

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, and recovering a verdict for £5, one is led to wish that the courts would return to the old practice of amercing ‘*pro falso clamore suo*.’ I have reason to believe, and I say it with disgust, that I have more than once been made the unwitting instrument of cheating railway companies; and no counsel who has been concerned in these cases is free from the same unpleasant suspicion.

“One and the same tribunal ought also to hear and determine all claims arising out of the same accident. This alone would do something to moderate the excessive damages often given by juries, each of whom only hear one case, and are not allowed to take notice of the numerous other large claims behind. It would also diminish the expense arising from so many different actions.

“I venture another suggestion. In very many claims for personal injuries by accidents, the amount of damages chiefly depends on whether the injury will be permanent, or whether nature will not remedy it in a few months. On this point it constantly turns whether the damages should be £500 or £2,000. At present the jury have to decide it on conflicting medical opinions, before sufficient time has elapsed to test the permanence of the injury. The verdict is probably for the larger sum, and very soon after the plaintiff will be seen about and as well as if he had never been hurt. It is astonishing what miraculous cures are wrought by a verdict for large damages! I suggest that in all such cases the court ought to have power to adjourn the inquiry for a time in order to test the supposed permanence of the injury upon such terms as might be just. This might sometimes prevent a company from being compelled to pay five times the real amount of damage.”

SELECTIONS.

UNPUNISHED DEPREDATORS.

“A GUARDIAN of Two Wards” complains to the *Times* that there are no laws to prevent the “depredations” of usurers. “Instances of strict protection of property, some sad, some almost comical, occur,” he observes, “every day before our justices.” Three weeks’ imprisonment for stealing an apple; ditto for plucking a sprig of lavender; two months for a leaden paper-weight; six years for stealing bones from a dunghill, and so forth; while card-sharpers, skittle-sharpers, and betting-swindlers are watched and punished. And yet there is no check and no law for the “great scheming depredators,” the great and wealthy nondescripts, half jewellers, half

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