ORIGINAL CIVIL.

Before Sir Basil Scott, Kt., Chief Justice and Mr. Justice Batchelor.

GIRJASHANKAR DAYASHANKAR VAIDYA, PLAINTIFF AND APPELLANT *v.* THE BOMBAY BARODA AND CENTRAL INDIA RAILWAY, DEFENDANTS AND RESPONDENTS.*

1917. *December* 11.

Tort—Wrongful assault—Master and servant—Liability of a Railway Company for wrongful assaults committed by its servants—The Railway Company not liable for acts of the servants which the Company itself is not authorised to do—The Indian Railways Act (IX of 1890), sections 108, 121, 128, 131, 132—Arrest of a passenger for pulling the communication chain not authorised by the Indian Railways Act.

The plaintiff and his wife were third class passengers in one of the defendant Company's trains. The plaintiff's compartment which was intended to hold ten passengers became greatly overcrowded at a particular station to the inconvenience and discomfort of the occupants numbering about twenty-five. After ineffectual efforts to obtain assistance from the guard and the station master at the Station the plaintiff stopped the train by pulling the communication chain, being afraid that he would be molested by other passengers in the compartment. No step was taken to relieve the overcrowdedness of the compartment and the train was re-started. When the train had gone some little distance further on its journey, the plaintiff again stopped it by pulling the communication chain. Thereupon the driver and the guard got down from the train; and the driver pulling the plaintiff out of the compartment cuffed and slapped him, the guard assisting in the assault. The plaintiff was arrested by the driver and the guard at a subsequent station where he was handed over to a station-master and after his statement was recorded by the police he was released and allowed to travel to his destination. The plaintiff sued the defendant Company in the sum of Rs. 3,000 as damages for the wilful assault committed by the engine-driver and the guard. The plaintiff complained that the assault was aggravated having taken place in a public place in the presence of his wife and other passengers in the train in consequence whereof he had to suffer a good deal of public humiliation and mental agony.

Held (1) that inasmuch as the assault was an incident of the arrest and the defendant Company had no authority under section 108 of the Indian Railways

* O. C. J. Appeal No. 36 of 1917.

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Act to arrest the plaintiff for pulling the communication chain, the defendant Company was not liable for assaults committed by its servants;

(2) that the special provision of section 108 of the Indian Railways Act, which expressly provided for a particular kind of obstruction could not be controlled by the more general language of the wider sections 121 and 128 of the Act.

Poulton v. *London and South Western Railway Co.*(1), followed.

Bayley v. *Manchester, Sheffield, and Lincolnshire Railway Co.*(2), and *Goff* v. *The Great Northern Railway Company*(3), distinguished.

Barker v. *Edger*(4), referred to.

The master is liable where the servant, acting in a matter which is within the scope of his authority, that is, within the course of his employment, commits a wrong by exceeding the authority vested in him. The act itself which constitutes the wrong may be, and usually is, in excess of the servant's authority, but if in thus transgressing his authority the servant is doing in the master's interests one of the class of acts which the master has employed him to do, then the master is liable.

ACTION for assault.

The plaintiff, who was a managing clerk in a firm of Bombay Solicitors, sued the defendant Railway Company for damages, on account of the wrongful and tortious acts of their servants, an engine-driver and a guard under circumstances as under:—

On the 18th March 1916, the plaintiff and his wife, travelled in a third class compartment in one of the defendant company's train, from Charni Road Station to Choltan. According to the plaintiff there were nine passengers in the compartment when the train left Charni Road Station. At the next station, Grant Road, five more passengers entered the compartment while the train was stopping; and just when the train was starting from the Grant Road Station nine more passengers were pushed in by the Station Authorities, making

(1) (1867) L. R. 2 Q. B. 534.

(2) (1872) L. R. 7 C. P. 415.

(3) (1861) 30 L. J. Q. B. 148.

(4) [1898] A. C. 748.

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in all a total of 23 passengers. At the subsequent station, Mahaluxmi, two more passengers entered the compartment, there being in all 25 passengers in a compartment intended to hold only 10. The plaintiff attempted to communicate with the guard and the station master at Mahaluxmi but could not. When the train started from Mahaluxmi Station, some of the passengers reeled and fell on the plaintiff while one putting his foot on the plaintiff's foot slipped his hand into the plaintiff's pocket with a veiw to commit theft. The plaintiff and his wife got frightened, so the plaintiff pulled the emergency chain and the train stopped. Nothing was done to relieve the overcrowding and the train was restarted. The plaintiff again pulled the chain and after the train was stopped called out to the guard from the window of his compartment, but before the guard could come up, the driver of the train ran up to the plaintiff's compartment, caught hold of the plaintiff, pulled him out of the compartment and struck him several times with his fist. The guard on coming up to the spot also started slapping the plaintiff on his face. When the train reached Dadar Station, the plaintiff was arrested by the guard and the driver and was handed over to the station master. His statement was recorded by the police and he was released and allowed to proceed to his destination. The plaintiff thereafter lodged criminal proceedings against the driver and the guard who were convicted for assault, and fined.

Paragraph 5 of the plaint as originally filed ran as follows :—

"The said driver and the said guard were on the said day of 18th March 1916 in the employ of the defendants and in charge of the train by which the plaintiff was travelling and they were on duty in the defendants' employment when they committed the assault as aforesaid upon the plaintiff."

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As the plaint as it stood did not disclose any cause of action against the defendants, it was allowed to be amended by inserting at the end of paragraph 8 the following :—

"The plaintiff says the said wrongful and tortious acts were done by the said driver and the guard in the course of their employment and in the discharge of their duty as servants of the Company and whilst acting within the scope of their authority. The plaintiff, therefore, prays that the defendant Company is liable for the said acts of their servants."

The plaintiff also complained that the assault having taken place in a public place in the presence of his wife and other passengers, he had to suffer a great deal of public humiliation and mental agony over and above the physical injuries inflicted on him.

The plaintiff sued the defendant Company in the sum of Rs. 3,000 as damages for the wrongful and tortious acts of the servants of the company.

The defendants denied that the guard or the driver was acting in discharge of his employment when he committed the alleged assault upon the plaintiff. The defendants never authorised their guard or driver to commit any assault upon the plaintiff, and if any assault was committed it was done in direct defiance of the orders, rules and regulations of the defendants.

The defendants submitted that the driver and the guard were solely responsible for the wrongful assault and the plaintiff having misconceived his remedy the suit against them should be dismissed with costs.

The suit came on for hearing before Kajiji J. who dismissed the same with costs on the ground that inasmuch as the defendant Company had no power under the Indian Railways Act to arrest the plaintiff for pulling the emergency chain authority could not be implied to have been given to the servants to do an act

outside the scope of their employment. The following judgment was delivered by his Lordship :—

KAJIJI, J. :—The plaintiff, Girjashankar Dayashankar Vaidya, who is a managing clerk in a firm of Solicitors, claims from the defendant Railway Company Rs. 3,000 as damages for the wrongful and tortious acts of the servants of the defendant Railway Company. It appears that the plaintiff and his wife were, on 18th March 1916, travelling in a third class compartment from Charni Road Station to Choltan. It is alleged that there were nine passengers in the compartment when the train left Charni Road Station and more got in at the intermediate stations and when the train reached Mahalaxmi Station there were in all about twenty-five passengers in a compartment intended to hold ten. The plaintiff attempted to communicate with the guard and the Station Master at the Mahalaxmi Station but could not. After the train left Mahalaxmi Station some of the passengers attempted to molest the plaintiff. The plaintiff and his wife got frightened, so the plaintiff pulled the emergency chain and the train stopped. The plaintiff called out for the guard but before the guard could come up the driver of the train ran up to the plaintiff's compartment, caught hold of him, pulled him out of the compartment, struck him several times with his fist. In the meantime, the guard came up to the spot and he slapped the plaintiff several times on his face. The defendants denied that the guard or driver was acting in discharge of his employment when he committed the alleged assault upon the plaintiff. They never authorised their guard or driver to commit any assault upon the plaintiff and that if any assault was committed, it was done in direct defiance of the orders, rules and regulations of the defendants. Hence the present suit. As the plaint stood it certainly did not disclose any cause of action against the defendants,

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so I allowed the plaint to be amended and it was amended by inserting at the end of paragraph 8 of the plaint the following:—

"The plaintiff says the said wrongful and tortious acts were done by the said driver and guard in the course of their employment and in the discharge of their duty as the servants of the Company and whilst acting within the scope of their authority. The plaintiff, therefore, prays that the defendant Company is liable for the said acts of their servants."

On this counsel for the defendants raised the following additional issue, viz.:—

Whether the acts complained of were done in the course of their employment or in discharge of their duty as servants of the Company and whether they were within the scope of their employment?

Counsel for the defendants admitted that the compartment in which the plaintiff was travelling was overcrowded, the emergency chain was pulled by him twice, that the driver and the guard were, on 18th March 1916, and are still, in the defendant Company's service and that the driver and the guard committed the assault as alleged. The only question for the determination of the Court is whether the acts complained of were done by the driver and the guard in the course of their employment or in discharge of their duty and whether they were within the scope of their authority for which the defendant Company would be liable in damages to the plaintiff. The general rule is that a master is liable for the acts and neglects and defaults of his servants in the course of their service or employment. We have, therefore, to see what is meant by the course of service or employment. The injury in respect of which a master becomes subject to this kind of vicarious liability may, according to Pollock, be caused in the following four ways:—(1) It may be the natural consequence of something being done by a servant with ordinary care in execution of the master's specific orders. (2) It may be due to the servant's want of care in carrying

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on the work or business in which he is employed. (3) The servant's wrong may consist in excess or mistaken execution of a lawful authority, or (4) it may even be a wilful wrong, such as assault, provided the act is done on the master's behalf and with the intention of serving his purposes. It will be seen that (1) and (2) ways do not apply to the facts of this case. Therefore, to establish a right of action against the master in such a case as the present it must be shown that (*a*) the servant intended to do on behalf of his master something of a kind which he was in fact authorised to do and (*b*) the act, if done in a proper way or under the circumstances erroneously supposed by the servant to exist, would have been lawful. It is clear that the cause which led to the assault is the pulling of the emergency chain. It is contended by the plaintiff's counsel that under the Indian Railways Act if, in the opinion of any railway servant, anybody pulls the emergency chain without reasonable and sufficient cause and stops the train he thus obstructs a railway servant from the discharge of his duty, viz., moving, it is the duty of the railway servants to arrest such a person and take him to the Station-Master. It therefore becomes necessary to consider sections of the Indian Railways Act which are applicable to this case. Section 108 deals with the pulling of the emergency chain. Section 108 runs as follows :—

"If a passenger, without reasonable and sufficient cause, makes use of or interferes with any means provided by a railway administration for communication between passengers and the railway servants in charge of a train, he shall be punished with fine which may extend to fifty rupees."

It is contended by plaintiff's counsel that section 121 of the Indian Railways Act must also be read with section 108. Section 121 runs as follows :—

"If a person wilfully obstructs or impedes any railway servant in the discharge of his duty, he shall be punished with fine which may extend to one hundred rupees."

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According to plaintiff's contention a person who pulls the emergency chain, without reasonable and sufficient cause, wilfully obstructs or impedes a railway servant in the discharge of his duty, viz., of running the train, and thus makes himself liable for prosecution under sections 108 and 121 of the Indian Railways Act. In support of this contention counsel for the plaintiff says that railway officials think so too and places reliance on a passage which appears in Exhibit B, which is a letter, dated 1st May 1916, from the General Traffic Manager to the Loco and Carriage Superintendent. The passage relied on is:—

"I may add that in such cases the Company's servants are under the Railway Act authorised to remove passengers who obstruct Company's servants in their duty of running the train."

The first remark I should like to make in this connection is that what railway officials thought is in no way binding and that this was written by the Traffic Manager after consulting the Company's pleader who was defending the driver in the Police Court and in mitigation of his offence for lesser sentence and this remark in no way binds the Railway Company and it is not the view which either the driver or the guard took of the situation. Therefore in my opinion the plaintiff's contention is not only far-fetched but absolutely untenable and that section 121 of the Indian Railways Act has no application to the facts of the present case, and in my opinion the only section which is applicable is section 108 of the Indian Railways Act. The result is that in a case where a person without sufficient and reasonable cause pulls the emergency chain he will render himself liable for prosecution under section 108 only and not under section 121 also for preventing the running of the train and thus obstructing or impeding a railway servant in discharge of his duty. The reason why counsel for the plaintiff put forward this contention is obvious, for if a person commits an offence under

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section 121 of the Indian Railways Act then such person can be arrested under section 131 of the same Act without warrant or other written authority by any railway servant or by any other person whom he may call to his aid without any other requirements being first complied with. But if the offence committed is one under section 108 then in such a case a person who has committed such offence can be arrested only after the requirements set out in section 132 of the Indian Railways Act are complied with and those requirements are shortly: (1) there is reason to believe that he will abscond; (2) his name and address are unknown; (3) refuses on demand to give name and address; (4) there is reason to believe that the name or address given by him is incorrect. There is no evidence in this case to show that any Railway official or servant or engine-driver or guard ever asked plaintiff his name or address, much less he refused to give one, and I think from the evidence it is clear that the engine-driver had absolutely no reason to believe that the plaintiff would abscond as he was safe in the compartment. Under these circumstances the Railway Company itself would have had no authority under the Indian Railways Act to commit or do the acts complained of with a view to arrest the plaintiff much less its servants and the driver and the guard by doing the acts which they have done in this case cannot make the Railway Company liable in damages, and that this is the law is clear from the passage at page 255 of Vol. XX of Halsbury's Laws of England. The passage I refer to is as follows:—

"The master is not liable merely because the servant, in doing the act, honestly believed that he was acting in his master's interests and intended the act to be for the master's benefit: *Byrne* v. *Londonderry Tramway Co.*[1].

The case which is in point is *Poulton* v. *London and South Western Railway Co*[2]. I have carefully

(1) [1902] 2 I. R. 457.

(2) (1867) L. R. 2 Q. B. 534.

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considered every case which has been cited by Mr. Wadia for the plaintiff and the important of them, like *Goff* v. *The Great Northern Railway Company*[1], *Greenwood* v. *Seymour*[2], *Limpus* v. *The London General Omnibus Company (Limited)*[3], have been considered and distinguished by the learned Judges in *Poulton* v. *London and South Western Railway Co.*[4]. To my mind it is clear that the defendant Company had no power under the Indian Railways Act to arrest the plaintiff for pulling the emergency chain; therefore, authority cannot be implied to have been given to the servants to do an act outside the scope of the employment. I, therefore, hold that the acts complained of were not done in the course of their employment or in discharge of their duty as servants of the Company and they were not within the scope of the employment. The result is that the suit must be dismissed.

I think it is but fair to add that the defendants have in their letter and in their written statement expressed their regret that the plaintiff should have suffered any indignity or injury while travelling in the train and have punished both the driver and the guard departmentally.

Suit dismissed with costs.

The plaintiff appealed.

Setalvad, *Wadia* and *Rangnekar*, for the appellant.

Strangman, *Weldon* and *Campbell*, for the respondents.

Setalvad:—*Prima facie*, wrongful assault was committed by the servants of the Company in the course of their employment and in discharge of their duty. Sections 108, 121 and 128 of the Indian Railways Act lead to an irresistible conclusion that the Railway

(1) (1861) 30 L. J. Q. B. 148.
(2) (1861) 30 L. J. Ex. 327.
(3) (1862) 32 L. J. Ex. 34.
(4) (1867) L. R. 2 Q. B. 534.

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Company would be entitled to arrest the plaintiff for pulling the emergency chain. Section 108 punishes an act of a passenger who without reasonable and sufficient cause makes use of or interferes with any means provided by a railway administration for communication between passengers and the railway servants in charge of a train. Admittedly the plaintiff twice pulled the emergency chain, his intention being to obstruct and impede the driver in the discharge of his duty (see the report of the guard). The plaintiff's acts, therefore, fell under section 121. Under Rule 266 of the General Rules for Indian Railways, the guard is in charge of the train for starting, stopping or moving. Under Rule 311 it is the duty of the engine-driver to take the train in proper time. The obstruction need not be direct: see *The Queen* v. *Hadfield*(1); *The Queen* v. *Hardy*(2) and *Betts* v. *Stevens*(3). The pulling of the chain was one mode of obstructing the guard and the driver in the performance of their duties. Under section 128 the plaintiff may be said to have obstructed the rolling stock from proceeding further. Rolling stock includes the engine: see section 3, clause 10 of the Indian Railways Act. The result is that if the plaintiff's act viewed as a whole fell within sections 121 and 128, the Company's servants had power to arrest him under section 131 of the Indian Railways Act.

In any event, the Company is liable (*a*) if the servants thought that in the special case before them the circumstances existed which warranted the arrest of the plaintiff and (*b*) the servants intended to act for the benefit of the Company and not for their own private ends. Two distinct and separate principles govern such cases. One class of cases of which *Poulton* v. *London and South Western Railway Co.*(4) is a leading type illustrates that where the accusation is such that the

(1) (1870) 39 L. J. M. C. 131.
(2) (1871) 40 L. J. M. C. 62.
(3) [1910] 1 K. B. 1.
(4) (1867) L. R. 2 Q. B. 534.

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Railway Company would not have been in a position to arrest the plaintiff under any circumstances, the acts of the servants would be beyond the scope of their authority. The other class of cases of which *Bayley* v. *Manchester, Sheffield, and Lincolnshire Railway Co.*[1] is a leading type illustrates that where a servant commits an excess beyond the scope of his authority but in course of his employment the master is liable: see *Dyer* v. *Munday*[2]; *Radley* v. *London County Council*[3] and *Limpus* v. *London General Omnibus Co.*[4].

Campbell:—(1) On the facts, the acts of the driver and the guard could not be held to have been done in the course of their employment, in the discharge of their duties or within the scope of their employment. Nor were they intended to be so by them. Under Rule 266 of the General Rules for the Indian Railways, the guard is the person in charge of the train and not the engine-driver, in all matters affecting the starting, stopping and movement of the train: see also Rule 301. The engine-driver having no right to arrest the plaintiff, he acted on his own account to gratify his own sense of annoyance in having his engine stopped twice: see *Richards* v. *West Middlesex Waterworks Company*[5]. Even the guard did not intend to act for the benefit of the company, he having aided and abetted the driver who acted on his own account.

(2) Assuming the driver and the guard intended to act within the course of their employment, what they did was not in the course of their employment, in the discharge of their duties and within the scope of their authority. The plaintiff's act fell under section 108 of the Indian Railways Act, which expressly deals with the pulling of the emergency chain. The fact that the

(1) (1872) L. R. 7 C. P. 415.
(2) [1895] 1 Q. B. 742.
(3) (1913) 109 L. T. 162.
(4) (1862) 1 H. & C. 526 at p. 537.
(5) (1885) 15 Q. B. D. 660 at p. 663.

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chain was pulled twice would not bring the act under section 121 which treats of a different and more serious form of obstruction. For pulling the emergency chain no arrest is warranted except under circumstances specified in section 132 which are not proved. Section 132 gives power to arrest which can be exercised when certain conditions are fulfilled but not otherwise. Having regard to the facts of the case the Company had no power to arrest and the Company was not liable for the acts of the servants. *Poulton* v. *London and South Western Railway Co.*[1] is directly in point: see the dicta of Blackburn J. in that case wherein he pointed out that there was no power to arrest to start with, as in *Goff* v. *The Great Northern Railway Company*[2]: see also *Dyer* v. *Munday*[3] and Rowlatt J. in *Ormiston* v. *Great Western Railway Company*[4].

Selatvad in reply :—The plaintiff was pulled out for the purpose of being handed over to the station-master and for detention. There was arrest and intention to arrest in the discharge of duty and within the course of employment.

The engine-driver and the guard thought that the chain was unlawfully pulled and that they had a right to arrest. Section 128 speaks of unlawful acts and section 121 of wilful obstruction. Power is given under section 132 to arrest. The servants are the proper persons to judge whether the conditions laid down in section 132 for a lawful arrest are fulfilled. Their judgment and their acts are presumably intended to be for the benefit of the Company. These acts could be dissociated from the personal annoyance to them.

C. A. V.

BATCHELOR, J.:—The appellant before us was the plaintiff in the Court below, his suit having been

(1) (1867) L. R. 2 Q. B. 534 at p. 536.
(2) (1861) 30 L. J. Q. B. 148.
(3) [1895] 1 Q. B. 742.
(4) [1917] 1 K. B. 598 at p. 601.

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dismissed by Kajiji J. The plaintiff, who is a managing clerk in a firm of Bombay Solicitors, brought the suit to recover damages from the defendant Railway Company, on account of the wrongful and tortious acts of their servants, an engine-driver and a guard.

Owing to various admissions made by the parties at the trial, the facts have not been elicited from the witnesses with the usual completeness, but there can be no doubt upon the record what the essential facts are, and Mr. Campbell for the Railway Company did not press his attempt to give to them any other complexion than that which appeared to the learned trial Judge. These facts are as follows:—

On the night of the 18th March 1916, the plaintiff was a third class passenger in one of the defendants' trains. The plaintiff's compartment was greatly overcrowded to the inconvenience and discomfort of the occupants. After ineffectual efforts to obtain assistance from the guard or the station-master at a station, the plaintiff stopped the train by pulling the communication chain. The train was re-started, but no other incident then occurred, nor was any step taken to relieve the overcrowdedness of the compartment. Consequently when the train had gone some little distance further on its journey, the plaintiff again stopped it by pulling the communication chain. Thereupon the driver and the guard got down from the train; the driver pulled the plaintiff out of the compartment and cuffed and slapped him, the guard assisting in this assault. The degree of violence used is not now material; it was, I think, probably not much, but the assault is admitted, and the plaintiff naturally resents the indignity and affront to which he was subjected. The plaintiff was arrested by the driver and guard at Dadar Station, where he was handed over to the station master; his statement having been recorded by the

Police, he was released and allowed to go on to his destination. The guard and driver were prosecuted to conviction before the Magistrate, who fined them for the assault.

The only question in appeal is whether, in the above state of facts, the Railway Company are liable for the wrongful acts of their servants.

Now the general proposition of law applicable to the question of the master's liability for the wrongful acts of his servants may, for our present purposes, be stated thus; the master is liable where the servant, acting in a matter which is within the scope of his authority, that is, within the course of his employment, commits a wrong by exceeding the authority vested in him. The act itself which constitutes the wrong may be—and usually is—in excess of the servant's authority, but if in thus transgressing his authority the servant is doing in the master's interests one of the class of acts which the master has employed him to do, then the master is liable. It is unnecessary to refer to decided cases in support of this general proposition, which, as a broad statement of the law, is well established and has been accepted by both sides at the bar.

It remains to see how this principle is to be applied in such a case as this where a person is arrested and wrongfully assaulted by the servant. Here, in conformity with the general principle, the law, as I understand it, is this: the assault being an incident of the arrest, and being an excess of the servant's authority, the master is liable if, and only if, the arrest was within the servant's authority. In other words, if the supposed offence for which the person was arrested was an offence for which the master himself would have had authority to make the arrest, then the master will be liable; he will not be liable where he

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himself, for the alleged offence, would not have been justified in arresting the offender, for in such a case the arresting would be beyond and outside the course of the servant's employment, and the added assault would not be referable to any of the class of acts which the master had impliedly put the servant there to do.

This principle may be illustrated by a comparison of two decisions, that in *Poulton* v. *London and South Western Railway Co.*[1] and that in *Bayley* v. *Manchester, Sheffield, and Lincolnshire Railway Co*[2]. In the former case the plaintiff was detained in custody under a station-master's orders because he refused to pay the railway fare for a horse travelling by one of the defendant Company's trains. It was held that the Company were not liable for the wrongful arrest on the ground that, since the Company themselves would not have had the power to arrest the plaintiff on the assumption that he had wrongfully taken the horse by the train without paying, there could be no authority implied from them to the station-master to arrest the plaintiff on this assumption. *Bayley's case*[2] fell on the other side of the line. Bayley, a passenger on the defendant Company's railway, sustained injuries in consequence of being violently pulled out of a railway carriage by one of the defendants' porters, who acted under the mistaken impression that Bayley, the plaintiff, was in the wrong train. The Court held the Company liable on the ground that the removal of a passenger from a carriage by a porter was an act within the porter's authority, so that the injuries caused by the plaintiff's violent ejection were caused by the porter in the course of doing one of the class of the acts which the Company had put him there to do.

(1) (1867) L. R. 2 Q. B. 534 at p. 536.   (2) (1872) L. R. 7 C. P. 415.

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There are numerous other cases in the books which illustrate the same principle, notably, *Dyer* v. *Munday*[1] and Rowlatt J.'s decision in *Ormiston* v. *Great Western Railway Company*[2]. But probably no more concise or lucid statement of the distinction could be found than the words used by Mr. Justice Blackburn, as he then was, in the course of the argument in *Poulton's case*[3]. Counsel for the plaintiff there contended that the station master was the person in authority to do all acts required by the exigency of business, and that consequently the Company were bound by his act in arresting the plaintiff: and counsel cited, in support, a case where a passenger was wrongfully arrested on the mistaken assumption that he had not paid his fare: *Goff* v. *The Great Northern Railway Company*[4]. Blackburn J. interposing said:—"In that case there *was* a power to arrest, on the assumption that the facts were as the officer arresting supposed; here there is no such power."

The application of these principles to the present facts raises the question whether the defendant Company would have had authority to arrest the plaintiff for the offence for which the Company's servants arrested him. That offence was, clearly on the evidence, the pulling of the communication chain "without reasonable and sufficient cause," an offence made punishable under section 108 of the Indian Railways Act, 1890. It is unnecessary to decide whether the plaintiff had, or had not, reasonable and sufficient cause. I will assume, in favour of his present suit, that he had not, and that, in consequence, he laid himself open to punishment under section 108. But for this offence, it is admitted that, under the Act, the defendant Company had no

(1) [1895] 1 Q. B. 742.
(2) [1917] 1 K. B. 598.
(3) (1867) L. R. 2 Q. B. 534 at p. 536.
(4) (1861) 30 L. J. Q. B. 148.

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authority to arrest him. It follows, as my learned brother, Kajiji J., held, that the Company cannot be held liable for the assaults committed by their servants in the course of the arrest. To escape from this difficulty Mr. Setalvad for the plaintiff ingeniously contended that the offence for which the arrest must be taken to have been made was an offence falling not only under section 108, but also under sections 121 and 128. If this contention were sound, the plaintiff would, no doubt, be entitled to succeed, for persons offending under section 121 or section 128 may, as provided by section 131, be arrested without warrant by any railway servant. In my opinion, however, the contention is not sound. Section 121 deals with the obstructing of any railway servant in the discharge of his duty, and section 128 (so far as we are now concerned with it) provides punishment for any person who obstructs any rolling-stock upon any railway. It is admitted that, owing to the working of the mechanical contrivance, the pulling of the communication chain automatically stops the train, which cannot be re-started till the vacuum has been restored. Mr. Setalvad consequently contended that the plaintiff's action here obstructed the driver in the discharge of his duty to keep the train running, and obstructed the rolling-stock of the train by bringing it to a stop. It may be admitted that, as a mere matter of words, some colour may be lent to this argument from the generality of the phraseology in sections 121 and 128, and if section 108 did not exist, the plaintiff's offence might perhaps be brought within the scope of either of the later sections. But interpreting the Act as we have it, I think that Mr. Setalvad's construction is forced and unnatural. Reading the sections together, the fair conclusion seems to me to be that the stopping of the train by the wrongful pulling of the communication chain is one special kind of

obstruction, for which the Legislature has made special provision. It has ordained a particular punishment, which is lighter than that allowed for other obstructions presumably because the stopping of the train by this mechanical means is not likely to be attended with any danger to the travelling public. This differentiation of the consequences or results seems to me strongly in favour of the view that the special provisions of section 108 are not to be controlled by the more general language of the wider sections. If Mr. Setalvad's contention were allowed, it would follow that in every case where a passenger wrongfully pulled the communication chain, he would be liable to imprisonment for a term of two years under section 128; but in section 108 the Legislature expressly enacts that for this particular offence the maximum penalty shall be a fine of Rs. 50. Remembering that we are dealing with penal sections, I think that the imposition of the heavier punishment would be a result wholly outside the contemplation of the Legislature; in other words, the plaintiff's offence is, under the Act, punishable under section 108, and not under section 121 or section 128. The rule of construction here applied is but a particular case of the general principle embodied in the maxim, *generalia specialibus non derogant*, which is invoked in the interpretation of a later general Act bearing upon an earlier special Act. In explaining this maxim in *Barker* v. *Edger*[1] Lord Hobhouse used the following language, which, *mutatis mutandis*, appears to me to guide us to the true meaning of the earlier and the later sections in the Act now under consideration:— "When," said his Lordship, "the Legislature has given its attention to a separate subject, and made provision for it, the presumption is that a subsequent general enactment is not intended to interfere with the special

(1) [1898] A. C. 748 at p. 754.

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provision..." So here; the earlier special provision must be held to control the general provision *quoad* the particular case specially provided for.

On these grounds I come to the conclusion that for the offence for which defendants' servants arrested the plaintiff the defendants themselves would have had no authority to arrest him, and, consequently, that the defendants are not liable for the assaults committed by their servants. The appeal, therefore, fails and must be dismissed with costs.

SCOTT, C. J. :—I concur.

Solicitors for the plaintiff: Messrs. *Bhimji & Co.*

Solicitors for the defendants: Messrs. *Crawford, Bayley & Co.*

Appeal dismissed.

G. G. N.

CRIMINAL APPELLATE.

Before Mr. Justice Shah and Mr. Justice Marten.

EMPEROR *v.* RAMRAO VISHVANATH AND OTHERS.*

1918. *March* 20.

City of Bombay Municipal Act (Bombay Act III of 1888), sections 305 and 3 (w), (x) *and* (y)†—*Private street—Sewer pipe laid by Municipality before the Act of 1888 came into force—Sewer pipe carrying sullage from houses abutting on the street—Street includes houses on either side—Requisition by the Municipality to level and drain such streets.*

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*Criminal Appeal No. 487 of 1917.

† The sections run as follow :—

305. If any private street be not levelled, metalled or paved, sewered, drained, channelled and lighted to the satisfaction of the Commissioner, he may, with the sanction of the standing committee, by written notice, require the owners of the several premises fronting or adjoining the said street or abutting thereon to level, metal or pave, drain and light the same in such manner as he shall direct.