on failure to comply with such order, notwithstanding that the court in McKay's Case held that the Railway Committee was the proper body to see that adequate protection is provided.

The provision in s. 227, that "the Board may limit such speed in any case to any rate which it deems expedient," was not in the former Acts. It can have no effect so long as the prescribed fencing is maintained. By s. 25 the Board may make rules and regulations "limiting the rate of speed at which railway trains and locomotives may be run in any city, town or village, or in any class of cities, towns or villages described in any regulation; and if the Board thinks fit the rate of speed within certain described portions of any city, town or village and allowing another rate of speed in other portions thereof." The same provision in the Act of 1888 concluded with "which rate of speed shall not in any case exceed six miles an hour unless the track is properly fenced."

As already pointed out, rules and regulations made under this section have not the effect of statutory enactments, and those made under the authority quoted could not be general rules under s. 40. Moreover, as I have said, what might be ordered by them would not be prescribed by the Act.

By s. 243 "the company may, subject to the provisions and restrictions in this and the special Act contained, make by-laws, rules and regulations respecting: (*a*) The mode by which, and the speed at which, any rolling stock used on the railway is to be moved."

In *G. T. R. Co.* v. *McKay*, Sedgewick, J., was of opinion that as the train was travelling at the rate fixed by by-law the jury were not justified in their finding that the speed was excessive.

3. *Fires from Engines.*—Prior to the Act of 1903 there was no direct legislation on the liability of a railway company for injury to property caused by fire from a passing train, but such liability when established by the courts has been based on violation of the common law duty to provide the most efficient means for preventing the escape of sparks from an engine or on some other negligence on the part of the servants of the company. In Quebec the courts have attempted to make a company liable in every such case irrespective of any question of neglect to take proper precautions. Thus in *Roy* v. *C. P. R. Co.*, Q.R. 9 Q.B. 551, the company was held liable under the provisions of the Civil Code, though no