

Journal of Railroad Law.

RAILROAD COMPANIES—THEIR DUTIES AS TO MANNER OF LAYING TRACKS—PRESUMPTION OF NEGLIGENCE.

The recent case of *Worster vs. The Forty Second Street and Grand Street Ferry Railroad Company* (50 N. Y., 203), was an action brought to recover damages for injuries sustained by a horse of plaintiffs, occasioned by an alleged defect in defendant's track.

Defendant owns and operates a railroad running through and over Houston Street in the City of New York. On the 12th of April, 1864, plaintiff was driving a pair of horses, belonging to him over the track, one horse stepped into a hole, was thrown down and injured, and in consequence died.

The court dismissed the complaint upon the ground that there was no evidence showing defendant was aware of the bad condition of its track, or that the same was in such a condition for a length of time that would imply knowledge.

The General Term reversed this decision.

The following is the opinion of the court delivered by—

CHURCH, CH. J.—We are to assume that the defendants had a lawful right to lay their tracks in the street, where the injury occurred, but this right carries with it the obligation to lay the tracks in a proper manner, and keep them in repair, and if an injury occurs by reason of neglect in either of these respects the defendants are liable in damages. (*Flash vs. The Third Ave. R. R., Co., 1 Daly, 148, 11 Penn., 141*). The defect was immediately connected with the track and was plainly visible to the employees of the defendants who were constantly operating the road. The duty of remedying the defect was affirmative and absolute. Notice to the defendants of the defect was not necessary. (35 N. Y., 58). It was their duty to know it. It was patent and an omission to know that such a defect existed was *prima facie* negligence as much as an omission to repair after notice. The facts tended to prove that the defect had existed for some days. The learned judge who presided non suited the plaintiff because the defendants had no notice of the defects, and because they had not existed for such a length of time as to create the presumption of knowledge. The ruling was erroneous. The presumption of knowledge arises from the existence of the defects themselves. The plaintiff was only required to show that the injury resulted from the road being out of repair, and if circumstances existed showing absence of negligence it was for the defendant to prove them. The presumption of negligence was complete when it appeared that the defects existed and an inquiry was caused thereby. In some cases notice to municipal corporations, express or implied, of defects or obstructions in the streets, is requisite to create a liability for an injury produced by reason of them, but the authority of these cases has no application here, (*Hudson vs. Mayor, &c., 9 N. Y., 163*). Judgment of reversal must be affirmed.

Judgment affirmed.

The Harsimus branch of the Pennsylvania Railroad, extending from the railroad cut in Bergen Hill to the new depot in course of erection in Harsimus Cove, is completed. It will be used exclusively for freight trains.

Railways in India.

The annual report of Mr. Juland Danvers, Government Director of Indian Railway Companies, has been presented to Parliament. The report contains the following information on the condition and prospects of Indian Railways:—

A length of 305 miles was added during the year 1872 to the 5,089 miles of line which were open for traffic at its commencement, and during the present year 127 miles more have been completed, so that the railway system now open in India extends over 5,512 miles. Fair progress has been made with the works on the State lines, and during this year between 200 and 300 miles will probably be opened. An additional length of 150 miles on the Oude and Rohilkund line will also be finished and opened before November next. The works on this line which give most trouble are the bridges, especially those over the Ganges at Cawnpore and at Rajghat. The importance of obtaining good foundations below where the scour can possibly reach them has been demonstrated by dearly bought experience. Hardly a season passes without bridges breaking down and embankments being cut through by the streams they were respectively constructed to cross over and to check. During the floods of last year the Sutlej bridge, on the Punjab Railway, gave way, and on the Northern State line the unfinished works on the Jhelum and Ravee bridges were damaged. Several bridges on the Bombay, Baroda, and Central India Railway were also carried away in September last. "The fact is," says Mr. Danvers, "that when railways were first proposed for India, although a great many difficulties were started which on near approach disappeared, the great difficulty of crossing the rivers and of withstanding the force of the floods was not apparently sufficiently considered or estimated. The rivers of India, which rise in the various mountain ranges some thousands of miles from the sea, cut their way through soils of so soft and shifting a character that in many places a new channel, sometimes miles away from its original course, is frequently formed, and the old bed is left dry." A curious instance of a change of channel occurred last year, when a notification appeared in the *Calcutta Gazette*, transferring thirteen villages from one district to another, in consequence of the Ganges having so changed its course as to leave them on the south instead of the north bank. The process of erosion is thus described by the late Captain Wood in his *Journey to the Source of the Oxus*:—"When the waters of the Indus are low, the noise caused by the tumbling in of its banks occurs so frequently as to become a characteristic of the river. During the silence of night the ear is assailed by what at first might be mistaken for the continued discharge of artillery; two, three, and even four reports are often heard within the minute, and even thirteen have been counted in that short space of time." "The seasons in India," Mr. Danvers reminds us, "have a very different effect upon the water-courses to that which we generally see in Europe. The rainfall is confined to certain months, and, in some places, to certain weeks and days, while the rest of the year is dry and hot. In many cases river beds which may be easily forded and even waded at one season become channels for wide and impetuous streams in another. It was, of course, a part of the engineer's duty to study this characteristic and to provide against the danger. His investigations were, however, thwarted by imperfect data, and what, from recorded information observation, was considered to be the maximum volume of water that ever passed through a certain channel in the height of the floods has been frequently exceeded." Major-General Beadle, R. E., writing very recently concerning the works on the Oude and Rohilkund Railway, points out that in 1870 and 1871 the floods were so excessive and so entirely unforeseen that the estimates submitted and the project prepared had to be re-considered and altogether superseded; the bank had to be raised and the designs of bridges to be revised, increasing largely the waterway,

These floods fortunately occurred before the works were much advanced. This, however, has not been the case in other places. Disasters have accordingly occurred, and much damage has been inflicted on several railway bridges. Now that more is known more will be done to avert the mischief, but, after taking every precaution, there will always be considerable difficulty where shifting streams have to be encountered, and where foundations have to be laid in soil subject to a scour of 50 and 60 feet in depth. The only approach in Europe to this condition of things is in the northern plains of Italy, and last year we had an example of how human ingenuity and skill have been unable to cope with the streams which rush down from the Alps in the autumn and early winter. With regard to future extensions we are informed that no new undertakings were sanctioned during the past year. In the present circumstances of railway enterprise in India it is not surprising that the policy of Government in regard to future extensions should be marked by caution. So long as industrial works in India must be undertaken by Government, or, what amounts to the same thing, so far as financial risk is concerned, by guaranteed companies, and so long as the result of the working of existing lines involves a contribution from the revenue of the country to make up the amount due for interest on the outlay, the Government is right in requiring proof, or the strongest evidence in support of the belief, that future railways, whether undertaken by government or companies, will turn out to be remunerative in one shape or another. Indirect as well as direct gains, of course, enter into the calculation. The improvement of the material prosperity of the country is the end aimed at through all such works. But if the revenue of the country will not be increased, directly, by remunerative profits from the new lines themselves, or indirectly, by augmented receipts from existing lines, by saving the national expenditure or by improving the national resources, the Government naturally pauses before encouraging fresh works." As regards capital outlay, we find that the total amount of capital which, on the 31st of March last had been advanced for expenditure on the guaranteed railways was £91,686,025, of which £1,556,440 was expended during the past official year. The outlay in England for stores and materials was £822,994; in India, for construction purposes, £679,446. The expenditure on the State lines is brought down only to the 31st of December, 1872. It had then amounted to £3,492,323, of which £708,827 had been expended in England. A sum of £3,371,213 had been advanced or appropriated to the various undertakings, leaving £121,105 out of the amount expended in this country on stores, &c., to be appropriated in India. The amount appropriated to the State lines during the year 1872 was £1,558,836. The whole capital expenditure on railways in India thus accounted for (which is exclusive of the land for the guaranteed lines and the loss of exchange borne by Government) is in round numbers £94,500,000. Attention is drawn to the allegation, the truth of which is not denied, that railways in India have cost a great deal more than was expected and more than they will cost in future. The guarantee system, which should only be applied in exceptional circumstances on grounds of necessity, is not admitted to be the cause, and after investing the capital expenditure of the East Indian Railway, the most important and costly of the lines, the following conclusions are arrived at:—"An analysis of the cost of the East Indian Railway main line, the average of which was £21,100 per mile, shows that a great part of the outlay arose from causes which were unavoidable and of an extraordinary character, such as the mutiny (which, directly and indirectly, is estimated to have added £3,000,000 to the capital outlay), the Southal rebellion, the plan of commencing operations at various parts of the line simultaneously, and the great difficulty consequent thereon of transporting materials by the road or river. The stupendous bridges and the large extent of flood openings, the length of double way constructed, as well as the general firm