

Edinburgh. The continued vitality of this by-law is an illustration of the helplessness of the travelling public in the hands of the railway companies. Even if it were reasonable, it would not be binding on the passenger as part of the contract, as it is equally well established that taking a ticket with a mere reference of this kind does not incorporate the by-law in the contract. These points were not dwelt upon in the judgment of the court, but if possible a still weaker point in the company's case was fixed upon—namely, that the by-law did not profess to authorize the removal of a passenger as a penalty for its infringement. Such an authority was professed to be given in the case of illicit smoking, drunkenness, and such eccentricities as insisting on travelling on the roof, in the guard's van, or on the engine. The company's defence was somewhat mixed. A contract arising from the by-law, or implied from the contract of carriage was set up; but, even assuming its existence, it would only give the company a right to damages for the breach of it by the passenger, and would not justify them in turning the passenger out of the carriage or off the premises. The only plausible defence of the company lay in *Wood v. Leadbitter*, 14 Law. J. Rep. Exch. 161, the well-known case of the ticket for a grand stand, which was held merely to constitute a revokable license, and not to be a grant of a temporary easement. The railway company could only rely on this case in their character as proprietors of the soil. It is possible that they are entitled to rely on it to the extent that removing the plaintiff was not a trespass in the strict sense of the term. A person who sits in the carriage of another, whether the carriage is in the high road or on the land of the owner of the carriage, may be removed from it by the owner using, as in this case, only necessary force; but while the act does not amount to a trespass or assault, it may amount to a breach of contract, if there is a contractual relation between the parties. Railway companies are carriers first, and proprietors of land secondly. If they break their contract of carriage by any act which is justified in their character of proprietors, they must pay damages not for assault, but for breach of contract, which comes to the same thing. The plaintiff in the case under discussion brought his action for an assault and false imprisonment, and in so far as there was detention, no doubt there was a trespass; but the case is an authority where there is no detention, and where the act amounts to a breach of contract only, and can be justified from the proprietor's point of view. In such a case it is well to frame the claim for a breach of contract, with, perhaps, a claim for an assault in the alternative. This distinction was in the mind of Lord Justice Lindley, when he made an even more disturbing suggestion than that as to the potentiality of the by-law-making powers of railway companies—namely, that of *Wood v. Leadbitter* is "no authority that an action will lie not for breach of a contract to give an easement." Could it be said that the contract in that case was not a contract concerning an interest in land in the words of the Statute of Frauds? On the other hand, it cannot be said that a contract to carry from London to York concerns an interest in land at all.—*English Law Journal*.