

TRAVELLING BY RAIL.

a stockholder in the company, travelling by the invitation of the president, and not in the ordinary passenger car: *Philadelphia & Reading R. W. v. Derby*, 14 Howard U.S., Rep. 468. So, though the contract for the conveyance of mails has been made with the Postmaster General, still a clerk, who is injured while travelling free in charge of the bags, has a right of action: *Collett v. London & N. W. R. W.*, ante: see also *Austin v. Great Western R. W.*, L.R. 2 Q. B. 442, as to the right of injured parties to recover, even where they have paid no fare. Where the action is founded on breach of duty, and not on contract, it is not necessary to allege in the pleadings, or prove at the trial, that reward was to be paid by the plaintiff: *Marshall v. York, Newcastle &c. R. W.*, 11 C. B. 655. And where the Printers' Pension Society hired a train of the defendants, for an excursion from London to Brighton and back, for a certain sum, and the defendants gave tickets to the treasurer of the society, from whom the plaintiff purchased one, and an accident, in which the plaintiff was hurt, having occurred, it was held that the plaintiff was a passenger to be carried by the defendants, for whose safety they were liable: *Skinner v. London B. & S. C. R. W.*, 5 Ex. 787.

Where an accident happens to a passenger, either by the carriage breaking down or running off the rails, that is *prima facie* evidence for the jury of negligence on the part of the company; and such evidence, if not rebutted by evidence given by the defendants, will justify a verdict against the company which the Court will not set aside: *Dawson v. Manchester S. & L. Ry.*, 5 L. T. N. S. 682. In this case, the engine ran off the track, and it was found that its fore-axle was broken; but no evidence was given as to whether the accident caused, or was caused by, the breakage. The plaintiff's shoulder was contused, and he had re-

ceived a blow on his head which crushed in his hat: for a time he was insensible, and for a longer period sick: as a salve, the jury gave him a large sum which the Court allowed him to keep. The doctrine laid down in this case is sustained and enforced by *Skinner v. London B. & S. C. Ry.*, 5 Ex. 787, *Carpue v. London B. & S. C. Ry.*, 5 Ad. & E. N. S. 747, and *Reid v. Great Northern Ry.*, 28 L. J. (Ex.) 3. In the first of these it was decided that it was not necessary for the plaintiff to shew specifically in what the negligence of the defendants consisted, and that if the accident arose from some inevitable fatality it is the duty of the defendants to prove it.

The plaintiff being a passenger in one of the defendants' cars the axle of the tender broke, and the tender and car in which he was were thrown off the track and his arm was broken. At the trial the defendants called the engineer who had been in charge of the train, who proved that he had examined the axle shortly before the accident when it appeared in good order. The jury having found a verdict for the plaintiff upon this evidence, and with a charge favorable to the defendants, the Court refused to set it aside, on the ground that it was for the jury to determine on the evidence, whether or not there was negligence on the part of the company: *Thatch v. Great Western R. W.*, 4 U. C. C. P. 563. Chief Justice Macaulay, in delivering judgment, remarked that the accident having happened unaccountably, and without any proximate or active cause to account for it, constituting as the cases say some evidence of negligence, it rested with the defendants to explain and reconcile it with perfect innocence on their part, and having failed to do this to the satisfaction of the jury, he could not see sufficient ground for sending the case to a second trial, when the same evidence and no more might again be submitted to another jury.