2.—"Undue preference"—(Continued).

(d) "If the Railway Company choose to allow free warehousing for 28 days, and they think the applicants have made a freer or longer use of that indulgence than they expected, they have the remedy in their own hands. They can, if they please, provided they treat all persons alike, curtail the time which they allow for free warehousing, and, when that time is exceeded, make a charge for the overtime." (Ibid.)

(8) Carriage of goods—Railway Company making special agreement with customers.

(a) It is within the power of a Railway Company to make some special agreements with the customers, to secure certain advantages to them for the carriage of goods. Nicholson v. G. W. Ry. Co., 1 Ry., and Ca. Tr. Cas. 121.

(b) Such agreements will hold good only under the following circumstances—

(i) It must be clear that agreements are in the interests of such customers,

(ii) They must also be made with the object of increasing the profits of a railway;

(iii) The company must be willing to enter into similar agreements for the same facilities with all other persons. (Ibid.)

(9) Railway Company, whether can agree, to carry at reduced rates

For the simple reason that a Railway Company wants to introduce a certain kind of traffic into a country, it cannot enter into special agreements with different traders to carry at a lower rate than the ordinary charge. Oxlade v. N. E. Ry. Co., 1 Ry., and Ca. Tr. Cas. 72.

(10) One town preferred to another—Jurisdiction

Where a complaint of undue preference being shown to one town over another is made by a corporation, held that: the Railway Commissioners have jurisdiction to enquire into the same. Corporation of Dover v. S. E. and L. C. and D. Ry. Co., 1 Ry. and Ca. Tr. Cas. 319.

3.—"Public."

"Public," scope of the term.

(a) The public referred to is the public of the locality or district affected. Liverpool Corn Traders' Association v. G.W.Ry. Co., 8 Ry. and Ca. Tr. Cas. 114.

(b) Any considerable proportion of the population in general, as opposed to an individual or association of individuality, satisfies the description. (Ibid.)

Miscellaneous.

(1) Removal of the ground of complaint before the application.

Even after the—, the applicants can get an injunction to secure their interests in the future. Macfarlane v. North British Ry. Co. (No. 2), 4 Ry. and Ca. Tr. Cas. 269.

(2) Promise to afford facilities—Effect.

Where a promise to afford facilities is made, such promise does not affect the rights of the parties under the Railway and Canal Traffic Act, 1888, except so far as it testifies to the reasonableness of what the applicants ask for. Hobghead Local Board v. L. and N.W. Ry. Co., 4 Ry. and Ca. Tr. Cas. 87.
(3) Charge re heavy gradient.

Semble.—Where the cost of working a portion of a line is increased through a heavy gradient, an extra charge per ton per mile may be charged.


§ 44. Where a railway administration is a party to an agreement 1 for procuring the traffic of the railway to be carried on any inland water by any ferry, ship, boat or raft which does not belong to or is not hired or worked by the railway administration, the provisions of the two last foregoing sections applicable to a railway shall extend to the ferry, ship, boat or raft in so far as it is used for the purposes of the traffic of the railway.

Old Acts.

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

(Notes).

NB.—See notes to Ss. 42, 43, supra.

General

(1) Analogous provision

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

(2) Section. effect of

Where any railway administration is a party to an agreement for the carriage of traffic on any inland water by any ferry, ship, boat or raft not belonging to, or not hired or worked by the railway administration, the provisions of Ss. 42 and 43, supra, apply to the same, viz—

(i) The duty to afford all reasonable facilities for receiving, forwarding and delivering traffic (S. 42 (1), supra).

(ii) The duty to abstain from making or giving any undue preference or advantage or any undue or unreasonable prejudice or disadvantage. (S. 42 (2), supra).

(iii) The duty to afford all reasonable facilities for receiving and forwarding through traffic, i.e., (S. 42 (3) and (4), supra).

(iv) Whenever it is shown that the persons conducting any ferry, ship, boat, or raft, charge one trade 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 they charge 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 lies on the person conducting the ferry, ship, boat or raft. (S. 43, supra).
(1) Agreement, nature of.

(a) The agreement between the Railway Company and the owner of a ship must be definite, so as to constitute an using. Caledonian Ry. Co v. Greenock and Wemyss Bay Ry. Co, 4 Ry. Ca & Tr. Cas 70. 

(b) An obligation on the part of the owner of ship to run between two specified places must be created by the agreement. (Ib.)

(c) The agreement may be temporary only. Belfast Central Ry. Co. v. Great Northern Ry. Co. [Ir. (No. 4), 4 Ry. and C. Tr. Cas. 379]

(2) Rate to be equal.

In a case in which a Railway Company carries traffic to two ports, held, that the rates in respect of the same must be in proportion to the distance on both lines. Ayr Harbour Trustees v. A. & S. W. Ry. Co. (No 2), 4 Ry. & Ca. Tr. Cas. 90.

45 A railway administration may charge reasonable terminals.

Old Act.

This section is new.

(Note).

l.—"Terminals."

(1) Law before the passing of the Act.

There was no statutory provision as to the charging of terminals, before the passing of the Railway Act, 1890 (IX of 1890)

(2) Practice to make terminal charges.

But, for sometime past the practice for railway administration had been to make terminal charges

46. (1) The Governor-General in Council may, if he thinks fit, refer to the Commissioners for decision any question or dispute which may arise with respect to the terminals charged by the railway administration, and the Commissioners may thereupon decide what is a reasonable sum to be paid to the railway administration in respect of terminals.

(2) In deciding the question or dispute, the Commissioners shall have regard only to the expenditure reasonably necessary to provide the accommodation in respect of which the terminals are charged, irrespective of the outlay which may have been actually incurred by the railway administration in providing that accommodation.
Old Acts.

Act IV of 1879 XVIII of 1854 No corresponding provision.

(Notes).

Analogous provision.

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

Cf. S. 15, "The Regulations of Railways Act, 1873" (36 and Vic. 37. e 481). F

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

Cf. S. 24 (1), "The Railway and Traffic Act, 1888" (51 and 52 Vic. e. 25) G

1——"Power of Railway Commission to fix terminals."

(1) Terminal charges.

(a) As to what are——See Hall and Co v. London, Brighton and South Coast Railway Co., L R. 15 Q B D. 505. H

(b) 'Terminal charge' means the charge for the use of the goods, station, and for the various duties which the Company, as common carriers, perform in connection with the goods consigned to them for carriage. The Railway Company is entitled to levy terminal charges on the goods carried by them subject only, as to the rates and amounts thereof, to the sanction of Government, and under Ss. 41, 45 and 46 of Act IX of 1890, the High Court has no jurisdiction to consider or entertain a claim relating to terminals charged by the Company subsequent to that Act. 15 B. 5'7 (541 & 542). I

(c) "Terminal charges" are usually levied on account of the carrying of the goods to and from the wagon, loading and unloading them on and from the wagon, and for the use of the Company's premises where the goods frequently remain for sometime before they are taken away. Such charges, if not strictly perhaps "tolls", are certainly charges for performing of services, if not "necessary", at least "convenient" for the working of the Railway. 16 B. 434 (on appeal from 15 B. 537). J

(2) Authority to charge terminals, nature of.

(a) An authority to charge terminals must be express. See Fegler v. Monmouthshire Ry. Co., 30 L J. Ex. 249. K

(b) By its special Act, a Railway Company was required to carry, as common carriers. It was also required to give to all persons conveying or sending goods on the railway, every reasonable convenience and facility for loading and unloading goods. The Act further authorised the Company to demand a toll not exceeding 3d. per ton per milk •

• for the carriage of goods. On the Company charging 1 sh. per ton for services performed, accommodation afforded, and expenses and risks incurred in and about the receiving, loading and unloading, and delivering the goods, held, that the Company had no right to make such charges. (Ibid.) L
(3) Charge allowed—Instances.

(a) A Railway Company entitled to make a reasonable charge for loading, covering, and unloading, and for delivery and collection, and any other services incidental to the business of a carrier, where such services or any of them are, or is performed by the said Company, 'has the right to make a reasonable charge (1) for share of expenses of providing and maintaining station accommodation for dealing with merchandise traffic as carriers and (2) for share of expenses of station attributable to carrier’s services. Sowerby v. G.N. Ry., Co., 7 Ry. and Ca. Tr. Cas. 156.

(b) A charge for providing, maintaining and working, signalling and interlocking apparatus at a private siding, may be made. Dunkirk Colliery Co. v. G.S. and L. Ry., Co., 2 Ry. and Ca. Tr. Cas. 402.

(c) So also one for weighing coal, although the plaintiffs had no express statutory power to charge for the use of weighing machines. L. and N.W. Ry. Co. v. Price, L.R., 11 Q.B.D. 485.

(d) Also one for shunting (locomotive power, horses, staff, and stores) attributable to carrier’s services. Sowerby v. G.N. Ry. Co., 7 Ry. and Ca. Tr. Cas. 156.

(e) So also where the necessity for shunting was due to the inconvenient position of a private siding Portway v. Colne Valley etc. and L.E. Ry. Co., 10 Ry. and Ca. Tr. Cas. 211.


(g) For clerkage in respect of traffic at a private siding, see Portway v. Colne Valley etc. and L.E. Ry. Co., 10 Ry. and Ca. Tr. Cas. 211.


(4) Charge disallowed—Instances.

(a) A Railway Company was entitled to make a charge ‘for loading, unloading and covering, and the delivery and collection of goods, and other services incidental to the business of carrier, where such services, respectively, shall be performed by the Company.’ If the service was incidental to conveyance, and for which no charge could be made under the above clause, a charge for station accommodation would be disallowed. Kempton v. G.W. Ry. Co., 4 Ry. & Ca. Tr. Cas. 426.

(b) Likewise, a charge for providing and maintaining roads for egress and ingress of carts and horses sent to carry away coal traffic, was disallowed. Isle of Wight (Newport Junction) Ry. Co. v. Isle of Wight Ry. Co., 4 Ry. & Ca. Tr. Cas. 128.
I—"Power of Railway Commission to fix terminals"—(Continued).

(c) So also one for providing, maintaining and working, signalling and interlocking apparatus at a junction with a branch line colliery, which branch line belonged to, and was constructed and maintained at the railway company's cost. *Neston Colliery Co. v. L. & N. W. & G. W. Ry. Co.* 4 Ry. & Ca. Tr. Cas. 257.

(d) Also one for allowing coals to remain on some ground adjoining the defendant company's line. *L. and Y. Ry. Co. v. Gidlow* (No. 2), 45 L. J. Ex. 625

(e) 1 Also one for marshalling coal traffic at the defendant company's station. *Isle of Wight (Newport Junction, Ry. Co v. Isle of Wight Ry. Co)*, 4 Ry. and Ca. Tr. Cas. 128.

(f) Also one for taking empty wagons from, and placing full wagons on sidings. *Ibid.*

(g) So also a charge for finding, providing, and maintaining sidings accommodation. *Isle of Wight (Newport Junction) Ry. Co v. Isle of Wight Ry. Co.* 4 Ry. and Ca. Tr. Cas. 128.

(h) Similarly a charge for unloading platforms for coal traffic. *Ibid.*


(l) For advising an applicant at his request of the arrival of goods at the receiving station consigned to his order, and which were afterwards forwarded on. *Kempson v. G. W. Ry Co.*, 4 Ry. & Ca. Tr. Cas. 426


(n) Likewise, a charge for shunting and placing wagons in position for loading and unloading, and for haulage of loaded wagons to the place where they were attached for the train. *Kempson v. G. W. Ry. Co.*, 4 Ry. & Ca. Tr. Cas. 426.

(o) For invoicing and taking accounts of consignments, and keeping a staff for that purpose. *Isle of Wight (Newport Junction) Ry. Co. v. Isle of Wight Ry Co.*, 4 Ry. & Ca. Tr. Cas. 128.

(p) For providing and maintaining office accommodation re coal traffic. *Ibid.*
CHAPTER VI.

WORKING OF RAILWAYS.

General.

47 (1) Every railway company, and, in the case of a railway administered by the Government, an officer to be appointed by the Governor-General in Council in this behalf, shall make general rules, consistent with this Act for the following purposes, namely —

(a) for regulating the mode in which, and the speed at which, rolling-stock used on the railway is to be moved or propelled;

(b) for providing for the accommodation and convenience of passengers, and regulating the carriage of their luggage;

(c) for declaring what shall be deemed to be, for the purposes of this Act, dangerous or offensive goods, and for regulating the carriage of such goods;
(d) for regulating the conditions on which the railway administration will carry passengers suffering from infectious or contagious disorders, and providing for the disinfection of carriages which have been used by such passengers.

(e) for regulating the conduct of the railway servants;

(f) for regulating the terms and conditions on which the railway administration will warehouse or retain goods at any station on behalf of the consignee or owner and,

(g) generally, for regulating the travelling upon, and the use, working, and management of, the railway.

(2) The rules may provide that any person committing a breach of any of them shall be punished with fine which may extend to any sum not exceeding fifty rupees, and that, in the case of a rule made under clause (e) of sub-section (1), the railway servant shall forfeit a sum not exceeding one month's pay, which sum may be deducted by the railway administration from his pay.

(3) A rule made under this section shall not take effect until it has received the sanction of the Governor-General in Council, and been published in the Gazette of India.

Provided that, where the rule is in the terms of a rule which has already been published at length in the Gazette of India, a notification in that Gazette, referring to the rule already published, and announcing the adoption thereof, shall be deemed a publication of a rule in the Gazette of India within the meaning of this sub-section.

(4) The Governor-General in Council may cancel any rule made under this section, and the authority required by sub-section (1) to make rules thereunder may at any time, with the previous sanction of the Governor-General in Council, rescind or vary any such rule.

(5) Every rule purporting to have been made for any railway under section 8 of the Indian Railway Act, 1879, (IV of 1879), and appearing from the Gazette of India to be intended to apply to the railway at the commencement of this Act, shall, notwithstanding any irregularity in the making or publication of the rule, be deemed to have been made and to have taken effect under this section.
(6) Every railway administration shall keep at each station on its railway a copy of the general rules for the time being in force under this section on the railway, and shall allow any person to inspect it free of charge at all reasonable times.

**Old Acts.**

Act IV of 1879. S. 8 corresponds to Sub-sections (1) (a), (b), (c), (e), and (g), (2), (4) and (4) of the present Act.

,, XVIII of 1854. S. 26 corresponds to Sub-section (1) (a), (b), (c), (e), and (g), (2) (9) and (4) of the present Act.

Sub-sections (1) (d) and (f), proviso to Sub-section (3), (5) and (6) are new.

Proviso to Sub-section (3) represents the existing practice.

**(Notes).**

**General.**

**(1) Analogous provision.**

(a) **Subsection (1) (a to f)**

* Cf. Ss 7 to 9, the Railways Regulation Act, 1840 (3 and 4 Vic. c. 87), and S. 10, the Railways Clauses Act, 1845 (8 and 9 Vic. c. 20).

(b) **Subsection (1) (c)**

* Cf. S. 32, the Railway Clauses Act, 1863 (26 and 27 Vic. c. 92).

(c) **Sub-section (2).**

* Cf. The words ‘ and that ‘ down to the end of the Sub-section with S. 86, the Canadian Railways Act, 1886 (49 Vic. c. 109).

**(2) Section, scope and nature of.**

(a) This section will remove any doubt as to the validity of any existing rules and provides that, when rules have once been published in the Gazette of India, they may be extended to a railway by a reference to that Gazette and an announcement of their adoption for the railway, without being again published at length in the Gazette. (See Statement of Objects and Reasons).

(b) The intention of the section is to give the Railway Company power to enforce rules of its own making by imposing fine on its own servants. 11 C. W. N. 583 (584) = 5 Cr. L. J. 463.

(c) It seems that the Legislature, in enacting Ss. 26, 29, Act XVIII of 1854 (Cf. S. 47 and 101, present Act), had chiefly in view the protection of the public, and especially of passengers and other persons not directly connected with the railway, and it is very doubtful whether it was the intention of the Act to make the officers responsible for risks to fellow servants arising out of the particular duty in which they are engaged. 8 W. R. 43 (Cr.)

**(3) Distinction.**

(a) By S. 47, the Railway Company may make general rules for regulating the terms on which it will warehouse or retain goods at any station. 81 C. 961 (968) = 8 C. W. N. 726.

(b) By S. 54, the Railway Company may impose conditions for receiving goods (*Ibid.*)
I.—"Shall make general rules."

(1) General rules for working of railways under construction.

For—see General Statutory Rules and Orders, Vol. III.

(2) Ss. 47 and 54—Rules passed under the Act—Reasonableness.

(a) Ss. 47 and 54 of the Act empower the Railway Company to make rules determining the conditions under which the liability (as carriers) shall vest, and, particularly at what point of time it shall vest. 31 C. 451 = 8 C. W.N. 725.

(b) But such rules must be consistent with the Act, i.e., reasonable; otherwise they will be void and inoperative. (Ibid.)

(c) In Calcutta, a covenant, whereby goods consigned to a Railway Company were to stand at the owner's risk until a receipt had been granted by the Company, was held unenforceable, and the Company was declared liable to pay compensation for loss incurred in the meantime. (Ibid.)

2.—"For regulating the mode ...propelled."

(1) Necessity to take line clear ticket—General rule.

By a general rule sanctified and notified as required by law, the guard and driver of a ballast train should, on a line worked on the block system, stop the train at a station and should not leave the station till the guard has received from the station master and delivered to the driver a "line clear" certificate. 6 M. 201.

(2) Charge of disobeying a rule.

Where a— is brought, it is no answer to say that the rule had been habitually broken, or that the obedience to the rule would possibly not have prevented the accident which occurred. 6 M. 201.

(3) Railway accidents—Duty of Guard

Where some cooies were employed in assisting a ballast train into motion at a Railway station, and one of them, after pushing the train, in getting up on the train, or in attempting to do so, fell and was so injured that he afterwards lost his life, held, that the evidence did not show that it was the duty of the Guard to see that no one got up on the train when in motion. 8 W.R. 43 (Ch.).

3.—"For regulating the conduct of railway servants."

Rules for guidance of railway officials.

For—employed on lines administered by the Government, see, General Statutory Rules and Orders, Vol. III.

E1

4.—"For regulating the ....owner."

RULES FOR WARE HOUSING AND RETENTION OF GOODS UNDER S. 47 (1) (f).

I.—WHARFAGE.

On goods for despatch waiting to be consigned.

(1) For goods of every description brought on to railway premises for despatch but not consigned, wharfage may be charged at a rate not exceeding one anna per maund or part of a maund per day or part of a day, if consignment notes are not received before closing time of the day on which such goods are brought to the station.

E2
4.—"For regulating the....owner"—(Continued).

RULES FOR WAREHOUSING AND RETENTION OF GOODS UNDER S. 47 (1) (f).—(Continued).*

I.—WHARFAGE (Concluded).

(2) Goods will, in all cases, be at owner's risk, until taken over by the railway administration for despatch and a receipt in the prescribed form has been granted duly signed by an authorised railway servant. F

ON GOODS AVAILABLE FOR DELIVERY

(3) The goods shall be warehoused either under cover or in the open as space may be available. I

ON LUGGAGE AND PARCELS AVAILABLE FOR DELIVERY.

(1) For unclaimed booked luggage and parcels, a wharfage charge not exceeding two annas per maund or part of a maund per 24 hours or part of 24 hours, with a minimum charge as for one maund, may be made if they are not removed from railway premises within 48 hours from midnight of the day of arrival. J

NOTICE OF ARRIVAL.

(5) Subject to the provisions of S. 56 of the Indian Railways Act, 1890 (IX of 1890), notice of arrival will be sent when practicable, but the railway administration will accept no responsibility for non-receipt thereof. K

II.—DEMURRAGE.

ON VEHICLES ORDERED AND WAITING TO BE LOADED BY SENDERS.

(6) Demurrage at a rate not exceeding one anna per ton or part of a ton of carrying capacity per hour or part of an hour, may be charged on all vehicles ordered and not loaded, or loaded and not made available for despatch, after the expiry of nine hours of daylight from the time at which they are placed in position for the purpose. L

ON LOADED VEHICLES WAITING TO BE DISCHARGED BY CONSIGNEES.

(7) Demurrage at a rate not exceeding one anna per ton or part of a ton of carrying capacity per hour or part of an hour, may be charged on all loaded vehicles requiring to be discharged by owner, which are not discharged after the expiry of nine hours of daylight from the time of being placed in position for unloading. The railway administration may, at its option, unload the vehicle, and charge the consignee for doing so and charge wharfage on the contents under rule 3. M
Act IX of 1890 (INDIAN RAILWAYS ACT).

4.—"For regulating the....owner"—(Continued).

RULES FOR WAREHOUSING AND RETENTION OF GOODS UNDER S. 47 (1) (f)—(Continued).

III.—CALCULATION OF CHARGES.

(8) In calculating wharfage and demurrage charges, fractions of one anna less than six pies shall be dropped, and six pies and over shall be charged as one anna. Where the total amount of demurrage or wharfage due on any consignment is less than two annas, it shall be foregone.

IV.—GENERAL

(9) In the event of goods requiring to be loaded or unloaded by owners becoming liable to both demurrage and wharfage charges, the railway administration may levy both demurrage and wharfage charges for such periods as the goods would be liable to such charges under these rules.

(10) If, and for so long as the state of the traffic or any sudden emergency makes it necessary, and after advertisement in the local newspapers, the rate of demurrage or wharfage may be increased and the free-time curtailed.

(11) The railway administration shall have the same lien on goods for demurrage, wharfage, and, if incurred for unloading as for freight, and these charges must, unless under special arrangements a running account is kept, be paid before the goods are removed.

(12) Where the free time allowed in the previous rules includes either Sunday, Christmas Day or Good Friday, such days shall be allowed free in addition.

V.—TREATMENT AND DISPOSAL OF UNCLAIMED GOODS, LUGGAGE AND PARCELS, AND OF LOST PROPERTY FOUND IN RAILWAY VEHICLES OR ON RAILWAY PREMISES.

(13) Subject to the exception mentioned in rule 19 below, unclaimed goods shall be kept on hand at the station to which invoiced, for a period of not less than one month, during which time the notice prescribed in S. 56, sub-section (7), of the Indian Railways Act, 1890 (IX of 1890), will, if possible, be served upon the person appearing entitled thereto.

(14) If not taken delivery of within a period not less than one month after receipt at the station to which invoiced, unclaimed goods may be sent to the "unclaimed goods or lost property office," and dealt with as laid down in rule 21 below.

(15) Unclaimed articles shall be liable to the wharfage and demurrage charges hereinbefore referred to, as well as to all freight and special expenditure incurred by the railway administration on account of their custody and disposal.

(16) After being on hand for one month, unclaimed booked luggage and parcels may be transferred to the "lost property office," and dealt with in the manner prescribed in rules 15, 17, 18, 21 and 22.
V. - TREATMENT AND DISPOSAL OF UNCLAIMED GOODS, LUGGAGE AND PARCELS, AND OF LOST PROPERTY FOUND IN RAILWAY VEHICLES OR ON RAILWAY PREMISES—(Continued) (Concluded)

(17) Where articles such as arms, ammunition, explosives, intoxicating liquors, opium and its preparations, and hemp drugs, the sale of which by unlicensed persons is prohibited by law, are left unclaimed in the possession of the railway administration, they will be made over to the police or excise authorities for disposal under the, laws affecting the article. When not of a dangerous, perishable or offensive character, they will, however, be retained in the possession of the railway administration for the same period as that prescribed for other unclaimed articles.

This rule, in so far as it relates to explosives, is supplemental to, and not in modification of, rule 6 (IV) of the rules made under the Indian Explosives Act, 1884 (IV of 1884), and published under the Government of India, Home Department, Notification No. 5528, dated 11th October, 1901, in Part I of the Gazette of India, of the 12th October, 1901 (inde Appendix B to Part II of the General Rules for open lines of railway in British India, promulgated with the Government of India Public Works Department, circular No. 6 Railway, dated the 12th March, 1895, as revised by the Government of India, Public Works Department, circular No. 2 Railway, dated the 16th January, 1902), and any modifications of the same which may hereafter be made.

(18) Unclaimed perishable articles may be disposed of by the station master of the station at which they may be left after the expiry of 24 hours or earlier, if they are, or are likely to become, offensive.

(19) Lost property found in railway vehicles, or on railway premises may, subject to the exception mentioned in rule 18, be sent to the nearest "lost property office," and be similarly dealt with.

(20) An account of all unclaimed luggage, and of any lost property found on the line or on railway premises, shall be kept by the station master.

(21) Public sales by auction shall be held from time to time of all unclaimed or lost property which has remained in the possession of the railway administration for over six months. At least fifteen days' previous notice of each auction shall be given by advertisement in a newspaper.

(22) Any surplus proceeds arising out of sales of lost property or unclaimed consignments will, after payment of all charges and expenses due to the railway administration, be paid to the person or persons thereto entitled.
4.—"For regulating the
owner"—(Concluded).

RULES FOR WAREHOUSING AND RETENTION OF
GOODS UNDER S. 47 (1) (f)—(Concluded).

VI.—CLOAK-ROOMS.

(23) Passengers may leave small parcels or packages in the cloak-rooms, at
such stations as may be specified from time to time by the railway
administration.

(24) A charge of two annas per maund or part of a maund with a maximum
charge per package as for one maund, may be levied for each 24 hours
or part of 24 hours during which the parcel or package remains in
a cloak-room.

(25) The responsibility of the railway administration for articles left in a cloak-
room, shall be that of a bailee under sections 151, 152 and 161 of the
Indian Contract Act, 1872 (IX of 1872).

(26) A receipt ticket shall be given to any person depositing parcels and pack-
ages for custody in a cloak-room, and delivery will be made to any
person presenting such receipt ticket, after which all responsibility of
the railway administration in respect of such parcels or packages shall
absolutely cease and determine.

(27) Articles deposited in cloak-rooms which are unclaimed may, after a period
of one month, be transferred to the "lost property office," and dealt
with as prescribed in rules 15, 17, 18, 21 and 22 for unclaimed consign-
ments.

N.B.—The above rules were sanctioned by Government of India Notification
No. 231, dated 3rd July, 1902.

(1) Responsibility of Railway Company for goods left on its premises without
receipt being obtained for them—Company rules.

A rule by which a Railway Company disclaimed all responsibility for goods left
on the Company's premises, unless certain conditions were ful-
filled, the principal of which was that the goods should have been ac-
cepted and a receipt given for them by a duly authorised employee of
the Company, was a rule properly made under the provisions of this Act,
and no suit in respect of the loss of goods merely deposited on the Com-
pany's premises without such a receipt being taken for them, could
be maintained. 23 A. 367 = A. W. N. (1901), 107 (Shea v. The Great
Northern Ry Co., 14 C. B. 647, R.).

(2) Railway Company, when can claim wharfage and demurrage.

Where the goods remained on the premises of the plaintiff company, not by
reason of any neglect or default of their owner, to take delivery of them, but
by the act of the plaintiffs themselves, who kept and refused to
deliver them for their own protection and benefit, all that the company
could possibly be entitled to, would be a reasonable 'warehouse rent, and
not any wharfage or demurrage, which latter could be claimed only
when the owners had failed to take delivery of the goods within a certain
time after notice of arrival. 18 B. 281 (236).
5.—"For regulating the travelling upon railway."

(1) General rules made by the Director-General of Railways.

For—, for all open lines of railway in British India administered by the Government, see, General Statutory Rules and Orders, Vol. III.

(2) Railway ticket, available only on day of issue.

(a) One of the rules made by a Railway Company under S. 47 is that tickets are only available on the day of issue. 1 Weir 870

(b) Therefore, a ticket not so availed of is not a proper ticket within the meaning of S. 68 of the Act. (Ibid.)

6.—"Sub-section (2)."

(1) Rule 29, in Ch. V, pt. II

— of rules made under S. 47, assuming it within the powers conferred by S. 47 (1) (b), while empowering the railway administration, to exclude certain persons not bona fide passengers from railway promises, does not render the entry of such persons unlawful under S. 47 (2). 1 S. L. R. 91.

(2) Criminal offences, if created.

Neither S 47, nor the rules made under that section, create any criminal offence. 11 C.W.N. 581 (584) — 5 Cr. L.J. 463.

(3) Misconduct of railway servants—Fines

Various fines are imposed for misconduct on the part of the Railway servants, and those fines are made enforceable by deductions from their pay. This is in accordance with sub-S. (2) of S. 47.

48 Where two or more railway administrations, whose railways have a common terminus or a portion of the same line of rails in common, or form separate portions of one continued line of railway communication, are not able to agree upon arrangements for conducting at such common terminus, or at the point of junction between them, their joint traffic with safety to the public, the Governor General in Council, upon the application of either or any of the administrations, may decide the matters in dispute between them so far as those matters relate to the safety of the public, and may determine whether the whole or what proportion of the expenses attending on such arrangements shall be borne by either or any of the administrations respectively.

Old Acts.

Act IV of 1879  
Act XVIII of 1854  

| No corresponding provision. |

(Notes).

(1) Analogous provision.

Cf. S. 11, the Railway Regulation Act, 1842 (5 and 6 Vic. C. 55); and S. 9, the Railways Clauses Act, 1868 (26 and 27 Vic. C. 92).
(2) Section, nature of.

This section provides for the settlement by the Governor-General in Council of differences between railway administrations respecting the use of any common terminus or line of rails, where the differences are such as to be likely to affect the safety of the public. (See Statement of Objects and Reasons).

49. Any railway company, not being a company for which the Statute 42 and 43 Victoria, chapter 41, provides, may, from time to time, make and carry into effect agreements with the Governor-General in Council for the construction of rolling-stock, plant, or machinery used on, or in connection with, railways, or for leasing or taking on lease any rolling-stock, plant, machinery, of equipments required for use on a railway, or for the maintenance of rolling-stock.

Old Acts.

Act 1V of 1879
Act XVIII of 1854

(Notes).

(1) Analogous provision.

Cf. S. 4 (d), the Indian Guaranteed Railways Act, 1879 (42 and 43 Vic. c. 41).

(2) Ss. 49, 50 and 51, effect of.

The effect of Ss. 49, 50 and 51 will be to confer on railway companies domiciled in India, the same privileges as are enjoyed by the Indian railway companies domiciled in the United Kingdom. (See Statement of Objects and Reasons.)

1. "For which Statute 42 and 43 Vic., C. 41, provides."

(1) "Guaranteed Company."

The term—means any of the companies specified in the schedule to the Indian Guaranteed Railways Act, 1879 (42 and 43 Vic. c. 41), and any railway which for the time being constructs, maintains or works a railway under any guarantee from, or arrangement with the Secretary of State for India in Council. (See S. 1, 42 and 43 Vic., c. 41.)

(2) Railway Companies to which 42 and 43 Vict., C. 41 applies.

The—

The Great Indian Peninsular Railway Company;
The Madras Railway Company (now M. S. M. R.);
The Bombay Baroda and Central India Railway Company;
The Scinde, Punjab and Delhi Railway Company;
The Eastern Bengal Railway Company;
The South Indian Railway Company;
The Oudh and Rohilkund Railway Company (Limited).
S. 50]  Act IX of 1890 (INDIAN RAILWAYS ACT).

50. Any railway company, not being a company for which the Statute 42 and 43 Victoria, chapter 41, provides may, from time to time, make with the Governor-General in Council, and carry into effect, or, with the sanction of the Governor-General in Council¹, make with any other railway administration, and carry into effect, any agreement² with respect to any of the following purposes, namely:—

(a) the working, use, management, and maintenance of any railway;

(b) the supply of rolling-stock and machinery necessary for any of the purposes mentioned in clause (a), and of officers and servants for the conduct of the traffic of the railway;

(c) the payments to be made and the conditions to be performed with respect to such working, use, management, and maintenance;

(d) the interchange, accommodation, and conveyance of traffic being on, coming from, or intended for, the respective railways of the contracting parties, and the fixing, collecting, apportionment, and appropriation of the revenues arising from that traffic;

(e) generally, the giving effect to any such provisions or stipulations with respect to any of the purposes hereinbefore in this section mentioned as the contracting parties may think fit and mutually agree on.

Provided that the agreement shall not affect any of the rates which the railway administrations, parties thereto, are from time to time respectively authorized to demand and receive from any person; and that every person shall, notwithstanding the agreement, be entitled to the use and benefit of the railways of any railway administrations, parties to the agreement, on the same terms and conditions, and on payment of the same rates, as he would be if the agreement had not been entered into.

Old Acts.

Act IV of 1879  ) No corresponding provision.
Act XVIII of 1864
(Notes).

(1) Analogous provision.

Cf. S. 2, the Indian Guaranteed Railways Act, 1879 (42 and 43 Vic. C. 41). S. 87, the Railways Clauses Act, 1845 (+ and 9 Vic., C. 20). The Railways (Sales and Leases) Act, 1845 (9 and 9 Vic., C. 90). S. 22, the Railway Clauses Act, 1863 (26 and 27 Vic., C. 92).

(2) Ss. 49, 50, 51, effect of.

See S. 49, supra.

1.—"With the sanction of the Governor-General in Council"

Delegation of power of Governor-General in Council.

The powers of the Governor-General in Council have been delegated to the Railway Board, subject to their being exercised in accordance with the general rules and orders on the subject issued by the Government of India. (See Gazette of India, 1907, Pt. I, p. 273).

2.—"Agreement."

Instances.

For—of such agreement, see Mad. Rules and Orders, Vol. I.

51. Any railway company, not being a company for which the Statute 42 and 43 Vict. chapter 41, provides, may, from time to time, exercise, with the sanction of the Governor-General in Council, all or any of the following powers, namely:—

(a) it may establish, for the accommodation of the traffic of its railway, any ferry equipped with machinery and plant of good quality and adequate in quantity to work the ferry;

(b) it may work, for purposes other than the accommodation of the traffic of the railway, any ferry established by it under this section;

(c) it may provide and maintain on any of its bridges, roadways for footpassengers, cattle, carriages, carts, or other traffic;

(d) it may construct and maintain roads for the accommodation of traffic passing to or from its railway;

(e) it may provide and maintain any means of transport which may be required for the reasonable convenience of passengers, animals, or goods carried or to be carried on its railway;
(f) it may charge tolls on the traffic using such ferries, roadways, roads, or means of transport as it may provide under this section, according to tariffs to be arranged from time to time with the sanction of the Governor-General in Council.

Old Acts.

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

(Notes).

(1) Analogous provision.

Cf.—S 4, the Indian Guaranteed Railways Act, 1879 (42 and 43 Vict. c. 41). Z

(2) Ss 49, 50, 51, Effect of.

See S. 49, supra.

52. Every railway administration shall, in forms to be prescribed by the Governor-General in Council, prepare, half yearly or at such intervals as the Governor-General in Council may prescribe, such returns of its capital and revenue transactions, and of its traffic, as the Governor-General in Council may require, and shall forward a copy of such returns to the Governor-General in Council at such times as he may direct.

Old Acts.

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

(Note).

Analogous provision.—

Cf.—S. 3, The Railway Regulation Act, 1840 (3 and 4 Vict. c. 97).
Ss. 3 and 4, the Regulation Railways Act, 1868 (31 and 32 Vict. c. 119).
Ss. 9 and 10, the Regulation of Railways Act, 1871 (34 and 35, Vict. c. 78.) A

Carriage of Property.

53. (1) Every railway administration shall determine the maximum load for every wagon or truck in its possession, and shall exhibit the words or figures representing the load so determined in a conspicuous manner on the outside of every such wagon or truck.

(2) Every person owning a wagon or truck which passes over a railway shall similarly determine and exhibit the maximum load for the wagon or truck.

(3) The gross weight of any such wagon or truck bearing on the axles when the wagon or truck is loaded to such maximum load shall not exceed such limit as may be fixed by the Governor-General in Council for the class of axle under the wagon or truck.
Act IX of 1890 (Indian Railways Act).

[5s. 53 & 54]

Old Act.

This section is new.

(Note).

Analogous provision.

Cf. — S. 46, the Railway Regulation Act, 1842 (5 and 6 Vic. c. 51.)

54. (1) Subject to the control of the Governor-General in Council, a railway administration may impose conditions, not inconsistent with this Act, or with any general rule thereunder, with respect to the receiving, forwarding, or delivering of any animals or goods.

(2) The railway administration shall keep at each station on its railway a copy of the conditions for the time being in force under sub-section (1) at the station, and shall allow any person to inspect it free of charge at all reasonable times.

(3) A railway administration shall not be bound to carry any animal suffering from any infectious or contagious disorder.

Old Act.

This section is new.

(Notes).

General.

(1) Section, necessity for.

A clause like this (S. 54) is considered necessary for the purpose of covering the condition which all railway administrations in India do in fact impose in their quarterly hand books of fares and rates, published for the information of the public. (See Statement of Objects and Reasons).

(2) Ss. 47 and 54—Distinction.

See 31 C. 951 = 8 C.W.N. 725, noted under S. 47, supra.

1.—“Sub-S. (1).”

(1) Various forms sanctioned under Sub-S. (1).

(a) Goods consignment note,
(b) Goods receipt note,
(c) Luggage ticket,
(d) Parcels by bill,
(e) Single ticket for horses, carriages, dogs, etc,
(f) Return ticket for horses, carriages, dogs, etc,
(g) Live-stock ticket.

(2) Bye-laws, nature of.

Bye-laws can be passed only under S. 54 (1) of the Act, which only authorizes the passing of rules consistent with the Act, with respect to the “receiving, forwarding, or delivering” of articles. 76 P. R. 1908 = 139 P. W. R. 1907.
(8) Rule framed under the Act—Reasonableness.

(a) No rule or bye-law made by any Railway Company which is inconsistent with, or not authorised by any of the provisions of this Act, even if sanctioned by the Governor-General, is valid. 76 P.R. 1908 = 139 P.W.R. 1908.

(b) Under S. 54 (1) of the Act, the conditions that may be imposed by a bye-law are conditions with respect to the “receiving, forwarding or delivering” of articles. It cannot be said that a bye-law prescribing what the consignor or consignee is to do after the goods are lost, comes within those words. (Ibid.)

(4) Ss 47 and 54—Rules passed under the Act—Reasonableness.

See 31 C. 951 = 8 C.W.N. 725, noted under S. 47, supra.

(5) Rule framed by Railway.

A rule by which the railway administration disclaims responsibility for goods left on their premises unless certain conditions are fulfilled, one of which is that the goods should have been actually booked and a receipt given for them by a duly authorised agent or clerk, is a rule neither unnatural nor contrary to the General Law of Contracts. (1 S L R. 77.)

55. (1) If a person fails to pay, on demand made by or on behalf of a railway administration, any rate, terminal, or other charge due from him in respect of any animals or goods, the railway administration may detain, the whole or any of the animals or goods, or, if they have been removed from the railway, any other animals or goods of such person then being in, or thereafter coming into, its possession.

(2) When any animals or goods have been detained under subsection (1), the railway administration may sell, by public auction, in the case of perishable goods, at once, and, in the case of other goods or of animals, on the expiration of at least fifteen days’ notice of the intended auction published in one or more of the local newspapers, or, where there are no such newspapers, in such manner as the Governor-General in Council may prescribe sufficient of such animals or goods to produce a sum equal to the charge; and all expenses of such detention, notice and sale, including, in the case of animals, the expenses of the feeding, watering, and tending thereof.

(3) Out of the proceeds of the sale, the railway administration may retain a sum equal to the charge and the expenses aforesaid, rendering the surplus, if any, of the proceeds, and such of the animals or goods (if any) as remain unsold, to the person entitled thereto.
(4) If a person, on whom a demand for any rate, terminal, or other charge due from him has been made, fails to remove from the railway, within a reasonable time, any animals or goods which have been detained under sub-section (1), or any animals or goods which have remained unsold after a sale under sub-section (2), the railway administration may sell the whole of them, and dispose of the proceeds of the sale, as nearly as may be, under the provisions of sub-section (3).

(5) Notwithstanding anything in the foregoing sub-sections, the railway administration may recover by suit any such rate, terminal, or other charge as aforesaid or balance thereof.

Old Acts.

Act IV of 1879—Cf.—S. 14, with sub-sections (1) (2) (3) and (5) of the present Act.

Act XVIII of 1854—Cf.—S. 12, with sub-section (1) (2) (3) and (5) of the present Act.

Sub-section (4) is new

(Notes).

Analogous provision.

Cf.—S. 97, the Railway Clauses Act, 1845 (8 and 9 Vic. c. 20).

I.—"If a person fails...goods."

Railway Company putting a horse at the end of a journey into a livery stable.

A—for its protection, will doubtless be entitled to recover the charges from the consignee for so doing (C. W. Ry. Co. v. Swaffield, 43 L.J. Ex. 89).

2.—"The Railway administration may detain."

(1) The way in which Railway Company ought to deal with goods under lien.

(a) If a railway company keeps goods for its lien, it ought to deal with them reasonably. See G. W. Ry. Co. v. Crouch, 27 L.J. Ex. 345.

(b) Where the consignee fails to pay for the carriage of the goods consigned at the place of destination, the railway company ought not to send them back at once to the station wherefrom they were despatched. (Ibid.)

(2) Prior debt due by consignee—Right to detain.

By virtue of the powers conferred on a Railway Company by S. 55 of the Act, they can detain goods for prior debts due to them by the owner. (N. W.P. High Court, July 11, 1905).

(3) Lien of carriers—Stoppage in transit.

(a) The right of a consignor to stop the goods in transit is not affected by a usage for carriers to retain goods as a lien for a general balance of account between them and the consignee. Oppenheim v. Russell. 3 B. and P. 42.

(b) Likewise, where the lien for freight is only as regards the goods, the subject of stoppage in transit. Crawshay v. Eades, 1 B. and C. 181.
2.—"The railway administration may detain"—(Concluded).

(c) The lien of the carrier, as against the consignee, only enables him, to be paid for the carriage of the particular goods. *Oppenheimer v. Russell*, 3 B. and P. 42. 

(d) But, by the lien, the consignor's right to stop the goods in transit is not defeated. (Ibid.)

(e) It is evident that in India a railway administration will apparently have a general lien for any rate, terminal or other charge. (See the section) N. B.—For further cases, see notes under § 57, infra.

3.—"Sell."

(1) Railway Company's duty to sell detained goods—Notice of particulars of liability.

Sub-S. (2) of this section does not impose any liability or duty on the Railway Company to sell. It merely empowers them to do so. They ought to inform the owner distinctly in time that his goods are detained owing to a debt due to the company giving full particulars (Ibid.)

(2) Demand, nature of—Demand condition precedent to right to sell.

(a) A demand ought to be for a distinctly specified amount. See *Field v Newport, etc., Ry. Co*, 3 H. and N 409.

(b) The demand of the amount actually due for t-tons is a condition precedent to the right to sell. (Ibid.)

4.—"Published in one of...prescribe."

Mode of publishing notices—Absence of Local Newspapers—Bombay.

For mode of publishing notice of auction-sales in places where there are no local newspapers in Bombay. See *Bom. Goyt. Gazette*, 1895, Pt. I, p 1320.

56. (1) When any animals or goods have come into the possession of a railway administration for carriage or otherwise, and are not claimed by the owner or other person appearing to the railway administration to be entitled thereto, the railway administration shall, if such owner or person is known, cause a notice to be served upon him requiring him to remove the animals or goods.

(2) If such owner or person is not known, or the notice cannot be served upon him, or he does not comply with the requisition in the notice, the railway administration may, within a reasonable time, subject to the provisions of any other enactment for the time being in force, sell the animals or goods, as nearly as may be, under the provisions of the last foregoing section, rendering the surplus, if any, of the proceeds of the sale to any person entitled thereto.
Act IX of 1890 (Indian Railways Act).

Old Act.
This section is new.

(Note).

1. "Disposal of unclaimed things on a railway."

Rules for the disposal of unclaimed goods.

See notes under S. 47 (1) (f), supra.

57. Where any animals, goods, or sale-proceeds in the possession of a railway administration are claimed by two or more persons, or the ticket or receipt given for the animals or goods is not forthcoming, the railway administration may withhold delivery of the animals, goods, or sale-proceeds until the person entitled in its opinion to receive them has given an indemnity, to the satisfaction of the railway administration, against the claims of any other person with respect to the animals, goods, or sale-proceeds.

Old Act
This section is new.

(Notes).

Section, history of.

(a) This section was suggested by the Secretary of State's Despatch, Railway, No. 4, dated the 5th Jan. 1888.

(b) "These sections (Ss. 58 and 59, of the Indian Railway Bill, the former being omitted and the latter corresponding to S 57 of the present Act) have been suggested partly by existing practice, partly by the case of Eagleson v. The East Indian Railway Co., 8 B.L.R. 581, and partly by the proposal to give railway receipts the same effect as bills of lading. The proposal to give such effect to railway receipts has not been adopted, because railway administrations are understood to be averse to it, and it is not justified by existing legislation elsewhere." (See the Statement of Objects and Reasons, dated the 22nd Oct. 1888.)

1. "Power of railway administrations...cases"

(1) Railway receipt—Carrier—Jus tertii.

Where a person accepts bills of exchange on the security of a railway receipt, on which the Railway Company has promised to act, the possession of the goods has passed to that person, and the authority given to him to receive the goods cannot be revoked. 8 B.L.R. 581.

(2) Necessity for stating the law on the right of stoppage in transit.

Cases wherein two or more persons claim goods, etc., in the possession of a Railway Company very often crop up if the consignors are not paid and the consignees having become insolvent, the consignors stop the goods in transit in the hands of the Railway Company.
I.—"Power of railway administrations ... cases"—(Continued).

I.—STOPPAGE IN TRANSIT, SUMMARY OF THE LAW ON THE SUBJECT OF.

A.—CONDITIONS FOR THE VESTING OF THE RIGHT (Ss. 99 and 100 CONTRACT ACT).

(i) Power of seller to stop in transit

(1) Three essentials.

Three things must concur in order that the right of stoppage may vest in a seller:

(a) There must be an unpaid seller, who

(b) has parted with the possession of the goods, and

(c) the buyer has become insolvent.

Under the above circumstances, the seller has the right to resume possession of the goods and to retain them, until the whole of the price of the goods is paid. (See S. 99, Contract Act)

(ii) Acceptance of negotiable security as payment

A seller, who takes a negotiable security as an absolute payment, is not an unpaid seller and cannot exercise the right of stoppage in transit. (See M I.A. 422.)

(3) Property not passed—Seller's right

When the property has not passed, the seller’s rights depend on his right of lien, or upon a reservation of the usufruct. (See Bolton v. Lancashire and Yorkshire Ry. Co., L.R. 1 C.P. 191 (1890).)

(4) Kind of goods which may be stopped

(a) The right of the seller to stop in transit is exercisable only against the goods themselves, or their net proceeds of sale. (See Kemp v. Falk, L.R. 7 App. Cas. 573.)

(b) Such a right cannot be exercised against policy in one's own interest, in respect of insurances affected by the vendee. (See Berndston v. Strang, L.R. 3 Ch. 588.)

(ii) When goods are to be deemed in transit.

(1) Goods are deemed to be in transit.

—while they are in the possession of the carrier or lodged at any place in the course of transmission to the buyer, and are not yet come into the possession of the buyer or any person on his behalf, otherwise than as being in possession of the carrier, or as being so lodged. (S. 100, Indian Contract Act, IX of 1872.)

(2) Goods are in transit.

(a) Although they may have left the hands of the person to whom the seller entrusted them for transmission. (See Bethell v. Clark, L.R. 20 Q. B. D. 615 (1899).)

(b) It is immaterial how many agents' hands they may have passed through, if they have not reached their destination. (Ibid.)
I.—"Power of railway administrations—cases"—(Continued).

I.—STOPPAGE IN TRANSIT, SUMMARY OF THE LAW, ON THE SUBJECT OF—(Continued).

A.—CONDITIONS FOR THE VESTING OF THE RIGHT (Ss 99 AND 100, CONTRACT ACT) —(Continued).

(ii) When goods are to be deemed in transit—(Continued).

(3) Right to stop, when ceases.

(a) The right to stop ceases if the goods are delivered. See Kendall v. Marshall, Stevens and Co., L.R. 11 Q.B.D. 356, L.

(b) Where the freight due to a Railway Company has been paid and the goods have been loaded into the purchaser's carts, the unpaid vendor's right to stop in transit is at an end, and mere fact that the purchaser's carts were still standing in the goods—compound in the railway station, cannot affect the question. 14 B 57 (65).

(c) So long as the goods are subject to a lien for freight, the transit has not ended. The goods are not at home. The converse proposition would seem also to be true, i.e., when the ship-owner lands the goods and his freight has been paid, his right of control and lien over the goods is gone, and thenceforth the goods are held by the warehouses for the consignee alone. 17 B, 62 (92).

(d) Where goods are consigned to a carrier to await the orders of the buyer, and it is subsequently agreed between the carrier and the buyer that the buyer is to hold the goods as a warehouse-keeper for the buyer, the seller's right to stop the goods in transit is at an end. Taylor v. G. W. Ry., L.R. (1901) 1 K B, 774.

(4) Wrongful refusal to deliver

If a carrier wrongfully refuses to deliver possession on demand made and tendered of goods by the buyer, the transit is deemed to be at an end. See Ibid. v. Brown, 1 Ev. 736 (790), cited in 14 B 57 (66).

(5) Carrier's lien for freight—"Stoppage" in transit

(a) "A carrier has a lien on the entire cargo for his whole freight." Per Danley, J., in Cran- sley v. Eades, 1 B. and C. 181 (184).

(b) Until the amount is either tendered or paid, the special property which he has in his character of carrier does not pass out of him to the vendee, unless, indeed, he does some act to show that he assents to the vendee's taking possession of the property before the freight is paid." (Ibid.)

(c) In order to divest the consignor's right to stop in transit, there ought to be such a delivery to the consignor, as to divest the carrier's lien on the whole cargo." (Ibid.)

(d) Where, therefore, the entire freight has not been tendered or paid, the delivery is not complete as to any part; the special property is in the carrier, and the consignor is not deprived of his right to stop in transit." (Ibid.)
Act IX of 1890 (Indian Railways Act).

1.—“Power of railway administrations ... cases”—(Continued).


A.—Conditions for the vesting of the right (Ss. 99 and 100, Contract Act)—(Concluded).

(ii) When goods are to be deemed in transit—(Concluded).

(6) Rejection by buyer.

Till the buyer obtains absolute or constructive possession of the goods, they are in transit. Where, therefore, on the arrival of the goods, they are rejected by the buyer on account of certain difference in weight and quality, held, that the transit was never determined, and that the vendor had the right to stop in transit. *Bolton v. L. Y. Ry. Co., L. R. 1 C. P. 431.*

(7) Payment of freight.

It is not on alone, that the transit is put an end to. 14 R. 57.

(8) Consignment of 181 bags of wheat—73 bags arrived, loaded into carting agent's carts and unloaded—Effect.

Where, on a consignment of 181 bags of wheat whereon freight had been paid, 73 bags which arrived at the destination were loaded into the carting agent's carts and subsequently unloaded, held, that the transit of 73 bags had ceased, but not as to the remaining bags. 14 R. 57.

(9) Part delivery, if delivery of whole.

The question whether part-delivery of goods amounts to a delivery of the whole depends on the intention of the parties *Kemp v. Folk, L. R. 7 App. Cas. 573 (586).*

(10) Part-delivery—Effect.

Where part-delivery of the goods has been made to the buyer or his agent, the remainder are still in transit and can be stopped for, the possession of the remainder is unaffected thereby, unless such part-delivery has been made under such circumstances as to show an agreement to give up the possession of the whole of the goods. *Bolton v. Lancashire and Yorkshire Ry. Co., L. R. 1 C. P. 431.*

B.—How given effect to (Ss. 104, 105, Contract Act).

How the right to stop the goods in transit is given effect to.

(a) The goods may be stopped in either of two ways—

(i) By the seller taking actual possession of the goods.

(ii) By seller giving notice of his claims. (See S. 104, Indian Contract Act, IX of 1872).

(b) The notice of seller's claim must be given either to—

(i) "the person who has the immediate possession of the goods," as the warehouse-man, or

(ii) "the principal whose servant has possession," as the railway administrations. (See S. 105, Contract Act and the dictum of Parke, B., in Whitehead v. Anderson, 9 M. and W. 518).

(c) If the seller gives notice to the (principal railway administration), the notice to be effective as a stoppage must be given at such a time and under such circumstances, that the principal (railway administration), by the exercise of reasonable diligence, may communicate it to the servants in time to prevent a delivery to the buyer.
1. "Power of railway administrations...cases"—(Continued).

I.—STOPPAGE IN TRANSIT, SUMMARY OF THE LAW ON THE SUBJECT OF—(Continued).

B.—HOW GIVEN EFFECT TO (Ss. 101, 105, CONTRACT ACT)—(Concluded).

(2) Notice to the buyer.

\[ \text{See also, 17 B 62.} \]


(1) Right of seller on stoppage.

Stoppage in transit entitles the seller to hold the goods stopped until the price of the whole of the goods sold is paid. (See S. 106 of the Indian Contract Act, IX of 1872).

Illustration.

A sells to B 100 bales of cotton, 60 bales having come to B’s possession, and 40 being still in transit. B becomes insolvent, and A, being still unpaid, stops the 40 bales in transit. A is entitled to hold the 40 bales until the price of the 100 bales is paid. (Ibid.)

(2) Stoppage in transit restores lien.

(a) Stoppage in transit does not operate as a rescission of the contract, but merely restores to the seller his lien for price. Schotsmaus v. Lancashire and Yorkshire Ry., L.R. 2 Ch. Ap. 310

(b) The unpaid seller resumes possession of the goods for enforcing his lien. Phelps v. Combes, L.R. 29 Ch. Div. 813 (821)

(c) So, he can retain the goods as long as the price remains unpaid. (See Illustration to S. 106, Indian Contract Act, IX of 1872).

D.—CESSATION OF THE RIGHT (Ss. 100 to 103, CONTRACT ACT).

(i) Transit and right of stoppage in transit, lasting till the goods come into the possession of the buyer or of any person on his behalf.

See S. 100, Contract Act, supra

(ii) Stoppage in transit after resale by the buyer.

Seller's right of stoppage—Resale by buyer

(a) The seller's right of stoppage does not, except in the cases hereinafter mentioned, cease on the buyer's reselling the goods while in transit and receiving the price, but continues until the goods have been delivered to the second buyer or to some person on his behalf. (S. 101, Contract Act)

(b) The right of stoppage in transit consequently exists against the buyer and all persons claiming under him. See Kemp v. Falk, L.R. 7 A.C. 573.

(c) Thus, it avails against a sub-purchaser from the buyer, even though he has paid the purchase-money to the buyer. (Ibid.)

(d) For, such a sub-sale passes to the sub-purchaser the buyer's interest in the goods, but subject to the original seller's right of stoppage which was a right against the goods. (Ibid.)
1. "Power of railway administrations...cases"—(Continued).

I.—STOPPAGE IN TRANSIT, SUMMARY OF THE LAW ON THE SUBJECT OF—(Continued).

D.—CESSION OF THE RIGHT (Ss. 100 to 103, CONTRACT ACT)—(Cont'd).

(iii) Cessation of right on assignment by buyer of bill-of-lading.

Assignment of bill-of-lading, etc.

The right of stoppage ceases if the buyer, having obtained a bill-of-lading or other document showing title to the goods, assigns it, while the goods are in transit, to a second buyer who is acting in good faith, and who gives valuable consideration for them. (S 102, Contract Act. See also, illustrations to that section.)

(iv) Stoppage where bill-of-lading is pledged to secure specific advance.

(1) Bill-of-lading pledged to secure specific advance—Stoppage of goods in transit.

Where a bill-of-lading or other instrument of title to any goods is assigned by the buyer of such goods by way of pledge, to secure an advance made specifically on it, in good faith, the seller cannot, except on payment of tender to the pledgee of the advance so made, stop the goods in transit. (S 103, Contract Act. See also the illustrations to that section.)

(2) Railway receipts, whether instruments of title—Endorsement of railway receipts—Effect of.

(a) (i) Railway receipts for goods are not instruments of title, within the meaning of S 103 of the Contract Act, and by endorsing and handing them over to a third person, no assignment within the meaning of S 103 of the Contract Act is made. 14 B 57 (67)

(ii) "If this be thought by the commercial community to be an unsatisfactory state of the law, it will be necessary in our opinion, that the desired change should be made by the Legislature." Per Sargents, C.J., in 14 B. 57 (69).

(b) (i) The railway receipt in 14 B. 57, supra, runs thus.—

"Received from the consignor the undermentioned goods for conveyance to B. Bandar station by goods train, consignee C D., description— 18 bags of wheat. This receipt must be produced by the consignee, or the goods will not be delivered, if he does not himself attend, he must endorse a request for delivery to the person to whom he wishes it made. If the consignment or the railway receipt is sold one or more times, the endorsement must be a distinct order to deliver to a certain person or firm, and this order must be on an one-anna stamp. If more than one order appear on the face hereof, each order must bear a stamp. For condition of contract see back—Signature (—)." 14 B 57 (67).

(ii) In delivering judgment Sargents, C. J., said:—

"There can be no doubt that such a document, if endorsed, would not have been treated in the English Courts as a document or instrument of title to exclude the vendor's right of stoppage in transit, when the Contract Act came into force in 1872." (Ibid.)
I.—"Power of railway administrations...cases"—(Continued).

I.—STOPPAGE IN TRANSIT, SUMMARY OF THE LAW ON THE SUBJECT OF—(Concluded.)

D.—CESSATION OF THE RIGHT (Ss. 100 to 103, CONTRACT ACT)—(Conclud).

(iv) Stoppage where bill of lading is pledged to secure specific advance—(Concluded).

(iii) "The decision of the Exchequer Court in 1846 in Pargan v. Home, 16 M. and W. 119, was then in force, by which a delivery warrant signed by a wharfinger, whereby the goods were made deliverable to the plaintiff, "or his assignee by endorsement," was held to be "no more than a token of authority to receive possession"—(Blackburn on Sales, p. 297) or, as Mr. Basos Parker states it.

"Only an engagement by the wharfinger to deliver to the consignee, or any one he may appoint, and that, until the wharfinger has attorned to the assignee and agreed with him to hold for him, there was no constructive delivery to the assignee." (Ibid.)

(iv) "That decision was never overruled, and authoritatively determined the legal effect of such documents—at any rate until the passing of the Factors' Act of 1877 (40 and 41 Vic., c. 39).

(v) "In Trichin Panchand v. B B. and C I. Ry Co (Suit No. 287 of 1886), Farrar, J. seems to have thought that, in the absence of any definition of a document of title in the Contract Act itself, S. 4, Act XX of 1844 (by which the English Factor's Act, 5 and 6 Vic., c. 39, was extended to India) might be properly accepted as a guide to the meaning of the expressions "documents showing title to goods" or "instruments of title to goods," in Ss. 108 and 103 of the Contract Act; but it appears that, however much that definition might assist in construing the expression "document showing title" in S. 108 of the Contract Act, which was virtually substituted for the Factor's Act, and is in pars materia, it cannot be properly used in construing the expression "instrument of title" in S. 103 which relates to an entirely different subject-matter from the Factor's Act, and that it is, therefore, more reasonable to presume that, in a matter of such general commercial importance, the framers of the Contract Act intended to leave the term "instrument of title" in S. 103 to be construed with reference to the decision then in force in the English Courts." (Ibid.)

(c) Railway receipts are binding, and operate as estoppels against the railway companies issuing it, either as instrument of title or otherwise. J Rom L.R. 260 (267).

II.—MISCELLANEOUS.

A—Estoppel of railways by issue of railway receipts.

Estoppel of railways by the representations made by them in the issuing of a "railway receipts.”

See in this connection Ss. 115 and 117, Evidence Act.

B.—Bailment.

(1) Bailment by several joint owners

S. 87] Act IX of 1890 (Indian Railways Act) 111

I.—"Power of railway administrations... cases"—(Continued)

II.—Miscellaneous—(Continued).

B.—Bailment—(Concluded).

(2) Bailee not responsible, on re-delivery to bailor without title

See S. 166, Contract Act.

(3) Right of third person claiming goods bailed.


C.—Interpleader suits

(1) Provisions as to filing interpleader suits.

For—see s. 88 and O. XXXV. Act 1 of 1908 (Civ. Pro. Code)

(2) Interpleader suit—Essentials.

According to O. XXXV. r. 1., Civ. Pro. Code, 1908, in every suit of interpleader, it is necessary that the plaintiff claims no interest in the subject-matter in dispute other than for charges or costs. There must be no collusion between the plaintiff and any of the defendants.

(3) Claims must be bona fide.

An interpleader suit may be instituted where two or more persons claim bona fide. New Hampshire and Havannah Railway, W.N. 1875. p. 200

(4) Charges—What are.

(a) The charges include a right to wharfage, freight and demurrage by a carrier. 18 B. 281 (295).

(b) So, a claim for warehouse-rent is not such an interest as will exclude a plaintiff from filing an interpleader suit. Hawaiian v Betham, 1 L.J. Ex. 180.

(c) Also one for freight and charges made by a Bank with which bullion is deposited. Colter v. Bank of England, 2 L.J.C.P. 158.

(d) Also one for dock rent and charges. Attenborough v. St Katherine's Dock Co., (1878) 3 C.P D., 450.

(5) Interest, what is—Effect of claiming an interest.

(a) The person in possession must be in the position of a mere stakeholder claiming no interest himself. Prudential Assurance Co v. Thomas 3 Ch. App. 74.


(c) An interpleader suit will not lie if the plaintiff claims an interest in the property, or disputes the amount, or has paid it to a defendant on an indemnity. Burnett v. Anderson, 1 Mar. 405.

(d) So, also, where a plaintiff represents not merely that he has a lien with respect to which two other persons have adverse rights, but that there is a further question to be litigated adversely between himself and one of them, that is not a case of interpleader. Bigold v. Audland, (1840) 11 Sim. 23.

(e) Where there had been an agreement by stake-holders to pay a smaller amount in the event of the success of one of the parties to the suit, held, they had an interest in the subject-matter. Murrant v. South Armenian Co., 62 L.J. Q.B. 398.
I. "Power of railway administrations...cases"—(Concluded).

II. MISCELLANEOUS—(Concluded).

C. Interpleader suits—(Concluded).

(6) Plaintiff claiming an interest in suit property.

A—has no right of suit. Mitchell v. Hayne, 2 S and S. 63; see 18 B. 231 (235)

(7) Plaintiff disputing amount of suit property.

Where the plaintiff disputes the amount of suit property, no suit will lie. Duplock v. Hammond, 2 Sm. and G 141.

(8) Plaintiff ought to place suit property in Court's custody.

Where the plaintiffs failed to pay into, or place in the custody of, the Court, the subject matter of the controversy, their claim for wharfage and demurrage was held to be untenable. 18 B 231 (236).

(9) Duty of person in possession—Payment into Court.

(a) The person in possession must be ready to deliver it to the right owner. Tanner v. European Bank, 1 R 1 Ex. 261.

(b) Where a person in the possession of a mere stake-holder is made a defendant in a suit, his p. a. o. course would be to pay the money into Court and pray that the persons really interested may be substituted as defendants in his place. 2 Ind Jurs N S. 113

(c) The person against whom the suit is instituted must be in possession. Burnett v. Anderson, (1816) 1 Mer 406

(d) The stake-holder need not have been sue. New Hamburg and Brazilian Railway, W. N., p. 239 (1875)

(10) Bailee may interplead.

A—, though estopped from pleading a Just so Ent to Mersey Docks Board, (1893) 1 Q B 516.

(11) Collusion, meaning of.

"Collusion" does not involve anything morally wrong. Mursetta v. South Armenian Co., 62 L.J.Q B 396

(12) Facts from which collusion will be presumed.

(a) It is collusion to take an indemnity from one of the parties. Tucker v. Munn, 1 Cr and M 73

(b) Where the plaintiff has delivered the subject-matter in dispute to one claimant on an indemnity, no suit will lie. Burnett v. Anderson, 1. Mer 406

(c) An agreement with the stake-holders, whereby the plaintiffs bound themselves to defeat the right of other claimants to the fund, was held to be collusion. Mursetta v. South Armenian Co., 62 L.J.Q B 396.

(13) Estoppel to objection as to collusion.

Where the contention was that a stake-holder had, by merely taking an indemnity from one of the rival claimants to property in his hands, deprived himself of the right to relief, as he induced himself and must be taken to "collude" with the claimant that gave the indemnity, held, that the claimant could not raise the objection. Thompson v. Wright, 18 Q B 1 633.
58. (1) The owner or person having charge of any goods which are brought upon a railway for the purpose of being carried thereon, and the consignee of any goods which have been carried on a railway, shall, on the request of any railway servant appointed in this behalf by the railway administration, deliver to such servant an account in writing signed by such owner or person, or by such consignee, as the case may be, and containing such a description of the goods as may be sufficient to determine the rate which the railway administration is entitled to charge in respect thereof.

(2) If such owner, person, or consignee refuses or neglects to give such an account, and refuses to open the parcel or package containing the goods, in order that their description may be ascertained, the railway administration may (a) in respect of goods which have been brought for the purpose of being carried on the railway, refuse to carry the goods, unless in respect thereof a rate is paid not exceeding the highest rate which may be in force at the time on the railway for any class of goods, or (b), in respect of goods which have been carried on the railway, charge a rate not exceeding such highest rate.

(3) If an account delivered under sub-section (1) is materially false with respect to the description of any goods to which it purports to relate, and which have been carried on the railway, the railway administration may charge, in respect of the carriage of the goods, a rate not exceeding double the highest rate which may be in force at the time on the railway for any class of goods.

(4) If any difference arises between a railway servant and the owner or person having charge, or the consignee, of any goods which have been brought to be carried, or have been carried, on a railway, respecting the description of goods of which an account has been delivered under this section, the railway servant may detain and examine the goods.

(5) If it appears from the examination that the description of the goods is different from that stated in an account delivered under sub-section (1), the person who delivered the account, or, if that person is not the owner of the goods, then that person and the owner, jointly and severally, shall be liable to pay to the railway administration the cost of the detention and examination of the
goods, and the railway administration shall be exonerated from all responsibility for any loss which may have been caused by the detention or examination thereof.

(6) If it appears that the description of the goods is not different from that stated in an account delivered under sub-section (1), the railway administration shall pay the cost of the detention and examination, and be responsible to the owner of the goods for any such loss as aforesaid.

**Old Acts.**

Act IV of 1879... Cf.—S. 15 with S. 58 (1) of the present Act.
Act XVIII of 1854... Cf.—S. 18 with S. 58 (1) of the present Act.
Sub-sections (2) and (3) are new.
No provision in the Old Acts corresponding to sub-sections (4), (5) and (6).

**(Notes)**

(1) Analogous provision.
Cf.—Sub-S. (+), (5) and (6), with S. 101, the Railways Clauses Act, 1845 (8 and 9 Vic., c. 20).

(3) Scope of section.
S. 58 of Act IX of 1890 is limited to the case of a demand being made by any railway servant appointed in this behalf by the railway administration. So where no such demand is ever made, the section under S 59 Act IX of 1879 (Cf. S. 106 of Act IX of 1890) cannot be supported.

I.—"Requisitions for...goods."

(1) Misdescription of goods consigned, effect of
Where the consignor's agent had misdescribed the bags of sugar-candy entrusted to the defendant Company as being bags of alum, the misdescription could not by itself exonerate the defendant from all liability in respect of the bags, though the consignor could recover on the basis of the lost bags having contained alum only, and not sugar-candy.

(2) Delivery in bundles—Company, when liable to account for contents in each bundle
Even where a receipt note showed that a particular number of bundles of hides were entrusted to the Company, each bundle containing a specified number of single hides, in the absence of evidence that the bundles have been broken or that the hides had been counted by pieces, the mere circumstance that the Company charged freight by the piece and not by bundles, and had implicitly accepted the enumeration as to the number of pieces in each bundle, would not be sufficient to fix the Company with liability to account for the hides by the piece.
69. (1) No person shall be entitled to take with him, or to require a railway administration to carry, any dangerous or offensive goods upon a railway.

(2) No person shall take any such goods with him upon a railway without giving notice of their nature to the station-master or other railway servant in charge of the place where he brings the goods upon the railway, or shall tender or deliver any such goods for carriage upon a railway without distinctly marking their nature on the outside of the package containing them, or otherwise giving notice in writing of their nature to the railway servant to whom he tenders or delivers them.

(3) Any railway servant may refuse to receive such goods for carriage, and, when such goods have been so received without such notice, as is mentioned in sub-section (2) having to his knowledge been given, may refuse to carry them, or may stop their transit.

(4) If any railway servant has reason to believe any such goods to be contained in a package, with respect to the contents whereof such notice as is mentioned in sub-section (2) has not, to his knowledge, been given, he may cause the package to be opened for the purpose of ascertaining its contents.

(5) Nothing in this section shall be construed to derogate from the Indian Explosives Act, 1884 or any rule under that Act, and nothing in sub-sections (1), (3), and (4), shall be construed to apply to any goods tendered or delivered for carriage by order or on behalf of the Government, or to any goods which an officer, soldier, sailor, or police-officer, or a person enlisted as a volunteer under the Indian Volunteers Act, 1869, may take with him upon a railway in the course of his employment of duty as such.

Old Acts

Act IV of 1879... Cf—S 16 with sub-sections (1), (2), (3) and (4) of the present Act.

Act XVIII of 1854... Cf—S. 15 with sub-sections (1), (2), (3) and (4) of the present Act.

Sub-section (5) is now.

(Notes).

(1) History of section

See despatch from Secretary of State to Government of India, No. 95, dated 19th July 1882. See also Proceedings of Home Dep., 1st July 1887, Nos 35 to 77.
(2) Scope of section.
   
   (a) This enactment is penal, 1 A. 60 (F.B.) Per Stuart, C.J.  

   (b) It contemplates a criminal prosecution. (Ibid.)  

   (c) But, such a law does not interfere with, much less take away, the civil remedy. (Ibid.)  

   I. "Dangerous or offensive goods"

(1) Railway company not bound to examine every parcel

Railway servants are not bound to examine every parcel carried by a passenger.  
28 C. 401 (P C) = 28 I A 144 = 5 C W.N. 449.  

(2) Goods of a dangerous nature—Duty of person sending notice—Liability of person not giving notice.

A person sending a box containing an explosive substance without giving notice of the dangerous character of its contents will be liable in a suit for compensation for destruction of life brought by the widow of a railway servant who was so injured by the explosion of the contents of the box that he died, although the cause of the explosion was unexplained.  
1 A. 60 (F.B.)  

K

(3) Fireworks.

It would be difficult to say that—are not dangerous goods within the meaning of S. 59 of the Act. 26 C. 466.  

L

2. "As is mentioned in sub-section 2."

The words and figures "Sub-section (3)" were substituted for the words and figures "Sub-S (1)" by the Indian Railways Act, Amendment Act (IX of 1890), S. 3.  

M

60. At every station a railway administration quotes a rate to any other station for the carriage of traffic other than passengers and their luggage, the railway servant appointed by the administration to quote the rate shall, at the request of any person, show to him, at all reasonable times, and without payment of any fee, the rate-books or other documents in which the rate is authorized by the administration or administrations concerned.

Old Acts

Act IV of 1879...S. 9.
Act XVIII of 1894...S. 43.

(Notes)

(1) Analogous provision

Cf.—S. 4, the Regulation of Railways Act, 1873 (36 and 37 Vic., C. 48),  
S. 33, the Railway and Canal Traffic Act, 1888 (51 and 52, Vic., C. 25).  

N

(2) Source of section.

See Seventh Report, Railway Commissioners, p. 1  

O
(8) Ss. 60, 61. scope of.

(a) Sections 60 and 61, following English Law, require railway administrations to keep open to the inspection of the public, a book showing the rates for the time being charged for the carriage of animals and goods, and to comply with the requisitions for details of gross charges made by and paid to them for the carriage of goods. (See Statement of Objects and Reasons, dated 22nd October, 1888.)

(b) This section is not imperative as regards all stations.

(c) It is imperative only as regards a "station at which a railway administration quotes a rate."

1. "Station"

Station defined

According to S. 14, the Regulation of Railways Act, 1873 (Cf. present section) a station is a place wherefrom a rate is charged. Harborne Ry. Co. v. L. & N. W. Ry. Co. (No. 1), 2 Ry. and Ca. Tr. Cas. 169.

2. "Exhibition to rates"

(1) Authority for quoted rates exhibited where

(a) Rate-books ought to be kept at sidings wherefrom goods are conveyed, if the sidings are accessible to the public. Harborne Ry. Co. v. L. & N. W. Ry. Co. (No. 1), 2 Ry. and Ca. Tr. Cas. 169.

(b) Not so, if they are merely private sidings not forming part of a station. Pelsall Coal, etc., Co. v. L. & N. W. Ry. Co. (No. 2), 7 Ry. & Ca. Tr. Cas. 36.

(c) Rate books ought to be kept at the station whereat rates are charged, wherever the booking of the carriage be effected. Jones v. N. E. Ry. Co., 2 Ry. and Ca. Tr. Cas. 208.

(2) Kind of rates to be shown


61. (1) Where any charge is made by, and paid to, a railway administration in respect of the carriage of goods over its railway, the administration shall, on the application of the person by whom, or on whose behalf, the charge has been paid, render to the applicant an account showing how much of the charge comes under each of the following heads, namely —

(a) the carriage of the goods on the railway;

(b) terminals;

(c) demurrage; and

(d) collection, delivery, and other expenses, but without particularizing the several items of which the charge under each head consists.
... The application under sub-section (1) must be in writing, and be made to the railway administration within one month after the date of the payment of the charge by or on behalf of the applicant, and the account must be rendered by the administration within two months after the receipt of the application.

(Notes).

1. Analogous provision.
   Cf. — S. 17, the Regulation of Railways Act, 1869 (31 and 32 Vict. C. 119).
   Cf. — Sub-section (d) with S. 14, the Regulation of Railways Act, 1875, (36 and 37 Vict. C. 48).

2. Source of section

3. Scope of Ss. 60 and 61.
   See S. 60, supra.

Carriage of Passengers 1.

(Notes).

LIABILITY OF RAILWAY ADMINISTRATION AS CARRIERS OF PASSENGERS.

A — Obligation with regard to safe carriage of passengers.

1. Duty to carry passengers safely.
   The benefit which a carrying Company derives, directly or indirectly, from their carrying passengers, imposes upon them the corresponding obligation of taking due and reasonable care for their safety. *Foulkes v. Metropolitan Dt. Railway Company*, 1 R. 5 C.P.D. 187.

2. Railway Company — Passenger, carriage of, obligation as to
   (a) There is no obligation on a Railway Company to carry a passenger safely; they are only bound to carry him with reasonable care and diligence. 28 C. 401 (P.C.) = 28 I. A. 144 = 5 C. W. N. 449 [Collet v. The London and N. W. Ry. Co., 16 Q. B. 935 (1851), Expl.]

   (b) Where through want of due care, a passenger is killed or injured, the railway company must make compensation and may even be made criminally responsible. *McCawley Funnell Ry. Co., L.R. 8 Q.B. 57.*

   (c) The obligation to take due care of the safety of passengers travelling is attached to the contract between them and the carrier. *Redhead v. Midland Railway Co., L.R. 4 Q.B. 379, appl. in 2 C.W.N. 600.*

   (d) Carriers are insured against all defect which care and skill can guard against. *Hyman v. Nye*, 6 Q. B. D. 585, appl. to 2 C.W.N. 109.

   (e) A carrier's undertaking to convey passengers from one place to another, went no further than this that, as far as human care and foresight could go, he would provide for their safe conveyance. *Christie v. Gregg*, 2 Camp Rep. 79, cited in 2 C. W. N. 609 (627).
LIABILITY OF RAILWAY ... PASSENGERS—(Continued).

A.—Obligation with regard to safe carriage of passengers.—(cld.)

(3) Due care, what amounts to.

(a) An obligation attaches to carriers to use "due care," that is, a high degree
of care, which casts on them the duty of exercising all vigilance to see
that what is required for the safe conveyance of their passengers is in
the fit and proper order. Redhead v. The Midland Railway Co., L.R.
4 Q.B. 379, appl. 2 C.W.N. 604.

(b) A Railway Company is bound to use the best precautions in known practical
use, to secure the safety of its passengers, but not every possible pre-
cation which the highest science and skill might have suggested. Ford
v. L. and S. W. R. Co., 2 F. and F. 730.

(c) Where the plaintiff was injured by the danger of the train being thrown off
the line, and the cause was alleged to be the defective tyre of one of the
wheels of the tender, the Company was held liable because it was
bound to take reasonable care to use the best precautions known in
practical use, for securing the safety of their passengers. Ford v.
London and South Western Railway Company, 2 F. and F. 730.

(d) It is the duty of a carrier to provide for his passengers a vehicle which shall
be free from defects as far as human care and foresight can provide
and perfectly road-worthy. Burns v. Court and Boway Ry. Co., 19
Ir. Law Rep., p 543.

(4) Railway Companies are not common carriers of passengers.

Railway Companies are not common carriers of passengers, and it is not for
them to prove beyond doubt that they are not responsible for the ac-
cident. Evidence must be given of their want of care and diligence. 28
C. 401 (P.C.) = 28 I.A. 111 = 5 C.W.N. 419.

B.—Negligence.

I. ONLY LIKES ON WHOM.

(1) No fixed rule.

(a) There is—as to onus—Per Amn., A.L.J. 26 C. 165

(b) Each case must depend on its own special facts, in some instances, the
situation of the parties and the nature of the accident, or the circum-
stances leading to it, may give rise to a legal presumption of negli-
gence against the defendants; in others, it may be necessary for the
plaintiff to establish affirmatively actual negligence before the
Company can be made liable. (Ibid.) See Byrne v. B. adle (1863) 2
563; Kearney v. London Brighton and South Coast Railway Co.,
(1870) L.R., 5 Q.B. 411.

(3) Occurrence of injury, not necessarily import ing negligence.

—is not conclusive proof of negligence. Bird v. O.N. Ry. Co. 28 L.J. Ex. 3.M
Act IX of 1890 (Indian Railways Act).


LIABILITY OF RAILWAY . . . . PASSENGERS—(Continued).

B. Negligence.—(Continued).

I. ONUS LIES ON WHOM—(Concluded)

(3) Reasonable evidence of negligence

There must be reasonable evidence of negligence. But, when the thing is shown to be under the management of the defendant or his servants, and the accident is such as, in the ordinary course of things, does not happen if those who have the management use proper care, it affords reasonable evidence, in the absence of explanation by the defendant, that the accident arose from want of care. Scott v. London Dock Co., 34 L. J. Ex. 220, cited in 3 W. R., 73.

(4) More proof of accident

—does not throw on the Railway Company the burden of proving the real cause of the injury. Hummack v. White, 11 C. L. J. (S S) 591.

(5) Company’s negligence—Passenger’s negligence—onus.

The onus of proving the Company’s negligence lies on the plaintiff, but the onus of proving the passenger’s negligence lies on the Company. 24 B. 1.


In a suit brought by the legal representant of a deceased person, who was killed at an accident, while traveling in the train, the onus of proving that there was no negligence on the part of the Railway Company, lies upon it, on the principle of law enunciated in S. 106, Evidence Act. 4 M. I. T. 261.

(7) Prima facie evidence of negligence


(b) Running off the rails—is—(Ibid).


(d) Omission of a Railway Company to test the tynt of a wheel which has been worn out—is—Manser v. Kester Counties Ry. Co., 3 L. T. 585.

(e) Omission to keep a station properly lighted—9 W. R., 73.

(8) Train running off the line—Prima facie evidence of negligence—Rebutted.

If a train runs off the line, there is prima facie evidence of negligence, but this can be rebutted by the proof that the accident was through the wilful and wrongful act of a stranger. Lathe v. Burnley Ry., 27 L. J. Ex. 155.

(9) Negligence—Motor Omnibus—Skidding owing to greasy state of road.

The plaintiff was a passenger in a motor omnibus belonging to the defendant. Owing to the surface of the road having been rendered greasy by rain, the omnibus skidded and collided with an electric light stand, and the plaintiff was in consequence injured. There was no evidence that the defendant's servants had been negligent in the driving or management of the omnibus, or that there was any defect in the construction.
I.—"Carriage of passengers"—(Continued).

LIABILITY OF RAILWAY......PASSENGERS.—(Continued).

B.—Negligence.—(Continued).

1. ONUS LIES ON WHOM—(Concluded).

or condition of the particular omnibus. Held, that generally in a case charging negligence, it is for the plaintiff to prove negligence of a duty owing to him, and the mere fact of an accident is not generall prima facie evidence of negligence, but, if the cause of the accident be shown, this may or may not be prima facie evidence, according to its nature. 


II. FIRE WORKS.

(1) Introduction of fire works into a carriage

The is by itself no evidence of negligence on the Company's part. 2 C.W.N. 401 W

(2) Fireworks in passenger's carriage—Explosion.

ONUS-PRESUMPTION.

(a) (i) Where loss of life and damage had resulted from the explosion of fireworks in the compartment of a passenger carriage, the onus was on the Railway Company to show that they had exercised due care and caution to prevent the fireworks from being so carried, and it was not for the plaintiff to show that they did not. 2 C.W.N. 600.

(ii) Under the circumstances and in the absence of evidence, the Court cannot presume that the Railway Company took due care to prevent the carrying of these fireworks, and that the person who carried them concealed them in such a manner that they could not be discovered by the Railway Company. (Ibid)

(iii) Further, because the carrying of fireworks in a passenger carriage is penal and because every man is supposed to know the law, it cannot be presumed that a passenger would carefully conceal the possession of the fireworks from railway officials. (Ibid)

(iv) The maxim that every one must be presumed to know the law as limited to the determination of the Civil or Criminal liability of the person whose knowledge is in question, and cannot be legitimately made use of in a case such as the present, where the parties are entirely different and distinct from the person who carried the fireworks. 2 C.W.N. 600.

(b) The carrying of fire-works by passengers into the travelling compartments, is a thing which may be prevented by that high degree of care which the Railway Company is bound to exercise for the safety of its passengers, so, where loss of life or damage resulted from the explosion of fireworks in a passenger carriage, the Company will be liable, unless it discharges the burden of proof on it to establish that it had taken due care to prevent the fire-works being carried in that manner. 26 C. 465 =3 C.W.N 781, but see 28 C.401 (P C).

(c) In cases where the accident would not, in all probability, have happened but for the want of care on the part of the defendant, the plaintiff should be held to have made out prima facie case of negligence; and it will be on the defendant to rebut it. See Alexander's case law on trusts, 3rd Edition, p. 39.
Act IX of 1890 (Indian Railways Act).

I.—"Carriage of passengers"—(Continued).

LIABILITY OF RAILWAY......PASSENGERS.—(Continued).

B.—Negligence—(Continued)

II. FIRE WORKS—(Concluded).

(d) In a suit for damages for loss of a son who helped his father and whose death was caused by an explosion in a railway carriage, the onus is on the plaintiff to prove that the accident was due to a want of reasonable care and diligence on the part of the Railway Company. 28 C. 401 (P.C.) = 28 I.A. 144 = 5 C.W.N. 449.

(3) Damages, measure of.

As to damage in cases of this nature, distinct evidence of the loss sustained or benefit expected is not necessary. 2 C.W.N. 600; 16 Bom. 234 (Appr. and Pl').

(4) Costs.

As to—in a case like this, they should be allowed on such a scale as not to exhaust the damage awarded. 2 C.W.N. 600 (7 B H.C.R. 119; 8 B. H.C.R. 120, 130 F).

III. ACCIDENTS.

(1) Accidents, when Company liable for.

(a) Where in a matter under the management of a Railway Company or its servants, such an accident happens as in the ordinary course of things does not usually happen, if those who have the management use proper care, it affords reasonable evidence, in the absence of explanation by the defendant that the accident arose from negligence. Scott v. London and Dock Co (1869) 3 H. and C. 590.

(b) Where a Railway bridge extending over a high-way rested on perpendicular walls having pilasters, and from the top of one of these pilasters fell a brick, shortly after the passing of a train and injured the plaintiff, while passing under the bridge, negligence was presumed against the defendant Company since it was bound to use all reasonable care and diligence in keeping it in such a state of repair that no damage from its defective condition should occur to those who passed under it. Kearney v. London and Brighton Railway Company, 1 R. 5 Q B 411.

(c) Where a Railway passenger carriage was rendered insecure, dangerous and unfit for the conveyance of passengers from fireworks being carried therein, and when the carrying of such articles could have been prevented by the exercise of care and skill on the part of the Railway Company, held, they were bound to exercise such care and were liable for neglect. 2 C.W.N. 600.

(d) Where a Railway Company was guilty of negligence in not keeping the station properly lighted, in allowing the train to overshoot the station, and in not warning the plaintiff against slipping, and it was owing to such negligence and not any want of care on the plaintiff's part he sustained the injuries in question, the Company was held liable for damages for such injuries. 9 W.R. 78. (Davies v. Main, 10 M. & W. 84, R.)
Act IX of 1890 (Indian Railways Act).


LIABILITY OF RAILWAY.....PASSENGERS.—(Continued.)

B.—Negligence.—(Continued).

III. ACCIDENTS.—(Concluded).

(e) Where the negligence on the part of the Railway Company was that a gate at a level-crossing was left open, and the gate-keeper was absent, at the time when an express train was overdue, and the person injured passed on to the line, and was knocked down by the train which came up at the moment, held, the Railway Company was liable, although it was proved that the person injured might have seen the train approaching, if he had chosen to look. 


(f) A person may be liable for the consequences of an accident resulting from his own negligence in combination with other causes, which he did not contemplate. 

Lynch v. Nudlin, 4 P. and D. 672, Cited in 1 A. 60. L

(2) Accidents, when Company not liable for.

(a) Where the plaintiff who was standing under a portico looking at a timetable was injured by the fall of a timber and a roll of zinc from the roof, in the absence of evidence that the defendant Railway Company knew or had the means of knowing that the roof needed repairing, no case of negligence was held to have been made out against the Company. 

Welfare v. London and British Railway Company, L.R. 4 Q.B. 693. M

(b) When the accident arose under circumstances and from a cause quite outside the control of the Company, the latter could not be held liable for damages resulting therefrom. 


IV.—TRAINS OVERSHOOTING PLATFORM.

Negligence—Trains overshooting platform—Invitation to alight.

(a) In order to establish negligence arising from invitation to alight, against a Railway Company, it is not sufficient to prove that he carriage in which the plaintiff was travelling did overshoot the level portion of the platform and was drawn up alongside the slope, and that the plaintiff's injuries were received by a shock or fall on alighting and not by a fall after he had alighted. But the plaintiff must go further and show that the situation in which he was placed by the invitation to alight at the particular spot, exposed him to danger which was not visible and apparent, or that he was invited to alight in an unsafe and improper place. 7 Bom. L.R. 119. See the decision in 34 I.A. 115=9 Bom. L.R. 671=11 C.W. N. 721=17 M. L. J. 347; Weller v. London, Brighton and South Coast, Ry. Co., (1874) 9 C.P. 126, Budges v. North London Ry. Co., (1871) 6 Q.B. 377 (406), C. O

(b) Mere overshooting, even with an invitation to alight, is not necessarily or by itself negligence. (Ibid.) 6

(c) To constitute negligence, there must be on the part of the Railway Company some further act or omission which exposes the passenger to a danger not visible and apparent, in other words, such danger as a passenger of ordinary caution could not reasonably be expected to avoid. (Ibid.) 0
1. "Carriage of passengers" — (Continued.)

LIABILITY OF RAILWAY......PASSENGERS.—(Continued.)

B. Negligence.—(Continued).

IV. TRAINS OVERSHOOTING PLATFORM—(Concluded).

(d) An invitation to passengers to alight on the stopping of a train, without any warning of danger to a passenger who is so circumstanced as not to be able to alight without danger, such danger not being visible and apparent, amounts to negligence. Cockle v. South Eastern Railway Co., (1872) 7 C.P. 321 (326), cited in 7 Bom. L.R. at p. 127. R

V. NEGLIGENCE THROUGH DOORS OPENING AND ACCIDENTS THROUGH SHUTTING DOORS.

(1) Duty of Railway Company to shut doors of carriages.


(b) The fact that the finger of a passenger seated in a railway carriage being crushed, owing to the shutting of the carriage door by a railway servant on the platform is not evidence of negligence on the company's part. Drury v. N.E. Ry. Co., (1901) 2 K.B. 522. T

(2) Shutting of carriage doors.

(a) Railway servants are not bound to give warning of the shutting of a carriage door to a passenger who is actually seated inside the carriage, and is not in the act of getting in or out of it. Drury v. N.E. Ry. Co., (1901) 2 K.B. 522. U

(b) A plaintiff after taking his seat, left his hand for about half a minute on the door-jamb. The guard called out to the passengers to take their places. Then, he shut the doors of the carriages. The plaintiff's thumb was injured. Held, that the plaintiff was guilty of negligence. Richardson v. Met. Ry. Co., 37 L.J. C.P. 300. V

(3) Leaving the door open or unfastened.

—amounts to negligence on the part of the Railway Company, for the consequence of which the Company is liable for any injury caused thereby to the passengers. 24 B. 1 = 1 Bom. L.R. 254 (258). W

(4) Leaving door of a railway carriage open or unfastened—Hurt caused to passenger while trying to secure door.

The door of a railway compartment in a train running from Poona to Bombay was left open or unfastened when the train left the Khandala station. The plaintiff was then asleep in the carriage. Subsequently, he awoke when the train was passing through a tunnel, and found that the whole of the door, which opened outwards, had been torn away from its hinges, except the upper part or sunshade, which was flapping backwards and forwards, against the side of the tunnel, and the door post of the carriage. In attempting to secure it, the top of the plaintiff's finger was torn away and the bone of one of his fingers fractured. Held, that the injury was caused by the negligence of the Railway Company, and the plaintiff was entitled to damages. 24 B. 1. X
LIABILITY OF RAILWAY......PASSENGERS.—(Continued).

B.—Negligence.—(Continued)

VI. DUTY OF RAILWAY COMPANY TOWARDS PERSONS WHO VISIT STATIONS.

Persons visiting Stations.

(a) A Railway Company is liable, if persons, who with the Company’s permission visit stations, suffer injuries whilst on the Company’s premises by reason of the negligence of its servants. *Wiltshire v G W, Ry Co.* 46 L J, C.P. 817.

(b) So also, if a consignee of goods entering the station premises with the permission of the railway servants for assisting the unloading of his goods, sustains injuries owing to the insecure condition of the station premises. *Holmes v N E Ry.* 6 L R 56 Ex, 121.

VII.—DAMAGES.

(1) Weighing machines allowed to be on platform—Injury by falling over—Damages.

(a) Allowing a weighing machine to be on a platform, in a usual place is not of itself negligence. *Common v Eastern Ry Co.* 29 J. L. Ex, 94.

(b) So, no damages will be given to a person who suffers injuries by falling over the same. (*Ibid*)

(c) Damages will be awarded, if plaintiff is injured by falling over a box containing two small ladders propped up about two inches above the level of the platform. *Sturges v G W Ry Co.* 56 L J, 278.

(2) Liability of Railway Company—Damages

A person sustaining injuries through the rash and negligent conduct of a railway servant is entitled to damages. *Tebbutt v Bristol and Exeter Ry Co.* 6 Q. B. 75.

(3) Injury to passenger trying to prevent danger from Company’s negligence.

If any inconvenience or danger is caused by the negligence of the Company, a passenger may lawfully attempt to get rid of any such inconvenience or danger, provided that in doing so he runs no obvious risk disproportionate to the inconvenience or danger, and is not himself guilty of any negligence, and, if in such attempt he is injured, the Company is liable in damages. 21 B. 1——1 Bom, L & R 254. *Robinson v North Eastern Ry Co.* (1875) L R, 10 Q B, 271, *Lee v Nixey* (1890) 63 L T. 280, *Wiskton v L & S W Ry Co.* (1886) 12 Ap Ca, 11, *Engelport v Farrar & Co.* (1897) 1 Q B, 240, followed.

(4) Personal injuries—Damages—Mode of assessment.

(a) The following will be taken into consideration in assessing damages:

(i) The pain and suffering of the person injured.

(ii) The expenses incurred for medical and other necessary attendance.

(iii) The loss sustained through his inability to continue a lucrative professional practice.

LIABILITY OF RAILWAY......PASSENGERS.—(Continued).

B.—Negligence.—(Continued).

VII. DAMAGES—(Concluded).


(b) The following will not be taken into account in reduction of damages—

(i) Monies received by the plaintiff under an accident insurance policy. *Eradiano v. G. W. Ry. Co.*, L.R. 10 Ed. I

(ii) So also policy monies.


VIII.—FATAL ACCIDENTS ACT (XIII OF 1855)—COMPENSATION.

(1) Death of passenger caused by negligence of a Railway Company, compensation for.

For—See Act XIII of 1855. K

(2) Mode of assessing damages.

—— ——— in a suit under Act XIII of 1855 for compensation for destruction of life. See 1 A 60 (F.B.). L

(3) Law Prior to Act XIII of 1855 and subsequent to that Act—Nature of suit to be brought under Act XIII of 1855

(a) The law before the passing of the Act XIII of 1855 (which was founded on Lord Campbell's Act, 9 and 10 Vic, C. 92) was based on the maxim *actio personalis moritur cum persona*, and no action or suit was maintainable against a person who by his wrongful act, neglect, or default caused the death of another person. See Preamble to Act XIII of 1855. M

(b) But Act XIII of 1855, empowers executors, etc., to sue for damages for benefit of the wife, husband, parent, and child of any person whose death shall have been caused by any wrongful act, neglect, or default which, if death had not been caused would have entitled the party wronged, to sue for and recover damages in respect of it, although the death may have been caused under such circumstances as amount in law to murder or any other crime. See S. 1 of Act XIII of 1855. N

(c) Suits can only be brought under this Act for acts, etc., for which the deceased could have sued if he had not been killed. *(Ibid.)* O

(d) Thus, where a servant is killed in the service of his master, the master is not liable for negligence for which the servant could not have sued him *Senior v. Ward*, 1 E. and E. 395; K.N. Roy, p. 87, *Starling*, 4th Ed., p. 164. P

(e) The action can only be for the benefit of the wife, husband, parent and child of the deceased 1 A 60 (F.B.); 7 B. H.C. 113; see S. 1 of Act XIII of 1855. Q

(f) The pecuniary loss sustained by the survivors through the death is all that can be recovered. *Blake v. Midland Railway Co.*, 18 Q.B. 98. R
VIII. FATAL ACCIDENTS ACT (XIII of 1855)—COMPENSATION—(Continued).

(4) The precise nature of the right conferred by Act XIII of 1855 (Fatal accidents).

(a) As stated in the preamble of the Act itself, the relations of a person, whose death was caused by the wrongful act of another were not, prior to its enactment, entitled to claim compensation on account of the death. 28 M. 479.

(b) The right to claim compensation in respect of such a death was created by the Act. (Ibid.)

(c) It is provided that every suit shall be for the benefit of certain specified near relations of the deceased "and shall be brought by and in the name of the executor, administrator or representative of the person deceased." (Ibid.)

(5) Representative, meaning of.

(a) The word "representative" means and includes all or any one of the persons for whose benefit a suit under the Act (XIII of 1855) can be maintained. 28 M. 479.

(b) These persons are the representatives of the deceased, in the sense, that they are persons taking the place of the deceased in obtaining reparation for the wrong done. (Ibid.)

(c) A son adopted, under the Hindu law, by the widow of the deceased, was held to be the legal representative of the deceased for the purposes of bringing a suit under Art. 21, Limitation Act (1908). 7 B.H.C. 113.

(6) Suit for compensation.

(a) In cases where the deceased is represented by an executor or an administrator, such an executor or administrator is given the power to sue for compensation for the benefit of the specified relations. 28 M. 479.

(b) Where there is no executor, or administrator, or where there is one, and he is or is unwilling to sue, then the suit may be instituted by, and in the name of, the representative of the person deceased. (Ibid.)

(c) But one suit only is allowed to enforce the claims of all persons beneficially entitled,—it being provided that the rights of each and every one of them shall be adjudged and adjusted by the Court in such suit. (Ibid.)

(d) The right of each beneficiary is only to receive compensation in proportion to the loss occasioned to him by the death of his deceased relative. (Ibid.)

(e) From this it follows, and it was in effect so decided in *Pyn v. The Great Northern Ry. Co.* (4 B.S. 396) with reference to the provisions of Lord Campbell's Act, that the right of the beneficiaries to compensation is a right distinct in each. (Ibid.)
Act IX of 1890 (INDIAN RAILWAYS ACT)

I.—“Carriage of passengers”—(Continued).

LIABILITY OF RAILWAY.....PASSENGERS—(Continued).

*B.—Negligence—(Concluded).

VIII. FATAL ACCIDENTS ACT (XII. of 1855)—COMPENSATION—(Concluded).

(f) In short, the beneficiaries entitled to compensation under Act XIII of 1855 are not persons entitled to compensation jointly, but are parties entitled to relief severally, in respect of the same cause of action which is enforceable at the suit of all or any one of them suing for himself and the rest. (Ibid.)

(7) Death caused by goods of an explosive nature.

(a) The person who sends, by Railway, goods of a dangerous and explosive nature without giving notice of its character to the servants of the Railway Company, must compensate for loss of life caused by the explosion of the articles sent, though the sender could not have foreseen the explosion. 1 A 60 (F B.).

(b) Pearson, J., dissenting, held, but that the defendant, who could not have foreseen the explosion, would be liable, only if he omitted to take reasonable precautions to preclude the risk of explosion. (Ibid.)

C.—Contributory negligence.

(1) Person bringing action for injury not to be guilty of contributory negligence

(a) A person bringing an action against a Railway Company for injury sustained must not be guilty of negligence contributing to his own injury. Keeley v. L. and N. W. Ry Co., L.R. 1 App. Ca. 751.

(b) Even if he has been guilty of negligence, his negligence was not excuse the Railway Company, if the company, could, in the result, by the exercise of ordinary care and diligence, have avoided the injury. (Ibid.)

(c) This rule is applicable equally if the plaintiff owing to his youth has not capacity enough for exercising due care and caution. Abbot v. Marine, 2 H. and C. 741.

(2) Contributory negligence arises when.

(a) Where a deaf person does not hear a warning of an approaching train given by a railway servant, he can be said to be guilty of contributory negligence. Sheeton v. L. and N. W. Ry Co., L.R. 2 C.P. 631.

(b) The same is the case, if the warning proceeds from a person other than a railway servant. Stingley v. L. and N. W. Ry Co., L.R. 1 Ex. 13.

D.—Unpunctuality of trains—Liability of railway administration.

(1) Issuing of ticket.

Mere—is not a warrant, that the train shall arrive at the time specified. Hurst v. G. W. Ry Co., 34 L.J. C. P. 264.

(2) Publication of time-tables—Effect.

Since the publication of time-tables implies that a train shall run as advertised, a Railway Company will be liable (if knowing that a connecting train has been taken off, it has advertised a through train) to pay damages to a passenger who has started on his journey assuming that a connecting train is running. Denton v. G. N. Ry Co., 25 L.J.Q. B. 129.
LIABILITY OF RAILWAY. ... PASSENGERS—(Concluded.)

D.—Unpunctuality of trains—Liability of railway administration.

(3) Unpunctuality of trains—Damages.

I. ENGLISH LAW.

(a) DAMAGES RECOVERABLE.

(i) Hotel bills can be recovered from the Railway Company by a passenger who has been delayed on account of the unpunctuality of the trains. *Hamlin v. G.N. Ry Co., 26 L.J. Ex 20.*

(ii) So, also, damages for the inconvenience of having to walk home *Hobbs v. L & S W Ry Co., L.R. 10 Q.B. 111.*

(b) DAMAGES NOT RECOVERABLE.

(i) A passenger delayed on his journey on account of the unpunctuality of the trains, cannot recover his doctor’s bill if he catches cold in consequence of his having to walk home *Hobbs v. L & S W Ry Co., L.R. 10 Q.B. 111.*

(ii) Nor will he have the right to recover damages for loss of custom, because he lost appointment. *Hamlin v. G.N. Ry Co., 26 L.J. Ex 20.*

II. INDIAN LAW.

Unpunctuality of trains—Amount of damages recoverable.

See § 78, infra.

62 The Governor-General in Council may require any railway administration to provide and maintain in proper order, in any train worked by it which carries passengers, such efficient means of communication between the passengers and the railway servants in charge of the train as the Governor-General in Council has approved.

Old Acts

Act IV of 1879
Act XVIII of 1854

No corresponding provision

(Notes).

Analogous provision

Cf. S. 22, the Regulation of Railways Act, 1869 (31 and 32 Vict., C 119) R

1.—“Communication...trains.”

Duty to provide communication.

Semple—A railway administration is under no obligation, statutory or otherwise, to provide any communication as stated here, unless so required to do by the Governor-General. *Conder v. Ballarpasod*, Printed Judgments, Bom. (1895), p. 92.
63. Every railway administration shall fix, subject to the approval of the Governor-General in Council, the maximum number of passengers for each compartment. The maximum number of passengers which may be carried in each compartment of every description of carriage, and shall exhibit the number so fixed in a conspicuous manner inside or outside each compartment in English, or in one or more of the vernacular languages in common use in the territory traversed by the railway, or both in English and one or more of such vernacular languages, as the Governor-General in Council, after consultation with the railway administration, may determine.

Old Acts

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

(Notes)

Analogous provision.


I.—"Compartment."

Compartment.

(a) There is no definition in the Act of the word.—24 B 293 = 1 Bom. I.R. 668.

(b) It is possible that it may be used in different senses in the various sections of the Act. (Ibid.)

64. (1) On and after the first day of January 1891, every railway administration shall, in every train carrying passengers, reserve for the exclusive use of females one compartment at least of the lowest class of carriage forming part of the train.

(2) One such compartment so reserved shall, if the train is to run for a distance exceeding fifty miles, be provided with a closet.

Old Act.

This section is now.

(Notes).

General.

Scope of section.

This section requires every railway administration to reserve in every passenger-train at least one compartment of the lowest class for the exclusive use of females. (See Statement of Objects and Reasons, dated 22nd Oct., 1889.)
I.—“Compartment.”

Compartment, meaning of.

A “compartment” means a division of the railway carriage separated from the other division by partition right up to the roof of the carriage, each such division being completely screened off from its adjoining division.

24 B. 298 = 1 Bom. L.R. 688.

N.B.—See also the same case noted under S. 63, supra.

65. Every railway administration shall cause to be posted in a conspicuous and accessible place at every station on its railway in English, and in a vernacular language in common use in the territory where the station is situate, a copy of the time-tables for the time being in force on the railway, and lists of the fares chargeable for travelling from the station where the lists are posted to every place for which car-travellers are ordinarily issued to passengers at that station.

Old Acts

Act IV of 1879 ... S. 9.
Act XVIII of 1854 ... S. 43

(Notes)

Analogous provision.

Cf. S. 15 of the Regulation of Railways Act, 1868 (31 and 32 Vic. C. 117).

I.—“Time-tables.”

Publication of time-tables—Effect.


66. (1) Every person desirous of travelling on a railway shall, upon payment of his fare be supplied with a ticket specifying the class of carriage for which, and the place from, and the place to, which, the fare has been paid, and the amount of the fare.

(2) The matters required by sub-section (1) to be specified on a ticket shall be set forth—

(a) if the class of carriage to be specified thereon is the lowest class, then in a vernacular language in common use in the territory traversed by the railway, and

(b) if the class of carriage to be so specified is any other than the lowest class, then in English.

Old Acts.

Act IV of 1879 ... S. 17.
Act XVIII of 1854 ... S. 1.
(Notes).

1. — "Fare."

(1) Right of traveller to be conveyed by carrier of passengers.

"... The common law right of a traveller to be conveyed by the carrier of passengers on reasonable notice to pay the usual fare, is subject to the condition that he offers himself as a passenger at a reasonable time and place." 1 Tlam, 52 (58).

(2) "Fare" meaning of.

(a) Wharton's Law Lexicon defines "fare" as "the money paid for a passage either by land or by water." B

(b) In Stroud's Judicial Dictionary, "His fare..." in 8 Vis., C 20, S 103, is defined as "the fare by the train, and for the class of carriage in which the passenger travels." C

(c) Webster's Dictionary defines fare as (1) "the price of a passage or going," (2) "the sum paid in due for conveyance of a person by land or water." D

(d) Fare is the amount fixed for taking a passenger from one station to another. 4 R. 548. E

2. — "Ticket."

(1) Right of passengers to have ticket issued during journey.

(a) A Railway servant is not bound to issue a ticket to a person starting on his journey without taking a ticket at a station between that at which he started and the station of destination. He can be removed from the train as a trespasser. 1 B. 54 (58). G

(b) "... It would be most inconvenient and unreasonable, regarded from a public point of view, were the Court to hold that a passenger by a train has a right to require the station-master, on the arrival of the train at an intermediate station, to leave the platform, where he has special duties connected with the train and passengers, and return to his office for the purpose of procuring him a ticket." Ibid. H

(c) It is the general practice of an intermediate station-master to close the office for the distribution of tickets on the arrival of the train." Ibid. I

(d) "... This practice has been adopted to enable the officials, and more especially the station masters, to attend to the particular matters which arise during the stoppage of the train in the station." Ibid. J

(e) There is no ground upon which a passenger by a train can claim to have the distribution of tickets resumed on his behalf, which had been already closed for the public outside the station. Ibid. K

(2) Duty of passengers and their liability.

(a) Under Ss. 17 and 31, Act IV of 1879 (Cf. Ss. 66, 69, 113, present Act) no passenger is to travel without a proper ticket (an ordinary one for the particular journey or a season ticket) furnished by the Company. 12 C. 192. L
2.—"Ticket"—(Concluded).

(b) Every passenger is to show or deliver up his ticket when called upon.  
(Ibid.)

(c) Any person, who fails in either of these points, is liable whether a  
season-ticket-holder or not, to pay the ordinary fare for his journey,  
or, if he cannot show when he got into the train, the ordinary fare  
from the starting point of the train.  
(Ibid.)

(3) Action by passenger against Railway Company, for personal injuries resulting  
from negligence of servant of Company.

(a) Where a passenger brings an action against a Railway Company for personal  
injuries caused by the negligence of the railway servant, such action  
is founded on fault and not on contract, though the passenger has  
taken a ticket.  

(b) This is the case even though the negligence consists in the doing, or  
the omitting to do, the act.  

(1) Liability of carrying company—Passenger not taking tickets.

(a) Though passengers may not have taken their tickets from the carrying  
company, yet such company owes a duty to passenger on it to  
carry them safely.  

(i) "I think that the same principle in such a case as the present is that the  
company, so far as concerns its own line, in which term I include a  
line over which running powers are exercised, and its own acts and  
omissions, is under the same obligations in lieu of to the security  
of the passenger, as if it would have been as if it had directly contracted  
with him."  
(Ibid.)

(c) Though a passenger not paid his fare, if he has not attempted to defraud  
the company by such non-payment, and is in the train with its  
authority, the company will hold itself responsible for carrying him  
safely.  
Faulk v. G.W. Ry Co, L.R. Q.B. 911.

07 (1) Fares shall be deemed to be accepted, and tickets to be issued, subject to the  
condition of there being room available in the train for which the tickets are issued.

(2) A person to whom a ticket has been issued, and for whom there is not room available in the train for which the ticket was issued, shall, on returning the ticket within three hours after the departure of the train, be entitled to have his fare at once refunded.

(3) A person for whom there is not room available in the class of carriage for which he has purchased a ticket, and who is obliged to travel in a carriage of a lower class, shall be entitled, on delivering up his ticket, to a refund of the difference between the fare paid by him and the fare payable for the class of carriage in which he travelled.
Old Acts.

Act IV of 1879... Cf. S. 18 which sub-sections (1) and (2) of the present Act.
Act XVIII of 1854... Cf. S. 2 with sub-sections (1) and (2) of the present Act.

Sub-section (3) is new.

(Notes).

(1) Omission of provision re preferential right of ticket-holders found in S. 18, Act IV of 1879, reason for.

The provisions of section 18 of the Indian Railway Act 1879 respecting the preferential rights of ticket-holders, have been omitted as being unnecessary and in practice unworkable. See Statements of Objects and Reasons, dated the 22nd Oct 1888.

(2) Omission of proviso re the carriage of troops, found in S. 18, Act IV of 1879, reason for.

The carriage of troops on a railway administered by companies, is regulated by the contract between the Government and the companies. (Ibid.)

Reserved accommodation—Waiver of benefit by Railway Company

(a) Under S. 27 of the Act, "fares shall be deemed to be accepted and tickets to be issued subject to the condition of there being room available in the train for which the tickets are issued." 30 M. 417 (418).

(b) This is a provision introduced for the protection of the railway, and on the principle Quodpotestres invertas non introducto, it is open to it to waive the benefit of this section. (Ibid.)

(c) But the railway administration cannot be considered to have waived the protection, merely because it allowed the plaintiffs to take advantage of the rule which entitles five second-class passengers, travelling together, to a reserved compartment, when practicable. (Ibid.)

(d) The reserved compartment must be deemed to have been applied for and granted on the usual terms that "reserved carriages in mail trains cannot be provided when the load of the train permits." (Ibid.)

(e) So, where the Railway Company did not provide the plaintiffs with a reserved carriage in a mail train, on the ground that the load of the train did not permit, it was held that the Company was not liable in damages. (Ibid.)

(f) In such a case, the plaintiffs will only be entitled to the statutory relief given by this section. (Ibid.)

68 No person shall, without the permission of a railway servant, enter any carriage on a railway for the purpose of travelling therein as a passenger, unless he has with him a proper pass or ticket.

Old Acts.

Act IV of 1879... S. 19.

" XVIII of 1854... S. 1.

(Notes).

Analogous provision.

Cf. the English Bye-law No. 1.
I.—"No person...ticket."

(1) "A proper pass or ticket."

By the words "——" in S. 68, must be understood "a pass or ticket by which the person would be authorised to enter the carriage for the purpose of travelling therein as a passenger." 9 C.P.L.R. 1 (2) (Cr.).

(2) Railway ticket not used on day of issue.

(a) One of the rules made by a Railway Company under S. 47 of the Act, is that tickets are only available on the day of issue. 4 Weir 870.

(b) Therefore, a ticket not so availed of, is not a proper ticket within the meaning of S. 68 of the Act. (Ibid.)

(3) Permission to enter railway carriage without ticket—Effect

If a person is permitted by a railway official to enter into a carriage without having taken a ticket, such permission, if it amounts at all to leave and license to the passenger to travel in the train without a ticket, can only operate as such until the train stops at the next station. 1 Bom. 52 (57).

69. Every passenger by railway shall, on the requisition of any railway servant appointed by the railway administration in this behalf, present his pass or ticket to the railway servant for examination, and, at or near the end of the journey for which the pass or ticket was issued, or in the case of a season pass or ticket, at the expiration of the period for which it is current, deliver up the pass or ticket to the railway servant.

Old Acts

Act IV of 1879 ... S. 17.
Act XVIII of 1854 ... S. 1.

(Notes)

Analogous provision.

Cf. the English Bye-law No. 1.

I.—"Exhibition and surrender of passes and tickets."

(1) Ss. 17, 31, Act IV of 1879 (Cf. Ss. 69 and 113. present Act)—Duty of passengers and their liability.

(a) Under Ss. 17 and 31, Act IV of 1879, the railway administration is to furnish every passenger with a proper ticket. 12 C. 192 (196).

(b) No passenger is to travel without a proper ticket (an ordinary one for the particular journey or a season ticket) furnished by the company (Ibid).

(c) Every passenger is to show or deliver up his ticket when called upon. (Ibid.)

(d) And any passenger, who fails in either of these points, is liable (whether a season ticket-holder or not) to pay the ordinary fare for his journey, or if he cannot show where he got into the train, the ordinary fare from the starting point of the train. (Ibid.)
Act IX of 1890 (Indian Railways Act). [Ss. 69 to 71]

1. "Exhibition and surrender of passes and tickets."—(Concluded).

(2) Tickets, production of.

(a) English Law.

According to the English Law, season tickets as well as ordinary tickets must be produced, if required. Woodard v. Eastern Counties Ry. Co., 4 L.T. 836.

(b) Indian Law.

(i) Every passenger, whether a season ticket-holder or not, may be called upon to show his ticket. 19 C. 142 (196).

(ii) And, if he is so called upon and has not got his ticket with him to show, he may be required to pay the ordinary fare. (Ibid.)

(3) Tickets to master for himself and his servants.

Where a Railway Company has issued tickets to a master for himself and his servants, it has no right to refuse to carry the servants because they have not got the tickets with them. Jennings v. G. W. Ry. Co., L.R. 1 Q. B. 7.

(4) Slanderous demand of ticket by Railway guard.

The mere fact that the guard of a train, in the execution of his duty, expressed to a passenger in the presence of others a suspicion, not altogether unfounded, that such passenger was travelling with a wrong ticket, cannot render the Railway Company liable in damages to him for slander. 13 M. 34 (39).

70. A return ticket or season ticket shall not be transferable, and may be used only by the person for whose journey to and from the place specified thereon it was issued.

Return and season tickets.

Old Act.

This section is new.

(Notes)

Analogous provision.

Cf. the English Bye-law No. 5.

1. "Return and seasons tickets."

(1) Applicability of Ss. 70 and 114—Sale or transfer of single ticket

(a) Ss. 70 and 114 of the Act apply only to return or season tickets. 1 Warr. 873.

(b) The sale or transfer of single ticket is neither prohibited nor rendered penal by the Act. Where the accused bought a large number of tickets from the Railway Company during a festival and sold one of them at a rate higher than those for which he had bought them, held, that the accused was not guilty of cheating under S. 417, Penal Code, inasmuch as the person who bought the ticket admitted that he was aware of the higher rate and was not misled. (Ibid.)

(2) Return-ticket-holder.

A—has the right only to travel to, and from the station specified on the ticket.


71. (1) A railway administration may refuse to carry, except in accordance with the conditions prescribed under section 47, sub-section (1), clause (d), a person suffering from any infectious or contagious disorder.

Power to refuse to carry persons suffering from infectious or contagious disorder.
(2) A person suffering from such a disorder shall not enter or travel upon a railway without the special permission of the station-master or other railway servant in charge of the place where he enters upon the railway.

(3) A railway servant giving such permission as is mentioned in sub-section (2) must arrange for the separation of the person suffering from the disorder from other persons being or travelling upon the railway.

**Old Acts.**

Act IV of 1879 ... S. 20.
Act XVIII of 1854 ... No corresponding provision.

**Notes.**

**Analogous provision.**

Cf. the English Bye-law No. 16.

**CHAPTER VII.**

**Responsibility of Railway Administrations as Carriers.**

**Notes.**

1.—"Chapter VII."

Material modification deemed not necessary.

(a) "'Chapter VII follows the rule embodied in S. 10 of the Indian Railways Act, 1879.' (See Statement of Objects and Reasons.)

(b) 'There have been very few complaints against the practical operation of this rule, which is based upon a judgment of the Bombay High Court reported at I.L.R. 3 B. 109, and though the soundness of that judgment has been questioned, the Government of India, as at present advised, is of opinion that experience does not justify any material modification of existing legislation.' (Ibid.)

2.—"Responsibility of Railway Administrations as Carriers."

I.—GENERAL.

(1) **Responsibility of carriers by railway.**

(a) The Railway Act of 1890 reduces the— to that of bailees under the Act of 1872. 18 C, 620 (628) (P.C.).

(b) But then it declares that nothing in the common law of England, or in the Carrier's Act, 1865, shall affect the responsibility of carriers by railway. (Ibid.)

(c) The reason for dealing with railways in this exceptional manner may perhaps be found in the circumstance that railways in India are to a great extent in the hands of the Government, and it will be remembered that the Government is excepted from the definition of a common carrier in the Act of 1865. (Ibid.)

(2) **Who is a common carrier.**

(a) To make one a common carrier, the employment of such carrier must be habitual. See Story on Bailments, 495, 500.

(b) It must be a public business, so that the carrier would be liable for a refusal to carry. (Ibid.)

(c) One undertaking jobs for special bargains, and not professing to carry generally, is not a common carrier. (Ibid.)
2. "Responsibility of Railway Administrations as carriers"—(Continued).

I.—GENERAL.—(Continued).

(3) Common carriers, duties and responsibilities of—English law.

(a) A carrier of goods was bound by the English law to receive all goods brought to him for carriage, provided he had conveniences to carry them, and the employer was ready to pay any reasonable award for the conveyance. See Pickford v. The Grand Junction Ry. Co., 8 M. and W. 373; John son v. The Midland Ry. Co., 4 Ex. 367 cited in 10 C. 166 (182). C

(b) And a tenant of the hire is not needed. Pickford v. Grand J. Ry. Co., 8 M. and W. 572. D

(c) A common carrier may not raise the rates to different persons. Johnson v. Midland Ry. Co., 4 Exch. 967. E

(d) But the carrier may object that the goods are not such as he carries, or that he has no room. (Ibid.) F

(e) The direction of the owner must be obeyed. See Story on Bailments, 690. G

(f) When required, there must be re-delivery to the consignor. (Ibid.) H

(g) The carrier is bound to use exact diligence, safely and securely to carry the goods to their place of destination, and these deliver them in a reasonable time and in a reasonable manner. (Ibid.) I

(4) Carrier not entitled to know contents

A carrier cannot refuse to carry a parcel on the ground that he is not informed of its contents. Crouch v. Land N.W. Ry Co., 14 C.B. 255. J

(5) Delivery to railway

(a)—must be made according to the known course of its business. See Sm. v. G.N. Ry. Co., 14 C.B. 647. K

(b) Delivery must be made with the knowledge of the Railway Company, its agents or servants. Lovett v. Hobbs, 2 Show 127. L

(c) Delivery should be made at a reasonable time. Gatton v. B. & E. Ry. Co., 1 B. and S. 112. M

(6) Extraordinary precaution.


(7) Proper address to be given.


(8) Obligation to carry.

The—has limited to such goods, and to and from such places as the railway Company may have publicly professed to do, and has convenience for that purpose. Johnson v. Mid. Ry. Co., 4 Ex. 67. P

(9) Duty of Railway Company as to method of carriage.

(a) It is the duty of a Railway Company, on receiving goods at their station, to ascertain, in cases where several modes of carriage are open, by which of those modes the consignor wishes the goods to be conveyed. 94 P.R. 1888. Q

(b) A servant of the company employed to receive and forward goods has been held to have authority to contract to forward goods by a particular train, notwithstanding the instructions he may have received from the Company. Anderson v. Chester and Holyhead Ry Co., 4 L.C. 435. R
2.—"Responsibility of Railway Administrations as carriers"—(Continued).

I.—General.—(Concluded).

(10) Route to be taken by the carrier.

(a) The carrier undertakes to carry by the route ordinarily adopted in the usual course of business, though that route may not be the shortest. *Hales v. L. and N. W. Ry. Co., 4 B. and S. 66.*  

(b) It is not necessary that a carrier should arrange to carry the goods by the shortest route. *Myen v. L. and S. W. Ry. Co., L.R. 5 C.P. 1.*

(11) Railway Company undertaking to carry goods by a named route.

On a—such Company will be held responsible for any loss to which the consignor is put by their being carried by a different route. *Mallet v. G., E. Ry. Co., (1896) 1 Q.B. 309.*

(12) Customer of Company to know ordinary routes.

Every customer of a Company should be taken to know the ordinary routes and train arrangements according to which the Company professes to carry. *6 M.L.T. 292; John v. London and N. W. Ry., 2 Trust Rep. 29 (35), F.*

(13) Obligation of warehousemen.

The obligation of the Company as warehousemen is to take proper care that the goods are safely kept from loss or injury. *Coggs v. Bernard, 1 Sm. L.C. 188.*

(14) Warranty of safety of warehouse.

(a) There is no warranty on the part of the warehousemen, that the place where the goods are kept are absolutely safe. *Searle v. Laverack, L.R. 9 Q.B. 122.*  

(b) The obligation is only to provide a place reasonably safe. *Ibid.*

(c) If, therefore, a building has been erected by a competent contractor, and the warehouseman has no notice of any defect, he is not liable for injury to goods warehoused there, arising from the contractor’s negligence. *Searle v. Laverack, L.R. 9 Q.B. 122.*

(15) Goods at owners sole risk.

A notice to the consignee that goods have reached their destination and are held by the company not at carriers but at the owner’s sole risk, subject to the usual warehouse charge, will not absolve the Company from the liability to take ordinary and reasonable care. *Mitchell v. Lancashire and Yorkshire Ry. Co., L.R. 10 Q.B. 256.*

II.—COMMON CARRIERS—LIABILITY AND NON-LIABILITY.

(1) Liability of common carriers.

(a) In India is discussed historically. See C.P. 1807.  

(b) A common carrier is liable for losses by the wrongful acts of strangers, as well as those of his own servants, or arising from his own negligence. (See Story on Bailments, 507.)

(c) (i) The only exceptions are losses by the act of God, that is, from natural accident which would not happen by the intervention of man. (See Story on Bailments, 511.)

2.—"Responsibility of Railway Administrations as carriers"—(Continued).

II.—COMMON CARRIERS—LIABILITY AND NON-LIABILITY—(Continued).

(a) And by public enemies that is, those with whom the nation is at war and not mere robbers. (Ibid.)

(b) But a carrier may limit his liability by means of special contracts or conditions. See Wyld v. Puckford, 8 M. and W. 443.

(c) If those are shown to have been brought to the knowledge of the consignor, * and he does not dissent, he is by English law a suamed to assent to them. (Ibid.)

(d) And this may be by a notice on ticket delivered to the consignor, or by exceptions contained in a bill of lading. (Ibid.)

(e) But inland carriers in India cannot limit their ordinary liability as to articles not enumerated in the Act by mere public notice. (See Act III of 1865, S. 6).

(2) Liability of Railway attaches, when.

* The liability of Railway Company only attaches from the time when the Railway Company accepts the goods for carriage: See Dale v. Hall, 1 Wills. 281.

(3) Liability begins, when.

(a) The liability begins on delivery to, and acceptance by the carrier; the delivery may be constructive as well as actual. See Story on Bailments, 574.

(b) Where the owner or his agent accompanies the goods and has exclusive custody of them, the carrier is not liable. East India Co. v. Puller, 1 Stra. 99.

(4) Liability ends, when.

(a) The liability ends when the goods have arrived at their place of destination and are deposited there, and no further duty remains on the carrier. See Shepherd v. B. & E. Ry. Co., L.R. 39 Ex. 189.

(b) The carrier will not be liable to the consignor, if, by the order of the consignee, the delivery is at a place different from that agreed upon with the consignor. Bartlett v. L. & N.W. Ry. Co., 8 Jur. N. S. 58.

(c) The carrier’s liability as carrier ceases when the contract for carriage has been performed. See Brown on Railway Companies, p. 299.

(d) If the goods are to be delivered at the consignee’s address, and they are refused at that address, the liability as carrier ceases. Hengh v. L. & N.W. Ry. Co., L.R. 5 Ex. 51.

(5) Notice of refusal.

In such a case there is no general rule requiring the carrier to give notice of refusal to the consignor; the carrier is only bound to do what is reasonable under the circumstances. Hudson v. Baxendale, 27 L.J., Ex. 93.

(6) Liability under a contract to carry.

(a) Where a Company receives goods to be carried to a station beyond its own line, the contract is with that Company only, and that Company only can be sued by the owner of the goods if they are destroyed on the line of a second Company. Muschamp v. Lancaster and Preston Ry. Co., 8 M. and W. 421.
Act IX of 1890 (Indian Railways Act).

2.—"Responsibility of Railway Administrations as carriers"—(Continued).

II—COMMON CARRIERS—LIABILITY AND NON-LIABILITY—(Continued).

(b) In such cases, a servant of another Company over which the goods are sent is to be considered the servant of the contracting Company for the purpose of taking instructions for the countermand of the delivery of parcels. The contracting Company is therefore liable if a servant of a second Company disobeys an order given to him by the owner of the goods. Scotthorn v. S. Staff Ry. Co., 8 A. X. 121.

(7) Defect inherent—Liability of Railway Company.

(a) For any loss occurring through the inherent vice or defect of goods, a carrier will not be taken to task. Hudson v. Barsendale, 2 H. and N. 575.

(b) Loss from the inherent vice of the thing carried would include deterioration of perishable articles, and also evaporation and leakage of liquids. (Ibid)

(8) "Fragile goods."

(a) "Some goods require much more tender handling than others, and the line of conduct which the carrier should propose to himself is that which a prudent owner would adopt if he were in the carrier's place, and had to deal with the goods or animals under the circumstances and subject to the conditions in which the carrier is placed, and under which he is called upon to act." Gill v. M. S. and I. Ry Co., L. R. 8 Q.B. 186 (196).

(b) If the consignor wants that some special care should be taken in carrying the animals or goods consigned, the Railway Company should be in formed of the same. Baldwin v. L. C. and S. Ry. Cos., L. R. 9 Q.B.D. 532 (584).

(9) Goods left on Company's premises without receipt—Liability for loss.

In the case of certain goods left on the premises of a Railway Company without a receipt being obtained therefor, held, that the Company was not liable for the loss of goods in that condition, because no receipt was obtained by the consignor as per the rules of the Company. 23 A. W. N. 107.

(10) Wagon defective—Liability of carriers.

(a) English Law.

According to the—, carriers being regarded as insurors of animals carried as well as of goods, they are liable for all loss or damages except when caused by the Act of God or the King's enemies, although occasioned without any actual negligence on the part of the carriers. Forward v. Pittard, 1 R. R. 142.

(b) Indian Law.

Semble:—A Railway Company will not be held liable, if it has taken such care as a man of ordinary prudence would take to see that the truck is sufficient for the purpose intended.

(11) Non-liability as carriers.

Where goods have been lost after they had been marked by the railway authorities, but before they had been weighed or loaded, there was no complete contract for the carriage of the goods, but mere negotiation for the same, and the company was not therefore liable as carriers under S. 72 of the Act. 1 S. L. R. 77.
2.—"Responsibility of Railway Administrations as carriers"—(Continued).

III.—DElIVERY OF GOODS.

(1) Notice of arrival of goods.

For provisions re—, see Rule 5 of the Rules for the warehousing and retention of goods under S. 47, supra.

(2) Goods to be ready for delivery.

(a) It is the duty of a Railway Company, in regard to the goods which have reached their destination, to have the same ready for delivery at the usual place of delivery, until, the consignee, in the exercise of due diligence, can call for and receive them. 3 B. 96.

(b) It is the owner's duty to call for and remove them within a reasonable time.

(c) So, on proof of the arrival of the goods at the place of destination, the burden lies on the railway company to show that it had the goods ready for delivery for a reasonable time after such arrival, notwithstanding the fact that proof had not been given of any application for delivery by the plaintiff within a reasonable time. (Ibid.)

(3) Goods to be examined by consignee while taking delivery.

(a) It is incumbent on a consignee to examine the goods delivered by a Railway Company at the proper place and at the proper time, and ascertain whether they are in good order or not. Stewart v. N. B. Ry. Co., 5 Sess. Cas. (4th Series), 496.

(b) If no objection is intimated by him the presumption will be that they were delivered in good order. (Ibid.)

(4) Delivery of article.

(a) Where an article is delivered to a carrier, that article and everything in or upon it is delivered to him. Walker v. Jackson, 10 M. and W. 161.

(b) It is the duty of the carrier to enquire what the article contains. (Ibid.)

(5) Delivery of goods on the platform.

As to railways, the rule seems to be that its duty is to deliver on the platform if the consignee is present, or, if not present, then to keep the goods safely for a reasonable time. 2 Hillard, 382, 557.

(6) Delivery within reasonable time.

(a) In the absence of a special contract, the carrier is bound to deliver the goods within a reasonable time. Taylor v. Great N. Ry. Co., L.R. 1 C.P. 385.

(b) He is not liable for delay caused by circumstances beyond his control, such as an accident due to the negligence of another company having running powers over the line. (Ibid.)

(7) Unreasonable Delay.

(a) The mere fact that the goods have not arrived as usual, because the company had altered its time-tables without notice to the consignor, would be evidence of—. Bollands v. Manchester, Sheffield and Lincolnshire Ry. Co., 15 Ir. C. L. 560.
2.—"Responsibility of Railway Administrations as carriers."—(Continued).

III—DELIVERY OF GOODS—(Continued).

(b) But the fact that a train arrives several hours after the proper time is _prima facie_ evidence of unreasonable delay in carrying goods, and requires explanation from the Company. _Roberts v. Midland Ry. Co._, 25 W.R. 323.

(c) It is a question of fact for the jury whether, upon the whole circumstances of the case, there has been unreasonable delay. See Browne on Railway Company, 299.

(d) If the ordinary course of conveyance is departed from owing to the negligence of a servant, this would be evidence of unreasonable delay. _Wern v. Eastern Ry. Co._, 1 L.T. N.S. 5.

(6) Delay—Effect.

(a) A railway Company will be liable if animals or goods are unduly delayed, through its negligence, to the damage of the owner or consignee. _Robinson v. G. W. Ry. Co._, 35 L.J.C.P. 123.

(l) But this responsibility does not attach to the railway Company, if the delay is due to causes over which it has no control, e.g., an obstruction on the line caused by the act of God. See _Budden v. G. N. Ry. Co._, 28 L.J. Ex. 51.

(10) Duty in case of absence, etc., of consignee.

(a) If the consignee is dead, cannot be found or refuses to receive the goods, the duty of the carrier is to secure the goods for the owner, and generally to do what is reasonable under the circumstances of the case. See Story on Bailments pp. 542, 544.

(b) There is no general rule of law requiring a carrier to give notice to the consignor, but in some cases it may be reasonable, and therefore necessary that the carrier should do so. _Ibid_.

(10) Refusal of the consignee to take delivery of the goods.

(a) On the—, the carrier is not bound to inform the consignor of the same. _Hudson v. Nazeendale_, 2 H. and N. 575.

(b) Though in certain cases it may be reasonable to inform the consignor of the fact of such refusal. _Ibid._

(c) Where a consignee refuses to take delivery of the goods, the railway company, prior to the despatch of the goods, to the consignor, will have to wait for a reasonable time. _G. W. Ry Co. v. Crouch_, 3 H. and N. 183.

(11) Consignee's refusal to pay carrier's charges—Detention of parcel.

_Somber_—Where a parcel is detained because the consignee refuses to pay the carrier's charges the parcel should be kept for a reasonable time at the place of delivery. _Crouch v. G. W. Ry. Co._, 27 L.J. Ex. 345.

(12) Time of delivery.

(a) Carriers, after a refusal of the goods at the consignee's address, are involuntary bailees, and are only bound to act with reasonable care and caution with respect to the goods. _Hendh v. L. and N. W. Ry. Co._, L.R. 5 Exch. 51.
2.—“Responsibility of Railway Administrations as carriers”—(Continued)

III.—DELIVERY OF GOODS—(Continued).

(b) Where there is no special contract as to the time of delivery, it must be
within a reasonable time; but if the carrier has used ordinary diligence to prevent delay, there is no liability on the carrier’s part for
delay from accidents or causes beyond the control of such carrier.

(13) Amount of time allowed to the consignee to unload and remove his goods.
The —, and take delivery of the same depends on the circumstances of each

(14) Place for delivery.

(a) It is part of the duty of the carrier to provide a proper place for delivery.

(b) And the carrier is liable to a loss arising from neglect to provide a proper
place. (Ibid.)

(15) Station-master, agent of Railway Company.

(a) A station master is the agent of the railway Company for the delivery of

(b) So, a station-master who assents to some other mode of delivery than the
usual one, will bind the railway company thereby. (Ibid.)

(16) Misdelivery.

(a) A carrier is liable for—See Browne on Railway Company, p. 298.

(b) But a carrier is not liable if he acts in the usual course of business and in
accordance with his instructions. (Ibid.)

(17) Railway Company will be liable for misdelivery of goods.

(a) A. —. Stephenson v. Hart, 29 R.R. 602.

(b) The action of a station-master who, without making enquiry of the consign-
or, delivers the goods to a wrong person, who had a name very
similar to that of the real consignee, amounts to a wilful misconduct
for which the railway company will be held liable. Hove v. G.W.

(18) Railway Company, when not liable for misdelivery of goods.

(a) Where a railway Company is forced to deliver the goods to a wrong person by
reason of the directions of the consignor, it will not be held liable for

(b) So also, when the railway Company delivers the goods through an insufficient
address and without any fault on its part. Cal. Ry. Co. v.

(c) So also, for a misdelivery through a forged order without negligence on the

(19) When non-delivery is excused.

(a) The carrier is excused where there has been loss by the act of God, by
public enemies, or by reason of inherent defects, or from the
nature of the goods they are liable to peculiar risks, and the carrier
has taken all proper precautions against them, or where the right of
stoppage in transit is duly exercised. See Story on Bailments
574—6.
2.—"Responsibility of Railway Administrations as carriers"—(Continued).

III.—DELIVERY OF GOODS—(Concluded).

(b) Where the carrier by mistake advises the consignee that certain goods have arrived when they have not in fact arrived, the carrier is not estopped from explaining the mistake, and cannot be made liable for the non-delivery of the goods. *Carrv. L. and N.W. Ry. Co., L.R. 10 C.P. 307.*

(20) Action for non-delivery of goods.


IV.—DAMAGES.

Damage for breach of contract to carry goods—Notice.

(a) The damages recoverable for breach of contract to carry goods, must be such as may be reasonably supposed to have been in the contemplation of the parties at the time they made the contract as the probable result of the breach of it. *Hogne v. Midland Ry. Co., L.R. 8 C.P. 13 (137).*

(b) Notice, that if the goods do not arrive in time they will be thrown upon owner's hands, is not such a notice of a lucrative contract by the owner as to enable him to recover his loss upon the contract. *Horne v. Midland Ry. Co., L.R. 8 C.P. 731.*

(c) Labelling goods as "traveller's goods—deliver immediately" is not notice to the company of the purpose for which they are wanted, so as to enable the consignor to recover damages for the detention of a traveller. *Candy v. Midland Ry. Co., 93 L.T.N.S. 246.*

(2) When special damage can be recovered.

Where the object for which the goods are forwarded is expressly brought to the notice of the company, or can reasonably be inferred by it, it is liable for damages naturally resulting from failure of the object. *Simpson v. L. and N. W. Ry. Co., 1 Q.B.D. 274.*

(3) Special damage when not recoverable.

(a) Where goods are to be applied to a particular object not known to the company, damages which have arisen from failure of the object cannot be recovered, *Hadley v. Buxendale, 9 Ex. 341.*

(b) Where the Company undertakes to carry goods in waggons of a certain kind and the consignor does not deliver the goods to the company because the waggons are not provided, but sells them on the spot, he cannot recover the difference between the price at the place where they were sold and the place to which they were to have been carried, there being nothing to show that the goods might not have been sent on by other means. *Irving v. Midland and Gl. W. Ry. (Ir.) Co., 6 L.R. Ir. 56.*

(4) Loss of contract.

Nor can the owner recover damages he suffers, by reason of the failure of a contract with a third person to whom he has sold his goods. *Horne v. Midland Ry. Co., L.R. 8 C.P. 131.*

(5) Hotel expenses.

2. "Responsibility of Railway Administrations as carriers"—(Continued).

IV.—DAMAGES—(Concluded).

(6) Personal expenses.

But he is entitled to his —in inquiring for the goods. *Hales v. L. and N. W. Ry.* Co, 4 B. and S. 66. Y

(7) Action for loss of goods—Damages

(a) In an action for the loss of goods, the damages are, as a rule, the market value at the time and place where they ought to have been delivered. See Browne on The Law of Railway Companies, p. 301. W

(b) If there is no market value, the price at the place of manufacture must be taken as the measure, together with the cost of carriage and a reason, able sum for imported profit. *O'Hanlan v. Gt. W. Ry. Co.* 34 L. J. Q. B. 154. X

(c) If this test does not apply, the value must be taken to be the price at which the owner has actually sold them under a contract. See *France v. Gandal*, L.R. 6 Q.B. 199. Y

(d) Or the price at which the best substitute for the goods could be supplied. *Isbey v. Liddell*, L.R. 10 Q. B. 265. Z

(e) It appears not to be clearly settled whether, where there has been delay in delivery, and the market price has fallen in the interval between the time when the goods ought to have been delivered and the time when they are delivered, the difference in price can be recovered. In the case of carriage by sea such damages cannot be recovered. The *Parana*, 1 P.D. 452 A

(f) On the other hand, in the case of land carriage, the authorities appear to show that damages for depreciation of market price can be recovered. *Wilson v. Lancashire and Yorkshire Ry. Co*, 9 C.B.N.S. 63. B

(g) Where the Company enters into an independent contract with a carrier to carry goods which are lost, the company is not liable for the costs of an action to recover the goods brought by the owner against the carrier. *Prunondale v. J.C. and D Ry. Co*, L.R. 10 Ex. 5. C

V.—CONTRACT TO CARRY—SUIT TO BE BROUGHT AGAINST WHOM.

(1) Carrier contracts with owner of goods.

In the absence of special circumstances, the carrier’s contract is with the person in whom the property in the goods is vested. See Browne on Railway Company, p. 296. D

(2) Who must sue under contract to carry.

(a) Thus, where goods are delivered to a carrier for a purchaser under a valid contract for sale the consignee is the proper person to sue whether he has nominated him or not. *Dutton v. Solomonson*, 3 B. and P. 582. E

(b) This general rule may be varied by a special contract by the carrier that he will be liable to the consignor. *Davis v. James*, 5 Burr. 2630. F

(c) If there is no valid contract between the consignor and consignee, the consignor is the person to sue, and the consignee cannot sue, though he may have appointed the carrier. *Combs v. Bristol and Exeter Ry. Co*., 8 H. and N. 510. G

(3) Goods sent on approval.

Where the goods are sent on approval, the consignor is the person to sue. *Swann v. Shepherd*, 1 M. and Rob, 223. H
2.—"Responsibility of Railway Administrations as carriers"—(Continued).

VI.—LIMITATION OF SUITS.

LIMITATION OF SUITS FOR LOSS OF, OR DAMAGE TO, OR NON-DELIVERY OF GOODS.

I—Art. 30, Limitation Act (IX of 1908).

<table>
<thead>
<tr>
<th>Description of suit.</th>
<th>Period of Limitation.</th>
<th>Time from which period begins to run.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Against a carrier for compensation for losing or injuring goods.</td>
<td>One year.</td>
<td>When the loss or injury occurs.</td>
</tr>
</tbody>
</table>

N.B.—The limitation was reduced from two years to one by Act X of 1899, S. 3, which came into force on the 1st May, 1899.

(1) Scope of article 30.

(a) Art. 30 of Act XV of 1877 applies only to suits for compensation for loss of, or damage to goods arising from malicious, misfeasance or nonfeasance independent of contract 3 M. 107 (110)

(b) Act X of 1899 provides that "no suits shall be instituted against a common carrier for the loss of, or injury to, goods entrusted to him for carriage, unless the notice in writing of the loss or injury has been given to him before the institution of suit, and within six months of the time when the loss or injury first came to the knowledge of the plaintiff."

(2) Suits for compensation for non-delivery of goods—Onus probandi.

(a) (i) Where in a suit for compensation for non-delivery of goods entrusted to a carrier by railway, the defendant pleads limitation under Art. 30 of the Act of 1877, the burden of proving that the goods were lost lies on the defendant. 7 B. 478.

(ii) Mere non-delivery is no proof of loss. (Ibid.)

(iii) If there be no such proof the suit will be governed by the Art. 49 or 115 of Act XV of 1877. (Ibid.)

(b) See 12 C 477, which was a case of non-delivery of goods by a carrier and in which a decision similar to that in 7 B. 478 was arrived at.

(c) A contract made with a Railway Company for delivery of goods at a station on another line belonging to a different Company should be regarded as an entire contract made with the first Company alone, and not with that Company as the agent of the second Company, through whose stations the goods were to be sent. A suit against the latter Company, therefore, not being founded upon contract but based upon the alleged negligence on the part of such Company, would fall within the Limitation Act, Art. 30, Schedule II, 3 M. 240.

(d) But if the action were for non-delivery or short delivery of goods founded on a contract, Art. 115 and not Art. 30 of Act XV of 1877 will apply. (Ibid.) and 5 M. 388; 7 B. 478; 12 C. 477.
2.—"Responsibility of Railway Administrations as carriers"—(Continued).

VI.—LIMITATION OF SUITS—(Continued).

LIMITATION OF SUITS FOR LOSS OF, OR DAMAGE TO, OR NON-DELIVERY OF GOODS—(Continued).

I.—Art. 30, Limitation Act (IX of 1908)—(Concluded).

(3) Loss of money.
   (a) A suit for compensation of money in specie despatched by rail, is governed by Art. 30, Act XV of 1877. 19 B. 165 (reversing 17 B. 723).
   (b) Where a box, containing rupees sent uninsured by a railway, was lost in the transit, a suit to recover the amount so lost was held governed by Art. 30 and not by Art. 115, Limitation Act. (Ibid.)

(4) Date of loss—Burden of proof.
   (a) The mere fact of non-delivery of the goods on a certain date would not give rise to the presumption that the loss occurred on that date.
   (b) To have the benefit of Art. 30 of Act XV of 1877 the carrier has to prove the actual date of the loss, provided the plaintiff has given prima facie evidence that his suit is not beyond the period of limitation prescribed.

II.—Art 31, Limitation Act (IX of 1908).

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<td>One year.</td>
<td>When the goods ought to be delivered.</td>
</tr>
</tbody>
</table>

NB.—(1) The limitation was reduced from two years to one by Act X of 1899, S. 3, which came into force on the 1st May 1899.

NB.—(2) The words "non-delivery of" introduced by Act X of 1899 have settled the controversy on the point. For conflict of opinions prior to 1899, see 3 M. 107 and 240, 5 M. 38, 7 B. 478, 19 B. 165 and 12 C. 477.

(1) Suit for non-delivery of goods.

Art. 115 is applicable to a suit against a railway Company by the consignee of goods (not sent on sample or for approval) for compensation for non-delivery, as the consignor contracts with the company as agent for the consignee and the property in the goods passes to the consignee on delivery to the Company. 5 M. 388. But see 4 Born. L.R. 477.

(2) Suits against railway Company for non-delivery of goods.
   (a) CALCUTTA AND MADRAS HIGH COURTS, VIEW OF.
      (i) Suits against railway for non-delivery of goods is not regulated by Art. 31.V.
      (ii) Following the decision of the Calcutta and the Madras High Courts, such suits must now be brought within one year from the date when the goods ought to have been delivered, provided there was no contract between the plaintiff and the Railway.
      (iii) or, if there was such a contract, within 3 years under Art. 115.
S. 71] Act IX of 1890 (INDIAN RAILWAYS ACT).

2.—"Responsibility of Railway Administrations as carriers"—(Continued).

VI.—LIMITATION ON SUITS—(Concluded).

LIMITATION OF SUITS FOR LOSS OF, OR DAMAGE TO, OR NON-DELIVERY OF GOODS—(Concluded).

II.—Art. 31, Limitation Act (IX of 1908)—(Concluded).

(b) Bombay view.

A suit for damages for non-delivery of goods is governed by Art. 31 and not by Art. 115, Limitation Act, because such a case is specially provided by Art. 31. 26 B. 562 = Bom L.R. 447.

N.B.—In the course of the judgment in the above case, Fulton, J. said—"We entirely agree in the reasoning of Bayley, C.J., in 19 B. 165, and hold that the Legislature having now re-enacted by Act X of 1899, Art. 31 in a form rather more comprehensive than before, there can be no reason for not giving effect to what appears to be the manifest provisions of the law. Had this amendment been made at the time when it was likely that the difficulties felt by Justice Parran as to the effect of Art. 30 would not have arisen. It is clear that this is a suit against a carrier for compensation. Art. 31, therefore, applies and not Art. 115, which only applies to suits for compensation for breaches of contract not in writing registered and not specifically provided for in the Act."

(c) Punjab view.

(i) Art. 31 of Act XV of 1877 as amended by Act X of 1899 governs suits against a Railway Company for compensation for non-delivery of goods whether the failure to deliver was tortious or was due to a breach of contract. 108 P.R. 1906 (F.B.) = 2 P.L.R. (1907) = 39 P.W.R. 1907. (19 B. 165 and 26 B. 562, F.; 3 M. 107, 240; 12 C. 477, diss.).

(ii) Art. 49 was held to be inapplicable as there was no wrongful conversion by the Railway Company, since the course which it adopted of selling the goods was one expressly authorised by the Railway Act, 1890. (Ibid.)

VII.—STOPPAGE IN TRANSITU.

N.B.—For notes on—, see notes under S. 57, supra.

(1) Stoppage in transitu

An unpaid vendor has the right of stopping the goods as long as they are in transitu, in the event of the vendee's insolvency. See Brown on Railway Companies, p. 299.

(2) Right lasts as long as carriage lasts.

(a) Where the goods are delivered to a carrier as such, the right of stoppage continues as long as the goods are in his possession as carrier, whether the carrier is nominated by the purchaser or not, and whether the destination of the goods is known by the vendor or not. Ex parte Cooper, in re Maclaren, 11 Ch.D. 68.

(b) The fact that the goods are carried to their destination and there warehoused by the carrier or his agent, does not defeat the right of stoppage, if there is nothing to show that the carrier or his agent has become the agent of the purchaser, Ex parte Barrow in re Worsdell, 6 Ch. D. 788.
2.—"Responsibility of Railway Administrations as carriers"—(Continued).

VII.—STOPPAGE IN TRANSITU—(Concluded)

(3) Purchaser refusing the goods when delivered.
Where the purchaser refuses the goods when delivered to him, the right of stoppage remains. Bolton v. Lancashire & Yorkshire Ry. Co., L.R. 1 C.B. 431.

(4) Where right of stoppage ceases.
The right of stoppage is gone when the transit prescribed by the vendor is at end, and the goods have been delivered to the purchaser or his agent whether they have reached their ultimate destination or not. See Merchant Banking Co. of London v. Phoenix Bessemer Steel Co., 5 Ch. D. 205.

(5) Transfer of property in goods.

(a) The right of stoppage over the goods is gone where the purchaser transferred the property in the goods to a bona fide purchaser for good consideration whether such consideration be past or not. Leark v. Scott, 2 Q.B.D. 376.

(b) But if the original vendor gives a valid notice to stop during the transit, though after the sale of the goods to a sub-purchaser, he will be entitled to be paid out of the unpaid purchase-money payable by the sub-purchaser. In re Falk, 14 Ch. D. 145

VIII.—WANT OF AUTHORITY TO CONTRACT.

Want of authority to contract.

Where plaintiff's agent at T consigned goods to him at B, but before the consignment reaches B, plaintiff caused the goods clerk at H to telegraph to the station-master at B asking him to send on the consignment to H, which is not done and plaintiff sues for non-delivery of the goods at H, the plaintiff's proposal for the re-booking of the goods having been made to a wrong and unauthorised person (the goods clerk), the acceptability of it by the latter does not constitute a valid contract so as to bind the Ry. Co., and the plaintiff's suit based on such a contract must fail. 27 B. 136; 4 Bom. L.R. 890. Garson v. Great Western Ry. Co., (1885), 27 L.J. Q.B. 375, R.

IX.—WANT OF PRIVITY OF CONTRACT.

(1) Contract—Want of privity—Carrier—Two companies—Loss—Remedy.
Plaintiff delivered jute to the L.C.S.N. Company at Serajunge for the delivery at the E.B. Ry. Co.'s station at Sealdah, where freight was payable on delivery and was so paid. A portion of the jute was not delivered, and a suit to recover its value was brought against the E.B. Ry. Co. Held, that the suit could not be dismissed on the ground of want of privity without further investigation. 17 W.R. 210.

(2) Reference by Small Cause Court—S. 22, XI of 1885—Inferences of fact—Privity of contract.
What a Small Cause Court is required to submit under S. 22, Act XI of 1885, is not, whether, upon the evidence sent, the Judge is right in the conclusion come to, but some question of law or construction affecting the merits. It was held that in this case the Judge was capable of inferring the absence of privity of contract between the parties. 18 W. R. 145.
Act IX of 1890 (Indian Railways Act).

2. "Responsibility of Railway Administrations as carriers"—(Continued).

X.—JURISDICTION OF COURTS.

Breach of contract to deliver—Jurisdiction.

(a) An action for breach of contract may be brought either in the place where the contract is made or in the place of its performance, and in either case the cause of action arises wholly. 1 M. 375.

(b) Plaintiffs contracted at Cawnpore with the E.I.Ry. Co. to deliver goods at Madras. The E.I.Ry. Co. does not run into the jurisdiction of the Madras High Court. On default made by the Railway Company in delivery of the goods, the plaintiffs sued them in the Madras High Court for damages for breach of contract without obtaining leave to sue. Held, that the breach having taken place at Madras, the cause of action had wholly arisen within the jurisdiction of the High Court. (Ibid) 10 B.L.R. 461; Vaughan v. Weldon, L.R. 10 C.P. 47, E. N

XI.—PORT TRUST CHARGES.

Ss. 38, 69, Presidency Small Cause Courts Act—Re-hearing—Miscarriage or failure of justice—Case stated for the opinion of the High Court.

Where a party prays for a case being stated to the High Court, but subsequently withdraws, and the judgment of the Court is finally against him, he ought not to be granted a re-hearing, unless there was miscarriage or failure of justice. An erroneous view of the law as to the fact of the case is not miscarriage or failure of justice. 17 B. 14.

XII.—NEGLIGENCE

(1) Negligence.

(a) "Consists in the omitting to do something which a reasonable man would do, or in doing something that a reasonable man would not do, in either case unintentionally causing mischief to another." Blyth v. The Birmingham Water Works Co, 25 L.J. Exch. 212, cited in 12 Bom L.R. 73 (84).

(b) "Negligence will not be a ground of legal liability unless the party whose conduct is in question is already in a situation that brings him under the duty of taking care. 12 Bom. L.R. 73 (84).

(c) "The definition of negligence is the absence of care according to the circumstances." Per Willes, J., Vaughan v. Tufi Vale Ry. Co., 5 H. and N. 679 (687).

(d) "The confusion seems to have arisen in using the word "negligence" as if it were an affirmative word, whereas, in truth, it is a negative word, it is the absence of such care, skill and diligence as it was the duty of the person to bring to the performance of the work which he is said not to have performed." Per Willes, J., in Grall v. Gen Iron-Screw Colliery Co., L.R. 1 C.P. 600.


2.—"Responsibility of Railway Administrations as carriers"—(Concluded).

XII.—NEGLIGENCE—(Concluded).

(g) "It is not, in many cases, practicable completely to sever the law from the facts." (Ibid.)

(h) "The Judge has to say whether any facts have been established by evidence from which negligence may be reasonably inferred; the jurors have to say whether, from those facts when submitted to them, negligence ought to be inferred." Per Lord Cairns in (Ibid.)

(2) Negligence—Liability for injury.

A Railway Company is liable for injury sustained to goods committed to its care, if it has been guilty of gross negligence. Bourke O. S. 99.

(3) Negligent conduct of railway servants.

Where, for want of bestowing due care, loss results, it is immaterial whether the negligence be imputable personally to the bailee or to his servants or agents. Per Lord Campbell in Dansey v. Richardson, 3 E. and B. 144 (166).

(4) Person liable for the consequences of an accident, when.

A person may be liable for the consequences of an accident resulting from his own negligence in combination with other causes which he did not contemplate. Lynch v. Nurden, 1 Q. B. 29.

XIII.—SENDING GOODS OF A DANGEROUS NATURE.

Railway Company not bound to examine every parcel.

(a) It is not the duty of a Railway Company to search every parcel which every passenger carries with him. 28 C. 401 (P.C.) = 28 I. A. 144 = 5 C. W. N. 449.

(b) It is the duty of a railway company to prevent dangerous looking goods being carried. (Ibid.)

N.B.—See also notes under S. 59, supra, and S. 107, infra.

72. (1) The responsibility of a railway administration for the loss, destruction\(^1\) or deterioration\(^2\) of animals or goods \(^3\) delivered \(^4\) to the administration to be carried by railway \(^5\) shall, subject to the other provisions of this Act, be that of a bailee under sections 152, and 161 of the Indian Contract Act, 1872 \(^6\).

(2) An agreement purporting to limit that responsibility \(^8\) shall, in so far as it purports to effect such limitation, be void, unless it—

(a) is in writing signed \(^9\) by or on behalf of the person sending or delivering to the railway administration the animals or goods, and

(b) is otherwise in a form approved by the Governor-General in Council.
(8) Nothing in the Common Law of England or in the Carriers Act, 1865, regarding the responsibility of common carriers with respect to the carriage of animals or goods, shall affect the responsibility as in this section defined of a railway administration.

(Old Acts).

Act IV of 1879....S. 10.
Act XVIII of 1854....S. 11.

(Notes).

General.

(1) Liability under Act IV of 1879, S. 10.

(a) The intention of the Legislature in enacting S. 10, Act IV of 1879, would appear to have been to define the liability of carriers by railway as identical with that of bailees in S. 152 and S. 161 of the Contract Act, 97 P.R. 1866.

(b) Under the enactment contained in S. 10, Act IV of 1879 (S. 72, Present Act), a carrier by railway is not subject to the common law liability of common carriers. (Ibid.)

(c) After the passing of the Railway Act of 1879, the liability of carriers in India, including carriers by Railway, was held to be not limited to a liability for negligence, but was held to be a liability as insurers of the goods delivered to them. 18 C. 427 (442).

(2) Liability under Railway Act, 1890.

(a) The Railway Act of 1890 reduces the responsibility of carriers by railway to that of a bailee under S. 152, Contract Act, but this does not affect the law relating to common carriers as such, laying down this liability as insurers on non-delivery. 18 C. 620 (P.C.)=18 L.A. 121.

(b) Apart from any special contract, the responsibility of a Railway Company for the loss, or deterioration of goods is declared by S. 72 of the Act to be that of a bailee, as defined in Ss. 151, 152 and 161, Contract Act, 8 M.L.J. 85 (89).

(c) The liability of a Railway Company for loss of goods delivered to be carried by them is, subject to the Provisions of the Act, that of a bailee under the Indian Contract Act. The plaintiff need not prove how the loss was caused; he must only show, in the first instance, the alleged loss or deficiency, and then, in the absence of proof by the company of any special grounds for exemption, the latter will be liable as bailee. 17 M. 445.

(d) It is for the Company to show that the loss occurred under circumstances which would exempt a bailee from responsibility. (Ibid.)

(3) Object of section—Injury caused by gross negligence not within section.

General—(Concluded).

(b) The object of S. 11, Act XVIII of 1854 (Cf. present section), therefore, appears to have been to fetter Railway Companies thus far in their power of contracting as to preclude them from being able by any stipulation to escape from liability for loss or injury to goods caused by gross negligence or misconduct of their agents or servants. 3 B. 96.

(4) Provisions of this section.

(a) The—arc quite clear and free from all ambiguity, and it is not open to any Court to take a case out of the provisions of the Statute when the case clearly falls within those provisions. 18 A 42.

(b) The—arc not fulfilled by the sender merely giving an account of the quantity and description of the goods delivered for carriage when required to do so by the booking clerk. 5 M 203.

(5) Scope of section

This section embodies the general common law with regard to the responsibility of carriers, which is that, when goods are delivered to the Railway to be carried, they become liable under the law like any other bailee. 31 C 951 = 8 C.W.N. 725


The Common Law, which came to govern the duties and liabilities of common carrier throughout India, was the——. (See 18 C 620) The effect of that law, as regards railways, is restricted by this section. 17 B. 417.

(7) Injury caused by gross negligence, not within section.

Under this section, notwithstanding any contract, or notice, the Railway Company shall always be liable for any loss caused by gross negligence or misconduct. In effect, it restrains the Company from limiting their liability with regard to ordinary goods, beyond gross negligence and misconduct, they, however, may with the consent of the Government, limit their liability for their loss arising from other reasons than gross neglect. Per Peacock, C J. in 4 B.L.R. 97 (O.C.)

(8) Ss. 72 and 80

—— referred to, in the judgment in 15 C.P.L.R. 116.

I.—“Loss, destruction.”

(1) “Loss, destruction,” scope of the expression.

The words “loss, destruction” etc., in S. 75, infrâ, include loss caused by the criminal misappropriation of the parcel by a servant of the railway administration in charge thereof. 19 B. 150.

(2) ‘Loss or injury’ in Sec. 1, English Carriers Act, 1830.

The words—— have been held to include the following:—


(b) A loss that occurs when goods have been negligently taken beyond their place of destination. Morris v. N. E. Ry. Co., 45 L. J. Q. B. 289, (Refereed to in 7 B. 478).
1.—"Loss, destruction"—(Concluded).


(d) Loss must be a loss by the carrier and not simply a loss by the owner in consequence of the non-delivery or the article in question. *Hearn v. L. and S. W. Ry. Co.,* 10 Ex. 793, (Referred to in 19 B. 159).

2.—"Deterioration."

(1) 'Deterioration,' meaning of.

(a) The word 'deterioration' imports the becoming reduced either in quality or in value (see the Standard Dictionary). Per *Subramanyam Aiyar, J.* 21 M. 172 (175).

(b) Deterioration must be such as is caused by the default of railway. *(Ibid.)*

(c) The word deterioration is wide enough to cover a falling off in the value of the goods due to their not having been delivered in time to enable the plaintiff to take advantage of the special market value which would have been available during a certain festival at a certain place. 8 M. L. J. 85 (89).

(d) The plaintiff, a cap manufacturer, sued the defendants for damages caused by the improper delay in delivering some cloth. The plaintiff had bought the article with a view to make it into caps for sale during the spring season of the year, but owing to the delay in transit, the plaintiff was unable to sell or use any part of it or manufacture any part of it into caps for sale in that season. Referring to the fall in the value of the cloth that could be shown to have taken place in consequence of the same arriving at a time when it was less in demand and less capable of being applied to an immediate use, *Williams, Wilkes and Keating, J J.,* spoke of it as "deterioration," and those learned Judges as well as *Byles, J.,* held that, in respect of such fall the same being the direct and natural result of the delay, the carrier was liable even in the absence of notice of the purpose for which the article was sent. *Wilson v. Lancashire and Yorkshire Ry. Co.,* 30 L. J. C. P. 232 (cited in 21 M. 172, 175, 176)

(e) Damage to cattle carried by the negligent conduct of the railway company in not supplying water, would probably be included in the term "deterioration." *Allday v. G. W. Ry. Co.,* 5 L. and R. 903.

(f) The term does not refer to damage due to their inherent vice. *Kendall v. L. and S. W. Ry. Co.,* L. R. 7 Ex. 373.

(g) Where a bullock is killed while attempting to escape from a truck, the railway company is not liable. *Blower v. G. W. Ry. Co.,* L. R. 7 C. P. 655.

(h) So also when damage to goods is due to their ordinary wear and tear. *Wilson v. L. and Y. R. Ry. Co.,* 9 C. B. (N. S.), 692.

(2) Case of destruction or deterioration of goods.

(a) Where it is a case of destruction or deterioration of goods hauled, the question of *onus delectandi* depends on the nature of the accident. 22 A. 164 (167).
2.—"Deterioration"—(Concluded).

(b) If it is one which, in the ordinary course of events, would not happen to goods of the kind in question if used with ordinary prudence, then it lies on the bailee to account for its occurrence, and thus to show that it was not due to his negligence. (Ibid.)

(c) Otherwise, it is for the bailor to give some evidence of negligence. (Ibid.)

3.—"Goods."

Applicability of the section.

This section is applicable to the luggage of a passenger, whether in charge of the passenger or of the railway servant, if it has been booked and receipt given for the same as required by S. 74, *infra.* 56 P.R. 1897.

4.—"Delivered."

Delivered scope of the term.

The word delivered in this section refers to a physical event, an important element of which is, that whatever is delivered passes from the physical custody of one man to the physical custody of another. It is devoid of any legal significance. 31 C. 951 = 8 C.W.W. 725.

5.—"To be carried by the railway."

(1) Applicability of section.

(a) This section applies only to cases in which animals or goods are delivered to be carried by railway.

(b) Hence the provisions of the Contract Act as to bailements generally apply to cases in which animals or goods are received by a railway company as warehousemen, or in a similar capacity.

(c) And such provisions can be modified by special contract.

(2) Responsibility of carrier ceases, when—English Law.

(a) Under the English Law, if the consignor of animals or goods had, or by watchfulness might have had, an opportunity of removing them, the responsibility as carriers comes to an end. Shepherd v. Bristol and Exeter Ry. Co., 3 Ex. 169.

(b) If the servant of the consignee being unable to drive away cattle, has them put into pens by the company's servants, the company's liability as carriers is, it seems, then at an end. (Ibid.)

6.—"That of bailee....1872."

Railway administration, responsibility of, as bailee under Contract Act.

The English common law rule, under which common carriers are held liable as insurers of goods against all risks except the act of God or the King's enemies, is not now in force in India. In cases not met by the special provisions of the Act relating to railways and carriers, the liability of carriers for loss or damage to goods entrusted to them is prescribed by Ss. 151 and 152 of the Contract Act. 3 B. 109 (dissented from in 10 C. 166; 10 C. 210; 18 C. 427, 620 (P.C.).
6.—"That of bailee...1872"—(Concluded).

(2) Ordinary liability of Company under § 152 of the Contract Act—Theft of goods on railway.

In the absence of special provisions in Acts relating to Railways and Carriers, the liability of Carriers is that prescribed by § 152 of the Contract Act. So, where goods consigned to the Company were plundered by robbers during the journey, the Company was permitted to prove that the robbers were not the Company's servants or agents, and that they had taken reasonable care of the goods. 3 B. 109 (419).

(3) Care to be taken by bailee.

In all cases of bailment the bailee is bound to take as much care of the goods bailed to him as a man of ordinary prudence would, under similar circumstances, take of his own goods of the same bulk, quality and value as the goods bailed. S. 151, Indian Contract Act (IX of 1872).

(4) Bailee when not liable for loss, etc., of thing bailed.

The bailee, in the absence of any special contract, is not responsible for the loss, destruction or deterioration of the thing bailed, if he has taken the ordinary care of it described in § 151. (S. 152, Indian Contract Act, IX of 1872).

(5) Bailee's responsibility, when goods are not duly returned.

If, by fault of the bailee, the goods are not returned, delivered or tendered at the proper time, he is responsible to the bailor for any loss, destruction or deterioration of the goods from that time. (S. 161, Contract Act).

(6) Degree of care required.

The— is not that which the bailee as a fact exercises over his own goods similarly situated with goods bailed to him. See 11 M. 459 (466).

(7) Degree of care required by a carrier.

(a) As to— see 36 C. 398 (P.C.) = 36 I.A. 1 = 3 C.W.N. 145. See, also, 22 A. 361; 9 A. 398, 17 B. 723.

(c) (i) "The Court has, in dealing with cases under § 151, Contract Act, to determine what a man of ordinary prudence would have done with his own goods under the circumstances." See, Indian Contract Act, by Cunningham and Shepherd, 8th Ed., p. 338.

(ii) "It must, therefore, take into consideration, the state of society, the ways of life, and the danger peculiar to the times, as well as the apparent nature of the subject of the bailment, and the degree of care which it seems to require." (Ibid.)

(8) Loss—Onus.

If goods bailed have been lost, it lies on the bailees to show that they have taken as much care of the goods as a man of ordinary prudence would, under similar circumstances, have taken of his own goods of a similar kind, and that the loss occurred notwithstanding such care. If the bailee fails to satisfy the Court on this point he is liable for the loss. 22 M. 524.
7.—"Sub-section (2)."

(1) "Risk-notes.”

(a) are agreements made in pursuance of sub-S. (2) of this section. 

(b) Formerly the public felt it difficult to know what forms of "risk notes" had been approved by the Governor-General as required by cl. (b) of sub-S. (2) of the section.

(c) But now this difficulty has been removed since forms of "risk notes" duly approved by the Governor-General have been sanctioned by Government of India Notifications No. 118, dated 16th March, 1898, and No. 115, dated 21st March 1900.

(2) Risk-note forms.

For—prescribed under this section, see circular No. 1, Railway, 9th March, 1898, and circular No. VII, Railway, 12th March 1900, and circular No. VII, 23rd Dec. 1902.

RISK-NOTES APPLIED BY THE GOVERNOR-GENERAL IN COUNCIL UNDER S. 72 (2)(b) USED FOR WHAT PURPOSE.

N.B.—For the various forms of ‘Risk Notes’ approved under this section. See Appendix.

(1) Risk-note Form A.

When used.

This form is to be used when articles are tendered for carriage which are either already in bad condition or so defectively packed as to be liable to damage, leakage, or wastage in transit. See, Circular No. 1, Railway, 9th March, 1898.

(2) Risk-note, Form B.

When used.

This form is to be used when the sender elects to despatch, at "special reduced" or "owner’s risk" rate, articles or animals for which an alternative "ordinary" or "risk acceptance" rate is quoted in the tariff. (Ibid.)

(3) Risk-note, Form C.

When used.

This form is to be used when, at sender’s request, open waggons, carts or boats are used for the conveyance of goods liable to damage when so carried, and which, under other circumstances, would be carried in covered waggons, carts or boats. (Ibid.)

(4) Risk-note, Form D.

When used.

This form is to be used when the sender elects to despatch, at ‘special reduced’ or ‘owner’s risk’ rate, dangerous, explosive, or combustible articles for which an alternative "ordinary" or "risk acceptance" rate is quoted in the tariff. (Ibid.)

(5) Risk-note, Form E.

When used.

This form is to be used, when booking elephants or horses of a declared value exceeding Rs. 500 a head; mules, camels, for horned cattle Rs. 50 a head; donkeys, sheep, goats, dogs or other animals Rs. 10 a head, without payment of the percentage on value authorised in S. 73, Act IX of 1890 (as amended by S. 4, Act IX of 1896). (Ibid.)
7.—“Sub-section (2)”—(Continued).

(6) Risk-note, Form F.

When used.

This form is to be used when booking horses, mules and ponies, tendered for despatch in cattle trucks or horse waggons instead of the horse boxes.  

(7) Risk-note, Form G.

When used.

This form is to be used as an alternative to Risk-Note, Form D, in the case of dangerous, explosive or combustible articles, for which an alternative “ordinary” or “risk acceptance” rate is quoted in the tariff, when the sender desires to enter into a general agreement instead of executing a separate risk-note for each consignment.  

(8) Risk-note, Form H

When used.

This form is to be used as an alternative to Risk-note, Form B, when a sender desires to enter into a general agreement instead of executing a separate risk-note for each consignment.  

(9) Risk-note, Form X.

When used.

This form is to be used when the sender elects to despatch an “excepted” article or articles specified in Sch. II of this Act, whose value exceeds Rs. 100 without payment of the percentage on value authorised in S. 75 of the Act.  

(10) Risk-note, Form Y.

When used.

This form is to be used as an alternative to Risk-note, Form X, when the sender elects to enter into a general agreement for a term not exceeding six months for the despatch of “excepted” articles specified in Sch. II of the Act, when value exceeds Rs. 100 without payment of the percentage on value authorised in S. 75 of the Act instead of executing a separate risk-note for each consignment.  

(3) Risk-note, validity of contract under

The risk-note is a document ordinarily purporting to limit the responsibility of the Railway Company for the loss or damage to goods delivered to them for being carried by railway, and whenever it is in writing, signed by the person sending the goods, and is in the form approved by the Government, there is nothing to prevent its amounting to a legally valid contract under S. 72 of the Act. 18 A. 42, distinguishing 3 N.W.P. 200.
7.—"Sub-section (2)"—(Continued).

(4) Railway Company—Risk-note.

Where the plaintiff consigned goods through a Railway Company and they were
damaged at a station beyond the one for which they were consigned,
the company not being guilty of negligence, held, that the company
was protected under the risk-note, the words "before, during and
after transit" occurring therein covering the whole period from the
time of delivery to the company up to re-delivery by it. 6 M.L.T. 292;
Steat v. Fagg, 4 R.R. 407, D.

(5) Exemption from liability.

(a) Where, by the risk-note, the consignor, in consideration of a special
reduced rate instead of the ordinary tariff rate for goods, undertook
to hold the company free from liability for any loss or damage to the
goods consigned arising from any cause whatever, the company could
claim protection under the terms of such risk-note. 17 B. 417. P

(b) Except so far as the company has been protected by the terms of the risk-
note, it continues liable for the safe carriage of the goods, and the
risk-note does not absolve it from all liability so as to impose on the
plaintiff the burden of proving that the loss was caused by such
defaults as render the company liable. 3 N.W.P. 200. Q

(6) Special contract under risk-note, effect of, on liability of Railway Company.

Where the risk-note signed by the consignor and embodying the special con-
tact to hold the Railway Company harmless, was in the form approv-
ed by the Governor-General in Council, the company would not be
liable to account to the consignee for any loss from any cause what-
ever, during the whole of the time that the goods were in their charge.
10 C. 210 (213). R

(7) Risk note by consignor—Liability of Railway administrator re goods lost in
transit.

Twenty bundles of loose cotton were consigned by a firm at C to the plaintiff’s
firm at G. A risk-note in a form approved by the Governor-General in
Council under S. 72 (3) (b) of this Act was signed on behalf of the
consignors at the time when the goods were delivered to the Railway.
The risk note provided that, whereas the consignment of cotton was
charged at a special reduced rate chargeable for such consignment,
the consignors in consideration of such lower charge undertook to
hold the railway administration harmless and free from all respon-
sibility for any loss, destruction or deterioration of, or, damage to the
consignment from any cause whatever. A part of the consignment
had been in transit. The plaintiffs sued the Railway administrator
for damages. Held, that part of the consignment was "lost" within
the meaning of the risk-note, though the cause of the loss was not
proved; and that the railway administration was protected by the
risk-note. 5 O.C. 158; (17 B. 417; 8 A. 42, R.). S

(8) Railway Company—Liability as carriers—Risk-note, Form B.

Where the plaintiff company delivered 188 bags of flour to be carried from
Delhi to Secunderabad by the defendant Railway Company, and