

## LIABILITY FOR ACCIDENTS.

Thus far the Essayist's remarks are mainly confined to the liability of individuals who are obliged to employ servants. He then proceeds to discuss its connection with the liability of railway companies for accidents arising from the default of those who carry on the business, and he considers the question in two aspects—accidents to strangers and to passengers; and there is undoubtedly a distinction fairly to be drawn. He thus speaks of the exceptional nature of railway traffic:—

“Railway traffic is a business which cannot be carried on without danger nor without occasional accidents; and when an accident does occur, the damage arising from it is often so enormous as to be out of all proportion to the payment made by the injured passengers to the company, and not less out of proportion to the act of delinquency which brought about the accident. A momentary oversight by a weary signalman may cause the loss of twenty lives or damages to the amount of £50,000. The public will have trains running from twenty to fifty miles an hour; they will have excursion and luggage trains; and this cannot be done without serious accidents occasionally happening. Drivers and signalmen are only mortals; they will at times be off their guard, or weary, or drowsy, or negligent. Probably they are as careful now as they are ever likely to be. The system of punishing railway companies by enormous damages for accidents arising from the errors or neglects of drivers and other servants has been in force a great many years, without putting a stop to accidents. Whatever amount of care is exercised by railway managers in selecting good and careful servants, the latter are but men and not guardian angels without wings, at two guineas a week, as the public would have them. Is any man so green as to believe that railway traffic can ever be carried on without serious accidents? As well might we expect to navigate the ocean in future without shipwrecks. Every man who embarks in a ship for a distant voyage knows that he must risk his life in so doing, and so does every man who gets into a railway train. The two things are inseparable; the passenger voluntarily encounters the hazard, without which he can't make the journey; he becomes a partner in the risk, and must share the loss when it happens. If a man were to go up in a balloon, and were to break his leg in the descent, many people would say, 'What else could he expect?' The public can't see that this applies to a journey by railway, and yet our fathers would certainly have said the same of any man who got

hurt while travelling forty miles an hour. Is it fair, therefore, to put all the loss on the railway company when an accident happens, seeing that railway travelling cannot be carried on without accidents? The law recognises this in other cases. Where a servant voluntarily takes employment under a master who carries on a dangerous trade, such as the making of gunpowder or the blasting of slate quarries, the law does not allow him any remedy against his master for accidents arising from the nature of the business, even though caused by the neglect of the other men employed in it. The reason is that, by entering into the business he voluntarily ran the risk incidental to it.”\*

The learned author then enlarges upon the following points: that the damages arising from railway accidents are out of all proportion to the payment received from the passenger and to the error committed by the company's servant: that no infliction of damages can compel or enable directors to do more than employ good servants, it cannot prevent or guard against the errors to which the best servants are liable; and that the enormous amounts given by way of compensation in England greatly encourage attempts at fraud and imposture on companies.

This very able pamphlet concludes by a suggestion that,—

“Some special tribunal ought to be established for the cognizance of all railway accidents—such, for example, as exists in the Admiralty Court, where the judge is assisted by experienced nautical men as assessors. A court composed of one of the judges, with two experienced medical men as assessors, having powers to make private examinations of the claimant, would surely be much better able to detect fraud and imposture and to probe suspicious claims to the bottom than a jury. The experience which they would acquire in dealing with fictitious or fraudulent claims would often prevent the court from being made the tool of rogues. Such a court might exercise with discretion, and ought to be armed with inquisitorial powers. Whatever odious terms may be applied to such a tribunal by popular outcry, every lawyer who has been in the secrets of these cases, knows by experience that all the existing powers of courts of law are wholly inadequate to ferret out, expose and punish the infamous cheats which are daily practised by fraudulent claimants. When one sees, as in a recent case, a man claiming £2,000,

\* Judgment in *Hutchinson v. York Railway Company*, 5 Exch. 343.