

Pacific Railway Company vs. Roy, it was decided in 1902, in accordance with previous decisions in the English courts, that inasmuch as Parliament had given the railway companies authority to run locomotives they would not be liable for damages for doing so, provided no negligence was proved. It may be pointed out, however, that the wording of the Railway Act is to the effect that the railways may operate 'by the power and force of steam' and does not in so many words make lawful the running of locomotives, as the English Act does. The running of a locomotive without statutory authority or the running of a traction engine along a roadway would come under the common law principle.

As the Railway Act requires the right of way of the railway to be kept clear of combustible material the failure of a railway company to keep its right of way cleared would amount to negligence at common law and would make the company liable for the full amount of damages sustained. This would be the case whether the fire was set by a locomotive or otherwise, so long as it originated on the right of way. It might be caused by burning of the combustible material on the right of way for the purpose of clearing, but the company would still be liable for full damages.

But in cases where no negligence of this or some other nature was shown the railway company was not, according to the decision given, responsible for damages.

In 1903, therefore, the question was brought before Parliament by Mr. L. Philippe Demers, M.P., for St. Johns and Iberville, who proposed a provision to make the railway responsible for damages caused by sparks from locomotives under the common law principle, whether or not negligence was shown. The provision proposed was, however, modified into the following, which has also been included in most of the provincial Railway Acts:

'Whenever damage is caused to crops, lands, fences, plantations or buildings and their contents by a fire started by a railway locomotive, the company making use of such locomotive, whether guilty of negligence or not, shall be liable for such damage and may be sued for the recovery of the amount of such damage in any court of competent jurisdiction: provided that if it be shown that the company has used modern and efficient appliances and has not otherwise been guilty of any negligence, the total amount of compensation recoverable in respect of any one or more claims for damage from a fire or fires started by the same locomotive and upon the same occasion shall not exceed five thousand dollars.'

The company was also given an insurable interest in property along its route.

While this section does not expressly include forests and timber, damages have been obtained under it for timber and cordwood destroyed, so that it may be considered as sufficiently comprehensive though it would be better if made clearer on this point.

While the railways are a great public convenience, there does not seem to be any valid reason why they should not be subject to the common law in regard to damages in all particulars the same as any other company. It has been decided by the courts that the Dominion Parliament has authority to make enactments in regard to railways acting under Dominion charters, even in matters affecting property and civil rights, which, under other circumstances, would be wholly in provincial jurisdiction. If the Dominion statute withdraws these railways from the common law it would seem only right that the Dominion Parliament should supply the defect through its own jurisdiction.

It may be added that the Railway Commission has decided that it has no jurisdiction in damage suits.

Penalties.

It is expressly provided in the Railway Act that the imposition of penalties does not affect claims for damages. As has been noted previously, the penalties for infractions of the regulations of the Railway Commission in regard to equipment and inspection of locomotives and the quality of fuel are fixed by the Board at twenty-five