

MAGISTRATES AND THE OFFICIAL REFEREES.

MR. ASHBY, builder, having made a projection to a house before the general line of fronts, an information was filed by Mr. H. Roper, the district surveyor, before the referees, who in due time gave their award and certificate that the projection was a nuisance, and should be removed. Mr. Ashby refusing to comply, the district surveyor went to Mr. Norton, the magistrate at the Lambeth office, to obtain the enforcement of the award; but the magistrate refused to take the award as evidence, and called on Mr. Roper to prove the nuisance, which he very properly refused to do. Mr. Clarkson, on the part of the builder, maintained that the award was not good, and the following conversation took place:—

Mr. Clarkson—If the referees, without having both parties before them, and on the information and evidence supplied by the surveyor, decided upon what is a nuisance, they will very soon be a nuisance themselves. Besides the production of the certificate of the referees, it is the duty of Mr. Roper to produce to you satisfactory evidence of the fact that the erection complained of is in violation of the Act of Parliament, and not within the exceptions.

Mr. Norton—I apprehend it would be no answer to an action, in the event of my sending the defendant to prison, that I had acted on the certificate. You, Mr. Roper, must therefore prove the nuisance, and I must hear what answer the defendant has to offer before I come to any decision on the case.

Mr. Clarkson—Magistrate after magistrate have declared that they could not understand the Act; and if Mr. Roper will give me the name of one magistrate who has sent a man to gaol under its provisions, I will give up my case.

Mr. Norton—In this case the Act calls on me, in the event of the building he has erected being proved a nuisance, first to call on the defendant to put in sureties to remove the nuisance; and in default of his putting in the required sureties, to commit him to prison. Surely, before I do this, I should have the most satisfactory evidence of the existence of the nuisance.

Mr. Roper—The certificate of the referees is a *prima facie* evidence of the fact, and I presume it rests with the other side to show the contrary.

Mr. Clarkson—I could do so by the testimony of several gentlemen present, if necessary, but I shall not do so, nor will the defendant, if called on, offer any bail to take down the building; on the contrary, he would refuse to do so, and it will be for the magistrate to commit him to prison, if he should think proper, but I feel convinced he will not under an Act of Parliament which all a kind of us agreed to be one of the most unintelligible Acts that has ever passed the British legislature. Indeed, the present case abundantly proves its impracticability, for if enforced, the defendant would be placed in this position, that he would have to run the risk of three actions, or go to prison for an indefinite period. The simple facts are these,—the defendant was employed to put a new front to the Stags public-house, and instead of two bow-windows, as formerly, the building was carried straight across on the freehold. The defendant has long finished the job, and therefore, if he presumed to go back now to disturb the erection, he would be liable to three actions, one by the freeholder, another by the lessor, and a third by the sub-lessee, as well as a fourth for trespass, and it would be no justification for him to say that what he had done was in consequence of Mr. Norton having threatened to send him to prison.

After a lengthened discussion, Mr. Norton asked Mr. Roper whether he would go on to prove his complaint by evidence? The latter replied in the negative, and added that he conceived he had complied with all the law required of him; he therefore conceived he was entitled to call on his worship to enforce the law.

Mr. Norton replied that he certainly could not think of acting without sufficient evidence of the existence of the nuisance; and if evidence was not produced, he should not proceed further. He expressed his surprise that in a question of such importance, the surveyors of the different districts of the metropolis did not join and take it into the Queen's Bench for its decision and interpretation of the Act of Parliament.

Mr. Norton's refusal to receive the award as evidence appears to be in direct contravention of the act, the 86th section of which, headed, "Effect of Awards as Evidence," says,—“And be it enacted, with regard to such award, so far as relates to

* The district surveyor proved that Mr. Ashby and his architect attended the first hearing, and that his solicitor attended the second.

the effect thereof, as evidence of the matter thereof, that if on the trial or hearing of any cause or matter in any court of law or equity or elsewhere, any copy of an award signed and sealed with the seal of the said registrar be produced, then it shall be the duty of all judges, justices, and others, and they are hereby required to receive the same as *prima facie* evidence of the matter therein contained." If the referees' awards cannot be enforced, nay, are to be wholly disregarded, it is quite useless and wasteful for the public to appeal to them. So long, however, as we find their own legal officer taking crotchets into his head, and asserting the *illegality* of their proceedings, in the face of the public, maintaining, for example, that though they have power to prevent a building owner from making a projection from his front wall, they cannot hinder him from bringing his whole house forward, if he please) so long we may avoid being surprised at disregard of them out of doors.

RAILWAY JOTTINGS.

IN A case at law as to the boring of the tunnel under a street in Liverpool, for the Manchester, South Junction, and Altrincham line, it has been decided by the Barons of Exchequer, that it is not sufficient to offer compensation to the owner of land on boring under his property, unless the offer be made previous to the trespass. The defendants had argued, that the owner's only redress was under the provisions of the Lands' Clauses Consolidation Act, the 6 & 9 Vict. c. 18, ss. 18 and 24, by summoning a jury to assess the compensation due. For the plaintiff it was responded, that the Railway Clauses Consolidation Act, and the 8 Vict. c. 20, also affected the question, in conjunction with the Act referred to by the defendants.—The sheriff-substitute of Edinburgh has decided that passengers whom companies, by the usual ticket, have contracted to forward by train, are entitled either to damages for delay if not so forwarded, or to forward themselves, at the company's expense, by any available conveyance, failing the train contracted for.—We lately began to give railway directors some little credit for an earnest desire, at length, to respond to the public outcry for means of safety in railway transit; but we now fear it betokened little else than a mere sagacious desire to sail with the current only through the rapids, and to whisk out of its eddy at the earliest opportunity; for little or nothing further seems to have been done to obviate the continual peril in which the public find themselves involved so soon as they put their foot into a railway carriage. Yet it so happens, in the new occasion which calls forth our present remarks, that the Company on whose line the danger manifested itself is one of those very few who have really done any thing to obviate such dangers. That little which they have done, however, is proved in this very instance to have been as insufficient as it was anticipated that it would be. The 'travelling porter' on the Great Western, whose duty it is expressly to look out for accidents, was lately found to be deaf, blind, and insensible (from the power of cold, in his senile state it might be), to the never futile and useless signals of distress made by the equally senile and probably almost equally benumbed and incapable guard, in circumstances of most imminent peril to an express train, arising from the fracture of a wheel tire (a frequent source of accidents); thus affording another negative proof, if other proof there need be, of the efficacy, under almost all imaginable circumstances, of our own simple suggestion to convert one side or both of the footboards along a train, or even the centre of the carriages opening through one another, into a safe and ready walk or beat for the guards, who could thus effectually communicate at all times with each other and with the driver, while their physical and mental faculties would thus, too, be kept by constant movement, especially in very cold or even in very hot weather, in a state of active watchfulness and alertness, becoming a vigilant guard, such as this 'travelling porter,'—stupidly so called—clearly and especially ought to be. In the case in question every endeavour to make signals of use was unavailable, and the train sped on for miles

until it stopped, as it most fortunately required to do, at a station ten miles from the spot where the accident occurred.—The Conway tubular bridge has been so far tested by its weight which it is said to support with a deflection of seven-eighths of an inch out of the level along the bottom. To effect this two temporary pillars were constructed under its extremities, and the wooden supports, to the length of 100 feet, removed. We wait to hear from our own correspondent on the subject.—A Devonshire correspondent again forces our attention on the working of the atmospheric line, of which, however, we have ourselves been by no means unobservant, especially during the continuance of winter and frost. That great speed with comparative safety and smoothness of transit, may be attained, as indeed it has been, and is being attained, by the atmospheric, we do not doubt, and the evidence presented by our correspondent, supports us in our belief of these advantages, but the very same evidence also supports us in our fear of its disadvantages during the occurrence of frost, which, even in the present winter, temporarily stopped proceedings so soon as the frost set in, and which, we observe, is still occasioning the like inconvenience. We are glad to perceive, however, that the substitution of a sufficient quantity of steam passed through the interior of the tube for a length of time early in the morning, in place of the inventor's contrivance of passing a heater over the valve in travelling is promotive of greater regularity than heretofore, unless when not sufficiently attended to at an early enough hour before the morning trains set off. These irregularities, however, which have even very recently led to the South Devon being dubbed 'the asthmatic railway,' must now be comparatively few, as a correspondent of the *Devonport Telegraph*, who writes from Newton, says that the trains are despatched and arrive with the greatest regularity, and from the great traffic on the line there are now sixteen or seventeen trains daily. The locomotive, he adds, is entirely off the line between Exeter and Newton. The arrival of the trains is looked at with much wonder by the sightseer, and the old locomotive is beginning to be looked at as an extinct race of by-gone generations. Our own correspondent remarks, that so easy is the atmosphere in comparison with the old mode, that but for the testimony of his watch he should not have believed that he had been occasionally conveyed at the rate of seventy miles an hour. The permanent way is laid continuously from Totness through the Marley tunnel, and the viaduct at Erme is being altered for additional security. The station arrangements at Laira, near Plymouth, are in rapid progress, and the opening of the line throughout depends entirely on the completion of the viaducts.—The engineers and workmen on the Chester and Shrewsbury line have met with a slough at Barchurch, into which they have been 'beaping Pelion on Ossa,' in the hope of filling it up, or for the purpose of fathoming its depth perhaps, though rather an expensive way of doing what, a little previous boring might have sooner and more cheaply convinced all interested either of the hopelessness of doing, or at least of the quantity of the more bulky material likely to be requisite. As it was, above fifty yards of the substratum disappeared, and, after all, the method so often in former cases recommended by us, and successfully adopted, in all but shallow swamps, has been resorted to, in the construction of a conglomerate surface of fagot and furze on which to lay the more immediate substratum of the line.

BLIND BUILDERS.—Sir: I beg leave to hand you a list of tender delivered for repair to two houses in Baldwin's-gardens, Islington, which were opened by the surveyor (Mr. Charles Foster), in the presence of the contractors.

ONE OF THEM.

Pickford	£ 273 0
Burg	268 0
Brace	255 10
Neelson	136 0
Lloyd	120 0
Hodges	93 0
Boake	89 0

"Blind builders indeed? It ought to be 'good builders.'"