bazendale v L, and S.W.Ry. Co., 1 Ry. & Ca. Tr. Cas. 231.* (but see, *Palmer v. L and S. W. Ry. Co., 1* Ry. & Ca. Tr. Cas. 243).

(d) So also, where a Railway Company refused to carry coals for a colliery owner, unless he had 15 wagons containing a minimum of 4 tons each, while it carried coals for others in smaller quantity. *L. and Y. Ry. Co. v. Sidler (No. 2) L.R. 7 H.L. 517.*
2.—Shall not make or give any undue or unreasonable preference

....whatsoever—(Continued).

RAILWAY ADMINISTRATION IS BOUND TO ABSTAIN FROM MAKING OR GIVING ANY UNDUE PREFERENCE OR ADVANTAGE, OR ANY UNDUE OR UNREASONABLE PREJUDICE OR DISADVANTAGE—(Continued).

(c) So also, where a Railway Company, for the purpose of obtaining the services of the Company as carriers to the exclusion of other carriers, intimates to the public that it would collect and deliver goods free of charge. *Barndale v. G. W. Ry., Co., 1 Ry. and Ca. Tr. Cas. 202, Godwin v. G. W. Ry. Co., 1 Ry. and Ca. Tr. Cas. 214.*

(f) So also, where rates or certain classes of goods from one station to another had been reduced for sometime, but the applicants were still charged at the previous and higher rates, although the reduced rates were charged to other traders *Macfarlane v. North British Ry. Co. (No. 2) 4 Ry. and Ca. Tr. Cas. 269.*

(g) So also, where a Railway Company, which makes a change to the public for the carriage of parcels, and empties and allows such amount to its own carriers and agents, when such services are performed by its carriers or agents, does not allow such charge to other carriers performing similar services *Goddard v. L and S W Ry. Co., 1 Ry. and Ca. Tr. Cas. 308.*

(h) So also, where a Railway Company refused to act on general order for delivering goods to a carrier, and insisted on a special order being produced in respect of each consignment, but required no order, whether special or general, to be produced by its own carrier *Paterson v. G. W. Ry. Co., 1 Ry. and Ca. Tr. Cas. 280.*

(i) So also, where a Railway Company charges a customer for services not rendered *Gaston v. Buxton and Ercel Ry. Co., 1 Ry. and Ca. Tr. Cas. 218.*

(j) So also, where a Railway Company evades its obligation of imposing rates equally, by colourfully pretending that what is in fact a charge for other things as well as for carriage, is a charge for carriage only. *Barndale v. G. W. Ry. Co., 1 Ry. & Ca. Tr. Cas. 202.*


(l) Where a Railway Company having control over the rates for passenger fares by two routes (including transit by road), the routes being practically of the same distance, charged the first class fare of £3 by one route and £2 s.7 d. 6 by the other route, held that the difference, being excessive, constituted an undue prejudice over the traffic of the former route. *City of Dublin Steam Packet Co. v. L. & N. Ry. Co., 1 Ry. and Ca. Tr. Cas. 10.*

(6) Undue preference as regards passenger traffic.

The cases relating to—, are few. See *Brunt v. C. W. Ry. Co., 3 Ry. and Ca. Tr. Cas. 523.*

(7) Undue preference—Monopoly as to goods already delivered.

Monopoly as to goods already delivered is not an——, see *West v. L. & N. W. Ry. Co., 1 Ry. & Ca. Tr. Cas. 166* (but see *Locke v. N. E. Ry. Co., 3 Ry. and Ca. Tr. Cas. 44).*
2.—Shall not make or give any undue or unreasonable preference

... whatsoever—(Concluded).

RAILWAY ADMINISTRATION IS BOUND TO ABSTAIN FROM MAKING OR GIVING ANY UNDUE PREFERENCE OR ADVANTAGE, OR ANY UNDUE OR UNREASONABLE PREJUDICE OR DISADVANTAGE—(Concluded).

(8) Question of "fares"—Court’s Interference.

(a) Where the fare on one branch line is higher than the fare for an equal distance on another branch line of the same Railway, the Court will not interfere. Caterham Ry. Co. v. L. B. & S. C. Ry. Co. (Ry. & Ca Tr. Cas. 32).

(b) So also, where the fares on a Railway worked by another Railway Company are higher than those charged for a like distance on the latter Railway (unless an undue preference or prejudice is caused thereby). Inner v. L. B. & S. C. and L. & S. W. Ry. Cos. 2 Ry. and Ca Tr. Cas. 155.

(c) So also, where the passenger fares from intermediate stations to the termini stations are higher than those between the two termini of the line. Hoare v. Caledonian Ry. Co., 1 Ry. & Ca 27.

(9) Two or more routes.

(a) "Where a Railway Company has two or more lines or channels of communication in its own hands, it may conduct the traffic which is left to its own discretion by which one of them it prefers." Londonderry Port v. Gt. Northern Ry. Co. (Ir.) and others, 5 Ry. and Ca. Tr. Cas. 282 (284).

(b) "And so long as it leaves traders also free to select the route they think most convenient, and subjects them to no undue disadvantage or unequal terms in carrying their traffic by the route they select, as compared with the route which itself, so to speak, favours, it does nothing which the Railway Canal and Traffic Act (1888) prohibits.” (Ibid.)

(c) But facilities on both must be the same. (Ibid.)

(d) Whether as to the hours of the trains running, or as to the hours being the same on both routes for the reception of the traffic, the Railway Company is bound to see that the service is as good by one route as another. (Ibid.)

(e) A Railway Company may disregard the consignor’s order as to route, if he is not prejudiced thereby. Donald v. N.E. Ry. Co., 6 Ry. and Ca. Tr. Cas. 53.

(10) Through-traffic—Alternative routes

Where two alternative routes for through-traffic, one similarly longer than the other, have been left open, it is not proper for a Railway Company, for the purpose of a through-rate to propose to carry the traffic by the longer route with the object of making its mileage rate more, and the mileage rate of the forwarding Company less. East and West Junction Ry. Co. v. G. W. Ry. Co., 1 Ry. and Ca. Tr. Cas. 381.

(11) Convenience to the public and the Railway Company.

(a)——must be taken into consideration. See Lees v. L. and Y. Ry. Co. 1 Ry., and Ca. Tr. Cas. 352.

(b) As to the convenience of the Railway Company being taken into consideration. See, Cooper v. L. and S. W. Ry. Co., 1 Ry. and Ca. Tr. Cas. 185.

3—“Sub-Ss. (3 & 4).”

A RAILWAY ADMINISTRATION IS BOUND TO AFFORD ALL DUE AND REASONABLE FACILITIES FOR RECEIVING AND FORWARDING TRAFFIC IN THE CASE OF CONTINUOUS LINES.

(1) Continuous line of Railway communication.

(a) English Law.

According to the—, a route is not a “continuous line of Railway communication,” until the Board of Trade sanctions the opening of the line. Hammans Foster and others v. G.W. Ry Co., 4 Ry. and Ca. Tr. Cas. 181.

(b) Indian Law.

The same rule is applicable to India, until sanction, in accordance with the provisions in Ch. IV of the Indian Railways Act, for the opening of the railway is given.

(2) Continuous communication for the carriage of passengers.

The Commissioners, on a complaint from the passengers, are entitled to make an order enjoining two Railway Companies having stations in the same town situate one mile apart—connected by a line of railway, which line, however, was used for the goods traffic only—, to afford facilities for a continuous communication for the carriage of passengers as well as of goods traffic. Uckfield Local Board v. L. B. and S. C. and S.E. Ry. Cos., 2 Ry. and Ca. Tr. Cas. 214.

(3) Reasonable amount of accommodation.

In considering what is a—, regard must be had to the convenience of the general traffic of the Railway. Barret v. G N. and M. Ry. Co. 1 Ry. and Ca. Tr. Cas. 38.

(4) Continuous line of communication—Obligation whether limited to cases where a Railway Company has accommodation.

(a) Two Railways formed continuous line of communication The applicants were prevented from sending their traffic by the same, and had to send their traffic by a circuitous route. Held (1) that the applicants had a right to have their traffic conveyed by whichever route they wished, and to use the two Railways as a continuous line. Victoria Coal and Iron Co. v. Neath and Brecon and Mid. Ry. Cos, 3 Ry. and Ca. Tr. Ca. 37.

(b) The obligation imposed on a Railway Company is not limited to cases where Railway Companies have accommodation to take over the traffic at the point of the junction. (Ibid.)

(5) Existence of disputes between Railway Companies.

Disputes between Railway Companies whose lines form a continuous line of communication, serve not as answers to the public who desire to use such lines as a continuous line. Hammans Foster, etc. v. G. W. Ry. Co., 4 Ry. and Ca. Tr. Cas. 181.

(6) Through-booking.

The Railway Commissioners cannot, as a matter of right, make an order for—. Duceot, Newbury, etc. Ry. Co. v. G.W. and L. and S. W. Ry., Cos., 10 Ry. and Ca. Tr. Cas. 1.
3.—"Sub-Ss. (3 & 4)"—(Continued).

A RAILWAY ADMINISTRATION IS BOUND TO AFFORD ALL DUE AND REASONABLE FACILITIES FOR RECEIVING AND FORWARDING TRAFFIC IN THE CASE OF CONTINUOUS LINES—(Continued).

(7) Right of customer—Single booking.

(a) A customer is entitled to require any number of companies to combine to form a continuous route, by which his traffic may be sent at a single booking and for a single payment. *G.W. Ry. Co v. Seven and Wye etc Ry Co*, 5 Ry. and Ca Tr. Cas. 170.

(b) So also, the Railway Commissioners are entitled to order through-booking of passengers at the sum of the local rates charged on two lines of railway constituting the through route *Dudcot, Newbury un Ry. Co v L. and S W.Ry C* (No 2) 10 Ry. and Ca Tr. Cas 9.

(c) This is the case even though the service may not be continuous by the same train, or by a connection between trains. *Tames v. L. B and S.C and L. and S Ry Cos*, 2 Ry. and Ca Tr. Cas 155 (167).

(d) But see *Barrett v G. N and Mid Ry Co*, 1 Ry. and Ca Tr. Cas 38, where an application for through-booking in the case of passenger traffic was refused.

(8) Route—Reasonable.

(a) The route to be granted must be a reasonable one. See *East and West Junction Ry Co v G. W. Ry Co*, 1 Ry. & Ca. Tr. Cas. 331; *Sale-domin Ry Co v North British Ry Co* (No 4) 3 Ry. and Ca. Tr. Cas. 403.

(b) "A route that would be serviceable if worked throughout by one Company, does not lose it serviceableness, because two or more companies are concerned in working at it." *Swindon and Marlborough Ry Co v. G. W. and L and S W. Ry Cos*, 4 Ry. and Ca Tr. Cas. 349 (353).

(9) Through routes—Competition, reasonableness of.

(a) Where a route can maintain a competition with quicker and cheaper routes, and is efficient enough to be likely to be preferred for some portion of the traffic, held that such a route is reasonable. *G.W.Ry. Co v. Seven and Wye etc. Ry Co* 5 Ry. and Ca Tr. Cas 170.

(b) "...therefore, it is in the interest of the public that there should be at least two routes open between any two given places, provided that those routes are practically independent of one another, fairly alternative, and reasonably calculated to keep one another in check." (*Ibid*) (199).

(c) "...mere paper competition would not be for the public interest, nor would such competition be for the interest of the public, if it could only be maintained on terms ruinous to one or both of the competing companies." (*Ibid*)

(d) "...healthy competition would be generally in the public interest, and, at any rate there would certainly be a presumption in its favour, which it would be for the Company alleging that it was not in the public interest to displace by evidence." (*Ibid*)
A RAILWAY ADMINISTRATION IS BOUND TO AFFORD ALL DUE AND REASONABLE FACILITIES FOR RECEIVING AND FORWARDING TRAFFIC IN THE CASE OF CONTINUOUS LINES—(Contd)

(10) Line being opened forming alternative routes—Distance and cost of carriage lessened—Effect.

On a line being opened forming alternative routes, by which distance and cost of carriage are lessened, it is reasonable that rates charged to the public, who are in a position to avail themselves of the shorter route, should be also in some measure reduced. *East and West Junction Ry. Co v. G. W. Ry Co* 2 Ry and Ca. Tr Cas. 147 (153)

(11) Route when not a reasonable one.

Where the station where it is proposed to exchange the traffic is not, in any reasonable sense, a practicable one for that purpose, the route cannot be called a reasonable one. *Plymouth Etc, Ry. Co v. G. W and L. and S W. Ry. Cos.* 10 Ry. and Ca. Tr. Cas. 68

(12) Through rate—Undue preference.


(13) Quantum of proposed through rate

(a) Though the Commissioners may think that some other amount would be more equitable, they must accept the proposed rate, unless they are prepared to refuse the rate altogether. *G W Ry. Co v. Severn and Wye, Etc. Ry. Co.* 5 Ry. and Ca. Tr. Cas. 170

(b) "We have no discretion as to quantum unless we can say that the rates proposed are (i) unreasonably high as against the public, and it would require a very strong case to make us say, in the absence of any lower rates by any other route, that the proposed rates were too high, or (ii) so low as to be unfair to the existing company, all we can say in such a case, all we did say on the former occasion, and all we propose to say in the present case on this question is this—There is nothing so unreasonable in the amount proposed as to render a rate, which in other respects is reasonable, unfruitful in its sanctions." *Ibnd*

(14) Granting a through-rate—Public interest.

(a) No through-rate will be granted, if it is not shown that it is required for public interest. *Belfast Central Ry Co v. Gt. Northern Ry Co.* (I.) (No. 3), 4 Ry. and Ca. Tr. Cas. 159.

(b) A case of special interest as well need not be proved, when a *prima facie* case of public interest is made out. *Central Wales, etc. Ry. Co v. S W Ry. Co.* 4 Ry. and Ca. Tr. Cas. 110.

(c) However, it is not competent for the Court to consider the public interest alone in a competitive route. It will consider also the right of a railway company for a long run *re* traffic originating on its own system. *Plymouth, Etc. By. Co v. G. W. and L. and S. W. Ry Cos.* 10 Ry. and Ca. Tr. Cas. 68.
3.—"Sub-Sa. (3) & (4)"—(Continued).

A RAILWAY ADMINISTRATION IS BOUND TO AFFORD ALL DUE AND REASONABLE FACILITIES FOR RECEIVING AND FORWARDING TRAFFIC IN THE CASE OF CONTINUOUS LINES—(Continued).

(15) Through rate—Customer.

(a) ENGLISH LAW.

* According to the—, any customer desiring his traffic to be carried at a through-rate, is competent to apply to the Board of Trade under the terms of S. 25, of the Railway and Canal Traffic Act, 1848. See G. W. Ry. v. Severn and Wye. etc. Ry. Co., 5 Ry. and Ca. Tr. Cas. 170 (174).

(b) INDIAN LAW.

* In India, however, customers have no such right.

(16) Through rates, company entitled to apply for.

(a) A railway company which has an interest in a through-route, has the right to apply, though its proposals would be more of a detriment to the other companies than benefit to itself Severn and Wye etc. Ry. Co. v G W. Ry Co., 5 Ry. and Ca. Tr. Cas. 156.

(b) It need not be the forwarding company, even if the company has some interest in the forwarding of traffic. Greenock and Wemyss Bay Ry. Co. v. Caledonian Ry. Co., (No 3), 2 Ry. and Ca. Tr. Cas. 227.

(c) Though a railway company does not act as carriers of the traffic it forwards, yet it may be called a 'forwarding company.' Warrick and Birmingham Canal Co v. Birm. Canal Co., 3 Ry. and Ca. Tr. Cas. 113.

(d) So also a company whose line is worked by another company. Greenock and Wemyss Bay Ry. Co. v. Caledonian Ry. Co. (No 3), 3 Ry. and Ca. Tr. Cas. 145.

(17) Through rate—Through booking.

(a) "There may be an application to the Commissioners for a through-rate, but such an application would not be made unless the rate asked for is one that is less in amount than the aggregate of the rates over the different parts of the route." Per Rugby, L.J., concurring and Loper L.J., dissenting in Dukel, Newbury, etc., Ry. Co. v. G. W. and L. S. W. Ry. Cos. 10 Ry. and Ca. Tr. Cas. 1 Lord Esher M.R.

(b) "The Commissioners may grant a through-rate, but in doing so, they must consider public convenience and other matters." (Ibid.)

(c) "If they grant a through-rate, it seems to follow, as a matter of necessity, that this must be a through-booking." (Ibid.)

(d) "The converse seems to be equally true, that, if a through-booking is asked for, it must be taken into consideration; then, if it is granted, it follows a matter of necessity that there must be a grant of a rate corresponding to the booking." (Ibid.)

(e) "If the Commissioners think that a through-booking is to the advantage of the public, and they do not wish to interfere with the amount of the rate, it will, by the granting of the booking, be a rate payable for the through-journey, which is, in ordinary language, a through-rate." (Ibid.)
A RAILWAY ADMINISTRATION IS BOUND TO AFFORD
ALL DUE AND REASONABLE FACILITIES FOR
RECEIVING AND FORWARDING TRAFFIC IN
THE CASE OF CONTINUOUS LINES.

(f) "It will be one rate made up of the amounts of the rates over the different
portions of the route." (Ibid.)

(g) "If the Commissioners consider that there should be less paid than the
aggregate of the local rates, then, they will grant a reduced rate, and if
you choose, you can call that a through-rate and that only." (Ibid.)

(h) "It seems to be a needless wrong way of criticising a very general and
easy term in the English language." (Ibid.)

(i) "If you grant a lesser rate, then, if you like, in railway language, it is a
through-rate; but if you leave the amount of the rates alone, and add
them together and make one rate of it, then, you have granted a
through-booking and a through-rate." (Ibid.)

(j) "Subject to the consideration of the conditions and limitations imposed
by statute, they can either grant that by saying they grant a through-
booking, or by saying they grant a through-rate. If they grant either
one or the other, they must of necessity grant both." (Ibid.)

(18) Through traffic—Right of a railway company.

The right of a Railway Company, outside the question re through-rates, is to
collect what traffic it can, to carry it as far as it can, and to hand it
over at the end of the transit, to any other company having the obliga-
Ry. and Ca. Tr. Cas. 170.

(19) Adjustment of rates—Competing companies, interests of

While adjusting their rates, railway companies must do so not only with refer-
ence to their own interests, but also with reference to the interests of
other companies. Great Northern Ry. Co. (I.), v. Belfast Central Ry.

(20) Through-rates—Apportionment how made.

The usual way in which through-rates between railway companies are ap-
portioned, is to make a division of the through-rate by the mileage, after
5 Ry. and Ca. Tr. Cas. 156 (166).

(21) Traffic carried beyond junction—Through rates—Apportionment.

As to the apportionment of through-rates, when traffic has to be carried beyond
junction, see Central Wales, Etc., Ry. Co. v. L. and N. W. Ry. Co.,
4 Ry. and Ca. Tr. Cas. 101; Buckfastleigh, etc., Ry. Co. v. South

(22) Break of gauge—Transfer of traffic.

The Commissioners, in a case wherein the traffic has to be transferred at a jun-
tion on account of a break of gauge while apportioning a through-
rate, allowed charge for the service of transfer to the company per-
forming the same. Tal-y-llyn-Ry. Co. v. Cambrian Rys. and Co.,
5 Ry. and Ca. Tr. Cas. 122 (124).
3.---"Sub-ss. (3 & 4)"—(Concluded).

A RAILWAY ADMINISTRATION IS BOUND TO AFFORD
ALL DUE AND REASONABLE FACILITIES FOR
RECEIVING AND FORWARDING TRAFFIC IN THE
CASE OF CONTINUOUS LINES—(Concluded).

(23) Power given by one company to another to use its railway and the works belonging to it, nature of

A railway company, giving to another railway company power to use its railway and the works belonging to it, undertakes to perform all those services which must be performed, if the privilege given is to be exercised at all. (Per W. and Mid. Ry. Cos. v. Bristol Port Ry. and Pict. Co., 5 Ry. and Ca. Tr. Cas. 94.)

43. (1) Whenever it is shown that a railway administration charges one trader, or class of traders or the traders in any local area, lower rates for the same or similar animals or goods, or lower rates for the same or similar services, than it charges to other traders or classes of traders, or to the traders in another local area, the burden of proving that such lower charge does not amount to an undue preference shall lie on the railway administration.

(2) In deciding whether a lower charge does or does not amount to an undue preference, the Commissioners may, so far as they think reasonable, in addition to any other considerations affecting the case, take into consideration whether such lower charge is necessary for the purpose of securing, in the interests of the public, the traffic in respect of which it is made.

**Old Acts**

Act IV of 1879 1) No corresponding provision.

Act XLIII of 1854 2) No corresponding provision.

(Notes).

**General.**

(1) Analogous provision

Cf. — S. 27, the Railway and Canal Traffic Act, 1888 (Vic. c. 25).

(2) Effect of section.

The effect of S. 27, the Indian Railway and Canal Traffic Act, 1888 (Cf. present section), is not to limit the Court in dealing with questions of alleged undue preference to the consideration whether or not the lower charge is necessary in the interests of the public. Liverpool Corn Traders' Association v. G. W. Ry. Co., 8 Ry. and Ca. Tr. Cas. 114.
1.—"Trader."

(a) **Indian Law.**

Nowhere in the Act is the term "trader," defined.

(b) **English Law.**

The term "trader" includes any person sending, receiving, or desiring to send merchandise by railway, (S. 55, Railway and Canal Traffic Act, 1888).

2.—"Undue preference."

(1) "Undue preference," defined

(a) **Indian Law.**

Nowhere in the Act is the term "undue preference" defined.

(b) **English Law.**

The expression "undue preference" includes an undue preference or an undue or unreasonable prejudice or disadvantage, in any respect, in favour of, or against any person or particular class of persons or any particular description of traffic (S. 55, the Railway and Canal Traffic Act, 1888).

(2) **Undue preference—Question of fact**

What amounts to undue preference is generally not a question of law, but one of fact. *Dipthwys Casson Slate Co. v. Festiniog Ry. Co.* 2 Ry. and Ca. Tr. Cas. 73 (81).

(3) **Undue preference—Instances**

(a) (i) An agreement by a Railway Company to carry the traffic of a colliery owner at a reduced rate, on his threatening the Company that he will divert his traffic from the Railway Company's line unless the Company agreed to carry the same at the reduced rate was held to be an —. *Harris v. Cockeyeith et al.* Ry. Co., 1 Ry. and Ca. Tr. Cas. 97.

(ii) Not so an agreement for carrying at a lower rate in consideration of large quantities at regular intervals. *Nasholm v. G. W. Ry. Co.* 1 Ry. and Ca. Tr. Cas. 121.

(b) (i) An agreement to carry traffic for one trader at a lower rate than similar traffic belonging to another trader, is prima facie an —. The inequality not being justified by the fact of the Railway Company having offered an agreement to the latter at similar rates. *Rhymney Iron Co. v. Rhymney Ry. Co.* 6 Ry. Ca. Tr. Cas. 60.

(ii) Not so where a trader, in the absence of proof, is charged a smaller rate than that charged to a competitor. *Greenwood v. T. and Y. Ry. Co.* 6 Ry. and Ca. Tr. Cas. 60.

(c) "The fact of a customer of a Railway engaging to employ other lines of the Company for traffic distinct from and unconnected with the goods in question or their carriage, is not a legitimate ground for giving an — to one of the customers of the railway. *Bazendale v. G. W. Ry. Co.* 1 Ry. and Ca. Tr. Cas. 191.

(d) So also an agreement by the customer to lend his goods by the defendant company's railway, and not by water on other railway companies. *Garton v. Bristol and Exeter Ry. Co.* 1 Ry. and Ca. Tr. Cas. 218.

(e) Gratuitous carting, loading and unloading was held to be an —. *L. and N. W. Ry. Co. v. Evershed.* 48 L. J. Q. B. 22.
2.—"Undue preference"—(Continued).

(f) "It would seem that where a Company carry grain to two towns, at neither of which they perform certain terminal services for their customers, it is an—in favour of the traders at one town to allow a deduction in respect of such services not being performed by the Company, if the same deduction is not also allowed to the traders of the other town." Thrope v. Midland Ry. Co., 11 Rep. Ry. Com. 1.

(g) If goods of the same classification as to rates are carried in different directions, it is an—to charge different rates for the same distance according to the direction in which such goods may be going. *Greenwood v. L. and Y. Ry. Co., 6 Ry. and Ca. Tr. Cas. 39.

(4) Interests of railway to be taken into account.

(a) Where the Commissioners want to decide the question whether a Railway Company has given an undue preference, or has subjected any person, company, or traffic to an undue prejudice, they should consider the interest of the Railway. Ransome v. Eastern Co. Ry. Co. (No. 1) 1 Ry. and Ca. Tr. Cas. 63.

(b) Similarly a Railway Company may carry traffic for one at a less rate than similar traffic for another, provided the circumstances are such as to render the cost of carriage for the former less than for the latter. Ockede v. N. E. Ry. Co. (No. 1) 1 Ry. and Ca. Tr. Cas., 72.

(c) Likewise, the Commissioners must take into account whether a Railway Company may not, for deriving equal profits to itself, carry traffic in large quantities at lower rates per ton per mile than small quantities, and for long distances at lower rates than for shorter distances. (Ransome v. Eastern Co. Ry. Co. (No. 1) 1 Ry. and Ca. Tr. Cas. 63)

(d) For a case where a reduced rate was allowed for iron, one but was refused for coal traffic, see Rhymney Iron Co. v. Rhymney Ry. Co., 6 Ry. and Ca. Tr. Cas. 60


"———does not consist in all being offered a similar agreement, for if the agreement is not for the public interests, or goes beyond the fair regard which a Company may pay to its own interests, it leaves untouched the right of all under the Traffic Act to be put on equal terms." Diphyus Casson State Co. v. Festinog, 2 Ry. and Ca. Tr. Cas. 73

(6) Rebate.

Rebate (discount, deduction from a payment in consideration of its being made before it falls due), if allowed, must be equal. See Bell v. L. and N. W. Ry. 10, 2 Ry. and Ca. Tr. Cas. 185.

(7) Charge for warehousing.

(a) In a railway rate, a—must not be included. See Greenwood v. L. and Y. Ry. Co., 6 Ry. and Ca. Tr. Cas. 39.

(b) *Semble:—A Railway Company ought to permit all an equal period of warehousing. *Ibid., *Per Sir Frederick Peel.

(c) "This expense of—seems to be an expense incurred by the Railway Company, not as carriers but as warehousemen, and I do not think that a warehouse expenditure is a proper ingredient in a railway rate." (Ibid.)