

By s. 226 a train before passing over such crossing must be brought to a full stop except where an interlocking switch and signal system is in use, as to which there is a provision similar to that in sec. 223.

Sec. 227. "No train shall pass in or through any thickly peopled portion of any city, town or village at a speed greater than ten miles an hour, unless the track is fenced or properly protected in the manner prescribed by this Act, or unless permission is given by some regulation or order of the Board. The Board may limit such speed in any case to any rate which it deems expedient."

This provision or the corresponding one in 55 & 56 Vict. c. 27, s. 8, was in question in *McKay v. G. T. R. Co.*, referred to in my former article and since reported 34 S.C.R. 81. By s. 259 of the Act of 1888 the speed was limited to six miles an hour "unless the track is properly fenced." By the amendment in 1892 it was "unless the track is fenced in the manner prescribed by this Act." By the present Act the minimum speed is ten miles an hour, "unless the track is fenced or properly protected" as prescribed.

It is not easy to follow the working of the parliamentary mind in this legislation. The provision was evidently intended to protect the public in crowded districts, and the Act of 1888, in requiring the track to be "properly fenced" meant that it should be fenced so as to accomplish that purpose. But the amendment in 1892 only protected the public by keeping cattle off the track in places where cattle are not likely to be found, and the latest amendment changing the wording to "fenced or properly protected" as prescribed is no amendment at all, since proper protection is not prescribed. It is true that the Act of 1903 re-enacts the provision in the former Act that the Railway Committee (now the Board of Commissioners) may order gates to be erected across highways, or other proper precautions to be taken, but it cannot be said that these are prescribed by the Act. It is also true that under either statute a company or employee who disobeys such order of the Board or Committee is liable in damages to any person injured in consequence of such disobedience: Sec. 259 Act of 1888. Sec. 294 Act of 1903. But in such case it would be a serious question, in view of the Supreme Court decisions, whether the fact that the company had done all that the Act really prescribed would not be a good answer to an action founded