

has done it, to make him answerable for an act of carelessness of the servant is to charge him with what he neither committed nor was able to prevent or foresee.

"Let me guard myself against misunderstanding, by saying, that I am not contending for any immunity for the master in any case where he is justly chargeable with personal neglect or blame. For instance, if he makes regulations calculated to cause mischief—if he knowingly provides materials improper for the work in hand—if he does not exercise due vigilance over his labouring men, and in many other cases, he might fairly be held liable as for his own fault. What I contend against is the law which makes him suffer where he is blameless, the fault lying entirely with the servant—as it commonly does."

After arguing out the position he supports at considerable length, Mr. Brown proposes to carry out his views as to the limitation of the master's liability in this way:—

"Let it be enacted that in no case should a master be responsible in damages for the negligence of a servant beyond the amount of £200, or any other fixed sum which may be considered a sufficient penalty for keeping a servant who committed an error. If, however, the public come to see the injustice of punishing a master at all, where he has taken due care to hire an experienced servant of good character, the requisite amendment of the law would be effected by enacting as follows:—1. That no action should be brought against the master without joining the servant who did the mischief as co-defendant. 2. That the master should be entitled to acquittal on proof that he took due care in the engagement of the servant, and was personally free from any other kind of blame. 3. That the guilty servant should be compelled to pay a part of his wages weekly towards the satisfaction of the damages, with a summary remedy to enforce payment. Imprisonment might be justly added in cases of injury to life or limb.

"I submit that such a law would be far preferable to that which now subsists. To see the way in which it operates is enough to extort from one an outcry against the perversity of mankind, and the imbecility of laws to deal with it. Because men are prone to negligence, and because society requires some protection from this propensity, the law has endeavoured to give it by allowing such actions as I have described. What can be more laudable or politic in appearance? Yet the effect has been to let in a flood of fraud and perjury, imposture and injustice—such as excites a doubt whether greater mischief would arise from abolishing such actions alto-

gether. Too often they exhibit the spectacle of a court of law laboriously doing iniquity in the name and with the forms of justice—a scene the most revolting to every right-minded man."

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?'