

railway vested in His Majesty. By secs. 49, 50 and 51 the Governor-in-Council may make regulations for the ascertaining and collection of the tolls, dues and revenues on such railway; for imposing fines for the violation of any such regulation; and for the detention and seizure, at the risk of the owner, of any carriage, animal, timber or goods on which tolls or dues have accrued and have not been paid. It is also noteworthy that by clause (h) of sec. 2 of the Act, "toll" is defined to include any rate or charge, or other payment payable for any passenger, animal, carriage, goods, merchandise, matter or thing conveyed on the railway. Furthermore, clause (i) declares that "goods" includes things of every kind that may be conveyed upon the railway, or upon steam or other vessels connected therewith.

Our object in quoting these statutory enactments is merely to show, *expressis verbis*, how far parliament intended to place the Crown in the position of a common carrier, and to give a remedy for its breach of duty as such.

In the second place, we shall proceed to examine the principles underlying the common carrier's liability at common law.

A common carrier may be defined to be a person who undertakes for hire or reward to transport the goods of such as employ him from place to place. *Dwight v. Brewster*, 1 Pick. 50. The following definition from one of the older books has been specially commended both for brevity and exactness: "Any one who undertakes to carry the goods of all persons, indifferently, for hire, is a common carrier." *Gisbourn v. Hurst*, 1 Salk, 249 (91 E.R. 220) Cf. *Liver Alkali Co. v. Johnson*, L.R. Ex. 267. These definitions bring the obligations of a common carrier within that branch of the law of contract known as bailments. The bailment of common carriage falls within the fifth of Sir William Jones' classifications, viz., *locatio operis mercium vehendarum*. Jones, Bail. 36.

Yet the common carrier's liability is something more than that of an ordinary bailee. Cf. Van Zile on Bailments, 2nd ed., sec. 29 (c). Lord Mansfield in *Forward v. Pittard* (1785), 1 T.R. 27 (99 E.R. 953) at p. 33, says:—"It appears from all the cases for 100 years back, that there are events for which the carrier is liable independent of his contract. By the nature of his contract, he is liable for all due care and diligence; and for any negligence he is suable on his contract. But there is a further degree of responsibility by the custom of the realm, that is, by the common law; a carrier is in the nature of an insurer. It is laid down that he is liable for every accident except by the act of God or the King's enemies.

Now as to railways. "That railroad companies are authorized by law to make roads as public highways, to lay down tracks, place cars upon them, and carry goods for hire, are circumstances which bring them within all the rules of the common law, and make them eminently common carriers." *Per Shaw, C.J. in Norway Plains Co. v. Boston & Maine Rd.* (1854), 1 Gray 263, p. 269.

Now, while the Crown is liable in actions arising out of contract, it is clear law that it is not liable to the subject in actions of pure tort except where made so by statute. *Tobin v. The Queen*, 16 C.B. (N.S.) 355; *City of Quebec v. The Queen*, 24 Can. S.C.R. 420. However, it is equally certain that the Crown