RAILWAY AND LAND TAXATION,

SHEWING THE

ORIGIN, PROGRESS, LAW, OPERATION, AND STATISTICS,

OF THE

POOR AND OTHER RATES,

AND THEIR

INJUSTICE AND IMPOLICY

WITH REFERENCE TO

RAILWAYS,

WITH A **DIGEST** OF ALL THE **LEGAL DECISIONS,** AND A GLANCE AT THE LOCAL RATES AND **GENERAL TAXATION** OF RAILWAYS AND LAND.

by

[Charles Barnes Nash]

BY THE AUTHOR OF "INDIAN LETTERS," "LEGAL AND GENEALOGICAL RESEARCHES," "CONTRIBUTIONS TO DAILY AND OTHER LITERATURE," &c. &c.

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TO

CHARLES STEVENS, ESQ.

OF

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The strenuous upholder of Railway Interests—whose Firm has for upwards of half a century occupied the highest station in the leading City of the World as Professional Advisers to numerous Public Companies, Mercantile and other Establishments; and whose reputation and engagements have extended to China, the East and West Indies, and all quarters of the Commercial World—this little Work is most respectfully Dedicated (without permission) by

His obedient humble Servant,

THE AUTHOR.

(See TIMES, Leading Article, Nov. 1st, Sept. 24th, and Oct. 23d, &c.

There are a few inaccuracies, arising from haste, which the Reader will readily notice and correct.

PREFACE.

The Writer having occasion to consider the subject of rates upon railways, being forcibly struck with their oppressive nature, feeling that the subject in its various bearings was too abstruse to be comprehended to its full extent without much research, and having been advised to pursue it, and having kept it before the public during several months, now presents the accompanying hastily written chapters in a connected form, and in the single hope that they may contribute to a more extensive knowledge of this subject, and its injustice, and be useful to the Companies in the future discussions which the subject will force upon the Executive and the Legislature.

The Writer has only aimed at a matter-of-fact summary; those who know him also know that he has no personal interest in the subject, that he has pursued it from a strong conviction of its injustice, and as being the most grievous to private enterprise that has come under his observation during eighteen years experience of public matters.

November, 1841.

RATING OF RAILWAYS.

CHAPTER I.

ORIGIN AND RISE OF POOR RATES.

In recurring to this subject, I feel it fair to the railway press to observe that as the oppressions practised upon Companies have increased and consequent appeals been made to the tribunals of this country, the subject has been kept alive for several months past, not only by those legal reports, but by the consequent discussions which the railway journals have with usual fairness admitted on both sides, and the writer having been allowed to share therein, was proud to find also that his labours upon the legal bearings were adopted by other journals, and contributed to the better understanding of the distinctions which exist upon the subject of rating; yet it is still discussed with too loose a reference to its legal origin, or to the current of the legal decisions; even the Committee of the House of Commons has contented itself with a superficial reference to the law, and an innocent endeavour to learn the nature of the arguments and decisions upon the liability of railways, and every one avoids wading through a mass of legal decisions. But as the subject may be considerably enlightened by a summary of the reasonings adopted in the legal cases, I shall undertake the task, and I propose to view this subject in the three branches of its legality, its operation and injustice, and its policy; under the first branch to trace the reasoning of the Judges upon the operation of the statute of 43rd Eliz. chap. 2 (1601), by which provision was made for setting to work and relieving the poor, "and the overseers, with the consent of the justices, were to raise by taxation of every inhabitant, and other, of every occupier of lands, houses, &c. sums for the relief of the lame, &c., to be gathered out of the parish, according to the ability of the parish." Before the Acts of Elizabeth (say the Poor Law Commissioners) the poor were maintained by the religious and Catholic houses which existed in the country, and there had been no receptacle similar to workhouses except in the time of Edward VI. The Act consolidated the ancient provisions, but was a system dependent on voluntary exertions; and after the enactment of compulsory relief, the rates which in the middle of the seventeenth century amounted yearly to a few hundred thousand pounds only, and were of as much insignificance as a public tax throughout England could well be, amounted, in 1813, in England, to 6,200,000*l.*, besides other local rates, which made up the "local taxation" to England about 10,790,000*l.*, and a total for England and Wales of nearly 12,000,000*l.* yearly on property.

There was no other statute but that of Elizabeth as to the general principle of rating until the Parochial Assessment Act of 1836 (6th and 7th Wm. IV. c. 96), which enacted that "no rate thenceforth should be of any force which shall not be made upon an estimate of the net annual value of the several hereditaments rated thereunto, i. e., of the rent at which the same might reasonably be expected to let from year to year, free of all usual tenants rates and taxes, and deducting therefrom the probable average annual cost of repairs, insurance, and other expenses, if any, necessary to maintain them in a state to command such rent." "Provided always, that nothing herein contained shall be construed to alter or affect the principles or different relative liabilities, if any, according to which different kinds of hereditaments are now by law rateable." That Act did but make this change, it (theoretically) substituted a "net annual value," instead of the computation which parish officers had adopted on a capricious annual value, or on a proportionate part of that value.

The next statute was the one exempting "inhabitants" from taxation; that was the 3rd and 4th Victoria, c. 89 (1840), which recited, that "it has been held that inhabitants, as such, are liable in respect of their ability derived from the profits of stock in trade and of other property to be taxed, for and towards the relief of the poor. And it is expedient to repeal the liability of 'inhabitants' as such; be it therefore enacted, that it shall not be lawful for the overseers, &c. to tax any inhabitant as such inhabitant in respect of his ability derived from the profits of stock in trade or any other property, for or towards the relief of the poor; but the Act is not to affect the liability of occupiers," &c.

These are the three statutes which form the basis of the present law of rating; and it must be remembered that all the decisions to which I shall refer, were under the single statute of Elizabeth, or before the Act of Victoria.

In the early consideration of the statute of Elizabeth, the first-class "occupiers" admitted of no difficulty in its application, but the Court long were at a loss what class was meant by the word "inhabitant," and Lord Mansfield declared (and Tindal C. J. agreed in 1842, 2 Ad. & Ell.) that "the

words of the statute are very loose and very general, and they may be construed into any latitude even to make all a man has and all a man gets in any way the measure of his ability, for truly and substantially it is so, but usage had explained and narrowed it." Ultimately it appears to be the result of the cases that the Court arrived at the distinctions of two classes liable to be rated—1st Occupiers (owners or lessees) of lands, houses, and other real property, whose liability was as such occupiers upon the produce and profits of the realty. 2d. Resident "inhabitants" (not occupiers of realty, &c.) having other property—local, visible, and profitable, in the parish, and deriving profit therefrom, and liable to rate as such, and upon such profits (such as personal property, profits on stock in trade, &c.) In the cases of *realty*, the mode of rating recognized by law has been the fair rent of the realty, having of course regard to its position, but not to whether, if personal property added, or if a particular trade or person, then a certain sum would be earned, and if a brewer's or other trade, then a larger sum would be earned as profit from that business, and liable to increased rate. In the cases of water companies, gas companies, and canals (to which railways have been assimilated) the result of the legal decisions appears to be that they were liable only as occupiers of *realty*, and upon the amount of their tolls as the produce, and the only produce, of the land and realty; the only attempt to rate them on their other profits or earnings (as carriers) was in the Bridgewater Canal case, which was defeated by the law. It was only for the produce and profits of the land itself, or arising directly and immediately from the land, together with anything annexed to it without the adjunct of personalty, that occupiers were ever rated. The profits of trade and personal property were always confined to the class of inhabitants, such as the profits of a stage-coach proprietor, of a carrier for hire, or of any other trade. If profits were not rated in the parish, "occupiers" were the only class rated, and then in respect only of realty. The cases up to 1840 were decided when both classes were liable, and these principles are clearly elucidated by the reasonings of the Judges in every case on the subject, and none show a liability of a stage coach proprietor's profits except as an inhabitant; as (since 1840) the class "inhabitant" is no longer subject to rate, the profits produced by the means or use of personal property (that is, profits of trade and stock as distinguished from the realty or land profit of occupiers) are wholly excluded from liability, and the only liability left is that of occupiers in respect of realty, &c. (hereditaments). The course of their taxation as prescribed by the statute is upon the "estimate of the net annual value" of the "hereditaments," that is to say, of the rent at which the same might nearly be expected to let from year to year free of certain deductions, and the usual mode sanctioned by law of ascertaining that value was, and still is, by taking the rent paid by the tenant as lessee, and making certain deductions, or if he were not rack-rented, as well as in the other case of an occupier who was also an owner, by taking the rent which the "hereditaments," (the real property,) and its annexations, without the application or addition of personalty, might reasonably be expected to let for, and making the statutable and certain other deductions; but to arrive at that result, as regards railways, the Court of Queen's Bench in effect say, that you may take all the occupiers' receipts from the realty (the land), and from the personalty, the profits of his trade, &c., if you do but make besides the statutable deductions, a further deduction for tenants' profits, stock, &c., whereby you arrive at the supposed estimated rent which any third person would give to the owner to tenant the realty [without *the* trade]. This course of proceeding is, I submit, in opposition to the current of the cases upon the liability under the statute of Elizabeth; it is a rating upon something more than the worth of the realty, and would be as applicable to canals, banking, or lodging-houses, as to a railway, and indeed until the late cases no such mode of assessment was ever attempted.

Having now glanced at the results and divisions which the law appears to me to have established, I will go through those authorities which (I submit) clearly establish these distinctions of realty and personalty liabilities, and I shall afterwards refer to the decisions as to railways, to the mode of ascertaining the value, and to the deductions to be made.

CASES.

In Lord Bute v. Grindall (1 Term Reports) rate upon the ranger of a park, the question was, whether he was rateable at all? Eyre, C. J., said, "It may be stated as a general proposition that the 'immediate' profits of land (some mines excepted) are a proper subject of assessment; or, to speak more correctly, that the person who is in the possession of the immediate profits of land may be taxed to the relief of the poor, in respect of those immediate profits, that quoad these immediate profits of the land, he is an occupier of the land within the meaning of those authorities, which have decided that the occupier only can be assessed to the relief of the poor." Lord Mansfield, referring to the lessee of a lead mine, said, "He was in the possession of profits arising immediately from the land, he was an occupier of the profits of the land, and as such rateable, so was the Earl of Bute."

In Rex v. Miller (Cowper), rate upon lessee of land and of a well thereout arising, Lord Mansfield said, "This is not a rate upon the profits of the well, but upon four acres of land, let to the defendant at 100*l.* a year, and the value arises partly from the buildings and partly from the spring that produces the mineral water; therefore the profits of the spring are part of the produce of the land. In Worcestershire and Cheshire, where there are salt springs, the rent of the land is increased considerably on that account, so here the consideration of the well increases the rent, it is part of the produce of the land, and therefore, as such, it ought to be rated."

In Rex v. Nicholson (12 East), Ellenborough said, "This is not merely a demise of a personal chattel of the ore after it is gotten, but of the ore which is to be gotten, and which is part of the solid mass of the land."

In Queen v. Crease, (1839) (11 Ad. and Ell.), it was admitted "that the principle that no person can be an occupier unless he has the exclusive right to enjoy some portion of the soil, is stated by Parke J. in Rex v. Mersey Navigation Company, and was the ground of decision in that case and Rex v. Thomas."

In Rowls v. Gells (Cowper), a "lessee" of lead mines was assessed for "lot and cope," Lord Mansfield said, "The Poor's Rate is not a tax on the land, but a personal charge in respect of the land. This is a personal charge by reason of the annual profits which the lessee of the Crown receives out of the land. In general, the farmer or occupier of land, and not the landlord, is liable to this tax, for it arises by reason of the land, in the parish."

In Rex v. Earl of Pomfret (5 Maule and S.), a rate upon the owner of lead ore, in respect of a reserved share smelted. Ellenborough said, "This is not a reservation of any part of the thing demised, it is not a reservation of any part of the ore, or of the mineral, in its natural or primitive state, but of something entirely different, of a metal produced by smelting, and mixed with another matter, and entirely different from either of the two, and rather as a manufacture of art and labour, 'resulting from the use' and application of these materials, 'than the original earth itself.'"

In Rex v. St. Austell (5 Barn. and Al.)—A rate on owner as occupier, in respect of a reserved share of produce of a mine, Bayley, J., said, "Here the person rated is in fact an occupier of land, and derives a profit in respect of that occupation; and he has not dispossessed himself of the possession of the land, as was done in the two latter cases of Rochester v. Pomfret. In Rowles v. Gells, it was first decided that a party was rateable for lot and cope. If the lot and cope had not been rateable in the hands of the original proprietor, it would not have been so in the hands of his lessee. The true ground of that decision was, that the party was there considered as an occupier of the land. Rex v. St. Agnes proceeded on the same ground."

In Crease v. Sawle, 1842 (2 Ad. and Ell. N. C.)—A rate upon the lessee of mines. The question was, "Whether, as the law of rating under statute 43rd Eliz. is at present understood, the rate can stand? The plaintiff contends that he is not an occupier at all; but that if he is, he is occupier only of part of a tin mine; and that in either point of view the rate is bad." For the defendants it was said, "the plaintiff is rateable as a party receiving profits out of realty; a distinction is indeed suggested between this case and all the previous ones on the subject, namely, that in those cases the party rated was an owner of the soil or mine from which the toll issued. Now here the Duke of Cornwall was in the position of owner. It was said here, that no interest in the land passed, but a mere authority to the grantee to dig. That may be so, and in that respect the case resembles Rex v. St. Austell; Taunton J. in Freemayn's case (4 B. and Ad.) says, that the distinction as to mines is very subtle, but that possibly the cases may be reconciled by distinguishing between the reservation of a rent and of a part of the soil itself. But if the owner, by reserving a part of the soil—in other words, of the mine—become an occupier of such part, to rate him for that is to rate him for the occupation of a mine, and that is not within 43rd Elizabeth." Rate disallowed.

In Rex v. St. Nicholas (Cald.) rate on a "machine house," Lord Mansfield said, "It is not in terms said that the machine is annexed to the freehold [house] but the nature of the thing supplies the defect in the expression. Indeed the expression sufficiently shews it. What is the house? It is 'the machine house.' They are one entire thing, and are together rated by the common known name, which comprehends both, and the principal purpose of the house is for weighing. The steel yard is the most valuable part of the house; the house therefore applied to this use may be said to be built for the steel yard and not the steel yard for the house." Willes, J., said, "There does not seem to have been any doubt but that the machine was, as it is described in the rate, 'appurtenant' to the building; if so its clear profits are undoubtedly rateable. If a billiard table stand [fixed] in a house, and the house should, in respect of such table, let at a higher sum, it would be rateable, while the table continued there and was so let, at the advanced rent." Buller, J., said, "the conclusion of this case is strong to shew that the justices considered the machine as part of the house; for the question they raise, the point they bring forward and refer to the court is, whether the profits are rateable? and so long as they are received, they undoubtedly are. It is like the case of Rex v. Miller, the Cheltenham Spa. There is an extraordinary profit arising from this modification of the enjoyment. The only question therefore is, whether a man shall be rated for the property he has? If a house to-day is let for 30*l.* per annum, and to-morrow, if turned into a shop, would let for 50*l.*, when it is turned into a shop it shall be rated at 50*l.* Its being called the machine house shews that the house and machine are an entire thing."

In Rex v. Hogg (1 Term Reports), rate on an engine-house with a carding machine, for the increased value it conferred; all the engines were placed on the floor, and no ways annexed or fastened to the same. Ashhurst said, "It may be fixed to the walls of the building, and considering the nature of the thing, it must be so, for it is stated that the engine is worked by water, &c., and it is not stated negatively that the engine is not fixed to the house." Buller, J., said, "It is clear that both the engine and the house go together, for they are in the hands of a leaseholder—they are rented together. The question ought always to be, whether the thing which exists is to be rated; and the rule is, that personal property, if visible and yielding a certain annual permanent profit, may be rated. In the present case, the house and the engine are let together as an entirety, and upon this ground also I am of opinion that the rate is good." Grose, J., "The question for the opinion of this Court is, whether by law this particular species of property, as described in the case, is or is not rateable? Now the property in question is all let together under one lease. Then the engine is let as part of the house, and the rate is upon the engine-house."

In Rex v. Bradford (4 Maule and S.), rate on occupier of a canteen under a lease to pay separate rents for the house and the canteen, Lord Ellenborough, (C. J.) said, "I cannot look at the reservation in this indenture in any other point of view than as a mode which the parties have chosen to divide the rent; for it is in substance but one entire rent, payable for the occupation of a real tenement, and for the enjoyment of the advantages belonging to it. From its vicinity to the barracks, it of course would attract to it almost all the custom of that neighbourhood, and this is the incident to the property which renders it valuable. If this could be separated from the value of the tene-

ment, and the rent distributed accordingly, we should henceforth never see a demise of any public house in which this form of distribution would not be observed, the lessor would let the tenement at the bare rent which it was worth, and the privilege of carrying on the trade as a separate and independent rent; and this would be a receipt for reducing the annual value of the tenement to a mere shadow. But we must judge of things as they really are, and not as they appear to be, and therefore we are to consider here whether this be not substantially one entire rent in respect of one entire subject, though artificially divided into several payments. Now, it does appear to me that this is as much a profit appurtenant to the tenement arising from its local situation, as was the profit of the weighing or carding machine to the tenements there rated. And it has not been improperly likened to the case of a soke mill, which is let at a higher rent because it has a right to the sole mulcture of all the corn and grain in the neighbourhood. Can it be doubted, that this would form a part of the rateable value of the mill itself? Therefore I cannot consider this reservation distributive, where it is in truth in respect of one entire taking of the benefits incident to it. Now, this canteen stands precisely on the same footing as a public-house, that is, it acquires a value from its situation, and from its being fitted up in a manner calculated to answer the purpose of a public-house. It is quite immaterial whether the rent which is paid for it is divided into separate parts, so much for the house, and so much for the privilege that it enjoys, if it be a rent for one entire canteen, and the party is not rated in respect of the profits of his trade, but only of the rent."

In Rex *v.* Bell (7 T. R.) the Court held that the Dean and Chapter could not grant the soil to the defendant, and nothing but an easement passed, which was expressly holden in Rex *v.* Jolliffe (2 T. R.) not to be liable to rate; and there Buller J. said, "This is only a bare right of passage, and not a grant of the profits of land."

CHAPTER II.

THE PRINCIPLE—CASES CONTINUED.

The uniformity of the legal decisions illustrate more forcibly than any remarks can do, the limitation of the liability to "realty," and the distinctions which were pointed out in the preceding chapter, on the application of the statute of Elizabeth and the liabilities thereunder, that I continue the quotations of the judicial dicta. Having in the preceding chapter shown the restricted liability of land and its annexations, of mines, and of easements, I shall bring down the series to Gas, Water, and Canal Companies, tolls, and light-houses, and to the two decisions upon the liability of railways:

In Rex *v.* Bilston (5 Barn. & Cress.) the owner and occupier of part of a mine was rated for an engine he had erected. Bayley J. said, "This appears to me a very plain case. The carding-engine and weighing-machine were each considered as part and parcel of a building, and were rated as such; so also in the case of a canteen, the privilege of selling liquors was considered as 'annexed' to the house, and as forming part of its value. Here a person working in a mine, in his own land, has erected an engine for the purpose of working that mine, and which is of no other use. The occupier of the mine, as such, is not rateable under the provisions of the 43rd Elizabeth. In many such mines there are railways under ground, which greatly enhance the value of the mine, and therefore of the land, but they cannot be rated, and in principle they are on the same footing as this engine. This is a mode of drawing the water from the mine, the railway is to facilitate the conveyance of the ore to the foot of the shaft. Each is of use in carrying on the mining operations, but of no other use. Suppose a conveyance or lease of this mine with the machinery had been made, it is clear that the engine would have passed to the grantee or lessee, it must therefore be considered as part and parcel of the mine, and is, as well as the mine itself, exempt from poor-rates."

Rex *v.* Nicholson (12 East) was a rate for Tolls of a ferry, on a non-occupier and non-resident. Lord Ellenborough, C. J., said, "In general the rate has been imposed on some real property in the parish, out of which the tolls arose, as on the sluice in King *v.* Cardington, and in the Salter's load sluice case." Bayley, J., "All the cases of tolls held rateable have been where the tolls arose out of the use of land;" and Le Blanc, J., said, "the packet owner (Jones's case) was only held to be rateable as an inhabitant, and for his profits in the parish where he resided, and where the boats were kept and produced the profit to him, and he was considered not to be rateable in any other place to which the boats sailed where he was not resident;" Bayley, J., said, "In King *v.* Cardington the party was rated for the sluice of which he was the occupier, which sluice was real property.. In the case of canal tolls the proprietors rated were the occupiers of the canals, and canals are real property: they are land applied to a particular purpose, and the tolls are the profits arising from the use of the land, and are given to the proprietor as a compensation for the use of it in that manner."

In Rex *v.* Baptist Mill Co. (1 Maul & S.), a rate on a lessee for lot, toll, &c. of calamine, as occupiers of land, Le Blanc J. said, "where a person receives without risk part of the produce extracted from the bowels of the earth, he is an occupier of land, but where he merely receives a rent, or money payment, there the Court has held, as in Rex *v.* Rochester, that he is not an occupier." Bayley, J., said, "So in Rex *v.* Nicholson, and Williams *v.* Jones, there was no pretence for setting up any person as an occupier of land; a distinction is made that here is a demise, not of the land, or any interest in the land, but of 'lot toll, and free share,' and so it does not operate until the lot, &c., are severed from the land, but it seems to me as if the lease demised a share in the produce of the land before the mineral is raised, it was intended that these lessees should have every benefit which would otherwise have resulted to the lord. I cannot therefore distinguish this from the case of granting a share in the land, which is not co-extensive with the entire interest. It is not doing any violence to this lease to consider the lessees under it as occupiers of land."

Now take the case of Gas Companies:—

In Rex *v.* Birmingham Gas Company (1 B. & C.) the Company were rated for land, pipes, and profits; inhabitants were not rated; Abbott C. J., said, "The question proposed to us is not whether the Company be rateable for their buildings above ground

or their pipes under ground, but to what amount they are rateable; I am of opinion that the amount in respect of which they are rateable, is the sum for which the buildings, trunks, and pipes would let to a person who is willing to carry on the [a] business there. It appears from the statement in the case that the premises, trunks, and pipes, if rated to the poor as other lands in the parish, that is if the profits arising from the sale of gas are not included, are worth 200*l.* per annum; but if the profits are included then they are worth 800*l.* per annum; I am of opinion that the profits are not in this case rateable, if they were, a blacksmith's forge might be rated, not at what it would let for but at the sum which the blacksmith acquires by it. The distinction between the cases cited and the present is, that here the profits rated are those of a manufactory, which are obtained by applying the skill and industry of man to capital brought from a distance for that purpose. They are very different from the profits of canals or of mineral waters, which are natural products arising within the parish and rendering the land in which they are situate more valuable." And Bayley, J., said, "This is really a question of 'quantum;' in most of the cases cited the question was whether the property was rateable or not, and though the profits may have been referred to as fixing the 'quantum,' the Court never went into that question. Here the question of 'quantum' is presented to the Court, and a distinction is taken between the value of the land 'per se' and when it is used for the purposes of the trade. I am of opinion that the Company ought to be assessed, not at a sum equal to the annual profits of their trade, but at that sum which the buildings, trunks, and pipes would produce to them if let at an annual rent to persons willing to carry on the trade, or that rent which the Company would be forced to pay if the premises were not their own property." Holroyd, J., "I am of opinion that the rate ought to be amended, as it is stated that in this parish the profits of other manufactories are not rated; and here an attempt is made to rate the pipes and the gas; but that cannot be done. The proper criterion for the rate to be imposed upon these lands and buildings is the rent at which they could be let to a person willing to carry on the business," [which can be exclusively assured to them, or one of their own, and not the Company's.] Best, J., said, "This rate cannot be supported; it is an assessment upon the profits of trade; a rate even upon the net profits of any undertaking must be unjust and unequal in a place where similar profits and stock in trade of others are not generally rated, [as now under the Act of Vict.] "The rate is in this case clearly on the profits of a trade and manufacture. The profits of this Company are very different from the tolls of a canal. When a canal is once formed and filled with water, it produces to the proprietor, without anything further being done a permanent profit, in the shape of tolls; but the Gas Company could obtain no profit by merely laying down these pipes for the conveyance of gas through the streets, the gas must afterwards be manufactured by the Company at a great expense, and sent through those pipes before they will be entitled to any recompense. The Gas Company stand therefore in the same situation as any other manufacturer who produces by artificial means a saleable commodity. Now the profits of such a manufacture could not, with justice, be rated to the relief of the poor in a parish where other profits and other stock in trade are not rated. I think, therefore, that the Company ought to be assessed at that annual sum for which the premises and pipes would let to a person willing to carry on the trade, and therefore that the rate ought to be amended by inserting the sum of 200*l.* instead of 800*l.*"

In Rex *v.* Brighton Gas Company (5 B. & C.) a rate included gas pipes, &c. Bayley J., "If it were doubtful in this case whether the pipes constituted part of the freehold, the Company would at all events be liable to be rated for an occupation way; but I think that we may collect from the case that pipes are fixed in the soil, and if so then Rex *v.* Bath establishes that they are to be deemed occupiers of that land in which the pipes are fixed. Rex *v.* the Rochdale Water Company, and Rex *v.* Birmingham Gas Company establish the same principle. In the latter case, part of the apparatus used for the manufacture of gas and coke was affixed to the freehold, and part was not; and it was held that the Company were liable to be rated to the extent of their occupation of land, and that the branches and pipes were to be considered part and parcel of the land. In many Acts of Parliament authorising the making of a canal, it is provided that the Company shall not be rated at a higher rate than the adjoining land; but if there be no such provision, then they must be rated in respect of the value which the land has acquired from its having been used for the purposes of the canal. There is no such provision in this case, and as the pipes are laid down so as to become part and parcel of the land for the time they remain, they thereby improve the value of the land in the same manner as buildings erected upon the land, and the whole must be rated accordingly." Holroyd, J., "I am of opinion that the Gas Company are liable to be rated. In one case, it was held, that a weighing machine affixed to a building was liable to be rated, on the ground that the land and building constituted one entire thing and that the house was much more valuable from the machine being appurtenant thereto. I think, therefore, that so long as the Company used the land for the purpose of their pipes, they are rateable, for they have the exclusive occupation of that part of the land in which their pipes lie, and that they are rateable for the entire profits of that land, part of them arising from the gas pipes placed in the land." Littledale, J., "The rate must be upon the land. Here the pipes being fixed to the land, the land and pipes are to be considered as one entire thing. The only difficulty in the case is whether the Company are to be considered as occupiers of land."

Now take the cases of locks and tolls upon Canals, &c., and of Water Companies.

Rex *v.* Macdonald (12 East.) was a rate on occupiers for locks, dues, &c. Lord Ellenborough said, "the Court have only said that tolls are not rateable per se, but only when connected and rated conjunctively with real and substantial property situated in the parish, which, as yielding profit there by means of the tolls, is the proper subject of rating within the Act of Elizabeth; now here the lock itself is rated, which is something real and substantial, locally situate in the township, and producing profit, and the addition of the dues or rates is merely giving other names for the same thing."

In Rex *v.* Bell (5 M. & S.) a lessee was rated for corn tolls as an occupier. Ellenborough, C. J., said, "I cannot say upon this statement that the appellant is an occupier of land; there is nothing to give this

toll a corporeal quality." Bayley, J., "Bell is assessed in the rate for 'corn tolls,' which it is plain from the statement of the case were mere market tolls, and not incident to the soil."

In Rex *v.* Sculcoates (12 East.) Ellenborough said, "the Hull Dock Company were in receipt of tolls for the benefit of the shareholders in respect of the use of the docks. I know of no instance where a Canal Company has been held rateable for the mere space occupied by the canal in a particular parish, if no tolls were received or became due there; and I cannot distinguish between land converted into a drainage and into a canal. We have no doubt upon the case, and are clearly of opinion that the Commissioners having no beneficial occupation of the property in this parish, either for themselves or others, are not liable to be rated for it. If we were to hold otherwise, it would be opening a question of beneficial occupation in every case where a canal or turnpike road passes through the parish, though the tolls were not due there, which has never been considered as liable to be rated in such parishes, but only where the benefit accrues."

In Rex *v.* New River Company (1 Maul. & S.) Lord Ellenborough said, "This is a rate imposed on land, including a spring of water, as being of the aggregate value of 300*l.* The case admits that the land without the spring would be worth 5*l.*, but admits that if the advantage which the Company derive from the use of the spring may by law be included in the rate upon the land, the land and spring together are of the annual value at which they are rated. Here, then, is land and water enclosed in a basin upon the land, which falls within the legal description of land, and although a considerable portion of the profits of such water is derived from pipes through which it is distributed to other places, yet it is found that the water has a certain ascertained value at the fountain head. It is admitted that the spring and the land in which it rises are the freehold of the Company, and in their occupation, and upon that subject there cannot be a reasonable doubt. I cannot distinguish this case from the common case of land on which corn grows. In such case the land is assessed according to its value, and that value is estimated according to that which it produces, so here the land produces a spring, and the value of it is to be computed according to the benefit which the spring produces to the Company. I say nothing as to the quantum of the rate, that being a question wholly in the discretion of the sessions. By that rate the Company are rated for land, which rate is imposed on them as occupiers of local corporeal property within the liberty. The case of tolls upon canals is perfectly distinguishable, because tolls exist as local visible property in the parish where they accrue, and before they can be rated all the cases have held that they must exist as toll, but this is a rate on land situate in the parish, &c. The question then is, what land do the Company occupy within the liberty? not what profits do they receive there, and what is its annual value?"

In King *v.* Lower Mitton (9 B. & C.)—Rate for basin, tolls, duties, &c.—On argument for this rate it was "admitted to be fully settled by recent decisions that the tolls of a canal are rateable as the profits of land (Rex *v.* Milton, 3 B. & A.); and the New River case shows that they may be taken into account. That case is precisely similar to the present in principle. There the water was conveyed to the other trenches in pipes under ground, here in trenches above ground; there it was sold to housekeepers for domestic purposes, here it is sold to bargemen for the navigation of their barges. Mayor of Bath, Rochdale Water-works, and Palmer's cases, fully establish the principle contended for."

In Rex *v.* Milton (3 B. & Ald.)—Rate on proprietor for river tonnage.—Best, J., said, "It is now clearly established that tolls 'per se' are not rateable. The only mode by which the tolls of a canal become rateable, is by rating the land itself, or that part of the land occupied by the canal, which is locally situate within the parish; the tolls then are the profits arising from that part of the land."

In Rex *v.* Palmer (1 B. & C.)—Rate on occupiers of land, navigation tolls, &c., in one parish for the entire tolls earned in all—Abbott, J., said, "the proprietors of a navigation are therefore rateable only as the occupiers of the canal, or land covered with water, for their tolls, as profits arising out of that land so used. They are rateable, therefore, in every parish through which the canal passes, in respect of the land there, and so used for the canal."

In Rex *v.* Oxford Canal Navigation (1 B. & Cr.), rate for dues, &c., the appellants derived no profit except from the tonnage, and were rated upon the full amount of the tolls; and Abbott, J., said, "it is clearly established by Rex *v.* Milton that the proprietors are rateable as the occupiers of the canal, or land covered with water, for the mileage duty as profits arising out of that land so used, and in every parish through which the canal passes, in respect of the land there situate, and so used for the canal; but as to coals passing into the Grand Junction Canal, instead of a toll per mile, there is to be paid a fixed sum, or compensation duty, without regard to distance, but still that sum or duty is earned in consequence of the goods passing along the Oxford Canal." Bayley, J., said, "The compensation duty stands upon the same footing as the mileage duty, and each is liable to be rated. Now the mileage duty is rateable, because it is the profit accruing from land covered with water, and the towing path, for each mile over which the goods are conveyed, and the compensation duty is the profit arising from the land covered with water and the towing path through the whole line of the canal; and the Company are rateable for the proportions earned by them in each parish through which the canal passes."

In Rex *v.* Bridgwater Canal (9 B. & C.) the Company were rated as occupiers of land for profits. The objection made to the rate was, that the trustees were rated to the full amount of their profits, and other parties in proportion to the rent which they pay. Bayley, J. said, "We have no doubt that the trustees must be rated as occupiers of land, and that the same principle of rating must be adopted whether the party be owner and occupier, or occupier only. If land be occupied by a person as a farmer, the value of the occupation is the rent paid by him for it. That however is not supposed to be the value of the land, or of its produce, minus the expense of producing it, but the value after deducting the expenses of cultivation and of the farmer's subsistence. I lay out of consideration the fact of the trustees being carriers, because their occupation only is to be considered. The profits of carrying goods are the profits of their trade. The tonnage is the profit of the land occupied by them. The other sums received by them constitute the profits of their trade. The principle of our decision in this case is, that the

same rule is to be applied to all occupiers, and that the rent or sum at which the land will let is the criterion of the value of the occupation."

In King *v.* Chelsea Water Works Company (5 B. & Ad.) a rate for land, reservoirs, pipes, &c., the liability of Water Companies was much discussed. The Company had by their pipes "the exclusive use and possession (said Lord Denman) of a part of the soil in their own right," confirming Lord Ellenborough's decision in Rex *v.* Bath, (14, East.) that "he could not distinguish between the case of water collected in a reservoir or in pipes, each being attached to the soil." And the Court approved of the distinctions between mere privileges, easements, and way-leaves, were nothing corporeal passed and no exclusive occupation, and so not liable to rate, (as in Thomas's Mersey Navigation, Ayr Navigation, Jolliffe's and Bell's cases.) and other cases of a corporeal hereditament being liable (as in Bath, Rochdale Water Works Company (1 M. & S.) Birmingham and Brighton Gas cases.)

In King *v.* Mersey Navigation Company (9 B. & C.) Parke, J., said "No person can be an occupier unless he has the exclusive right to enjoy some portion of the soil. The Companies who have gas pipes have the exclusive right to enjoy a portion of the soil, they have the exclusive right of occupying by means of these pipes that portion of the soil in which the main is"—and noticing a distinction between Canal Companies and River Navigation Companies, held, the latter were "not liable to be rated for the bed of the river, having only an easement in it." And the Aire and Calder and Thomas's Cases (9 B. & C.) were to same effect.

The principles have been further illustrated in cases as to Lighthouses.

In Rex *v.* Coke (5 B. & C.) it was held that tolls of a lighthouse were not liable. Bayley, J., said, "The rate is upon the lighthouse with the duties or contribution-money in respect of ships, &c., passing by. To make the defendant rateable to the full extent of 2,000*l.* a year, it must be shown that he comes within the words of the statute, 43rd Elizabeth, and is the occupier of a house or land of that annual value. Where there has been one uniform course of proceeding, as to property of this description, for a very considerable period of time, we ought not to introduce any alteration, unless it be founded upon sound legal principles. In Rex *v.* Macdonald, the rate was upon the lock as occupiers, in respect of the use of the land, for the lock dues were payable in respect of the use of the lock, which itself formed part and parcel of the land. In the Oxford Canal Company, the Company were rated as the occupiers of the towing-path land specifically. The proprietors were occupiers of the land, and it was in respect of that occupation, and that only, that they were chargeable in respect of the use of the land in that parish. Rex *v.* Bradford is very different from the present case, there the defendant was assessed as the occupier of a canteen. It was held that the canteen was rateable for the entire value of the house and privilege, that being a profit appurtenant to the tenement arising from its local situation, and Bradford being the occupier of a tenement of that value. In the New River Company, there could be no doubt that the land in Amwell yielded, at the place where the water rose, a profit equal to the value of the water; it was part of the produce of the land of that parish, it still constituted part of the land in the parish, and was rateable there in the same manner as land producing vegetables is rateable in the place where they are grown, and not where they are sold. The proprietor of the lighthouse in this case is at liberty either in that house or any other which he may think fit to erect or to rent, to burn lamps, &c. If it were imperative on the grantee to burn his lights within a particular lighthouse, still if the privilege is not given to him by reason of his being the occupier of that house, it would be appurtenant to, but distinct from, the house where it was to be exercised, and the duties payable to him in respect of the light would be profits arising from the exercise of that privilege, and not from the house or land where it happens to be exercised. The grantee would in that case have an exclusive privilege of carrying on in that particular house (if I may so express myself) a particular description of trade; but there would be no necessary connection between the freehold interest in that house and the light. The apparatus may or may not be attached to the freehold, and in that case the tolls payable by the ships would not constitute any part of the profits of the land, and would not therefore be rateable, and those profits are not rateable as constituting part of the value of that house or land. And if it be once ascertained that the tolls and duties, qua tolls and duties, are not rateable, then, although the business must be carried on in a house, or even in this specific house, a distinction must be taken between the value of the house in which that particular trade (for I consider it a species of trade) is carried on, and the profit arising from the trade itself. Those lights are not of *necessity* attached to the freehold, and if they are not *attached* to the *freehold* they would be personal property." Littledale, J., "It is admitted that the tolls 'per se' are not rateable, but in some cases where they arise from and are so far connected with a house or land that the land or house which gives occasion to the toll is made more valuable in itself, that increased value depending upon and being regulated by the profits produced by the toll is the subject of the rate. I think the light is not connected with the land, and that the profits arising from it are not part of the profits of the land or house. The light is not the 'produce of' but is 'collateral' to the land. The light is not any part of the freehold; it is an accidental circumstance that it is placed on the freehold, it might be placed on a moveable frame, so as to be easily displaced, or it might be suspended at the end of a pole. In the case of a canal the owner of the goods makes use of the canal, which is rateable as land, the party paying the tolls has actually the use of the property itself which is the subject of the rate. So in the case of a bridge, the thing which produces the tolls is used. So as to the tolls of a market, the tolls arise by persons bringing their goods into the market, and the profit arises within the district. So in the case of a soke mill, a party takes his own corn to be ground at the place, and he has within the parish the use of the thing which is the subject of the rate. To make tolls rateable there must not only be a profit produced within the parish, but it must also arise from the use of the thing, and in respect of it. Here the ships have not that sort of use but they have merely a transient view of the light as they pass. They do not come within a lighthouse as they do within a dock, in which case they have the actual use and occupation of the dock. This is distinguishable from all the other cases where the tolls themselves have arisen in respect not only of what was produced

in the parish, but from the actual use of 'the thing' which was the subject of the rate."

There are some cases which illustrate still further the exclusion of profits in arriving at the value of the realty, in a rate on occupiers:—

In Rex *v.* Collinson (8 East) Le Blanc, J., asked, "Whether the proprietors of stage coaches were liable to be rated in every parish where they stopped and changed horses in the course of their journey?"

In Rex *v.* Ringwood (Cowper) a rate was quashed by Sessions because an inhabitant for stock in trade of a brewery was not rated: it did not appear that personalty was rated in the parish. Lord Mansfield said, "In general, I believe, neither here nor in any other part of the kingdom, is personal property taxed to the poor. The Justices at Sessions should have amended the rate, if they thought this property rateable; and then on attempting to do it they would have discovered the wisdom of conforming to the practice, which they expressly state in the case, of not rating it. If they had tried to have amended it, how would they have rated this stock? Are the hops, and the malt, and the boiler, to be rated at so much for each? Or is the trader to be rated for the gross sum which his whole stock would sell for? If the Justices had considered, they would have found out the sense of not rating it at all; especially when it appears that mankind has, as it were, with one universal consent, refrained from rating it; the difficulties attending it are too great, and so the Justices have found them. As to the authorities which have been cited, they are very loose indeed; and even if they were less so, one would not pay them much deference, especially as they differ; and the rules they lay down have not been carried into execution for upwards of 100 years. Shall the tools of a carpenter be called his stock in trade, and as such be rated? A tailor has no stock in trade; a butcher has none; a shoemaker has a great deal. Shall the tailor be untaxed and the shoemaker taxed? Under the Land Tax Act in London, to avoid inconveniences, they tax the house in which a person lives at a certain sum, by guess; and to avoid discovering a man's stock they tax it at random, insomuch that I have known a house occupied by a physician taxed the same as when a merchant had it."

In Rex *v.* Ellis (1 Ma. & S.), a rate on a "fishery" was held good, "because it appeared to them that the grant of the fishery was not to be taken as a grant of a mere right of fishing or incorporeal hereditament; the terms of the grant, coupled with the constant usage of landing nets on the shore, 'fixing' them to the bed of the river, &c., seeming to imply a grant of such a fishery as conveyed some kind of 'interest in the soil,' for which interest the appellants were properly rateable."

Rex *v.* North Curry (4 B. & C.) is another illustration. There was a rate on an "occupier" for his house; also a rate for stock in trade; and it appeared that he carried on business there by a foreman, &c., who lived there, but the appellant inhabited in another parish. The rate on the stock was held bad, as he was not a resident inhabitant. No attempt was made to join the occupation and the profits under one class of "beneficial occupation."

In Rex *v.* Eyre (12 East), Lord Ellenborough said, "The appellant was rated merely as lessee of the tolls, and for nothing else which might have given them a corporeal quality."

In Rex *v.* Watson (5 East), Lord Ellenborough put the question whether "it was an incorporeal hereditament;" and

In Rex *v.* London (4 T. R.) Lord Kenyon said, "It is not a rate on tolls, but the close of land called 'the barge way and the toll gate.' The subject matter of the rate is real property: it is land, tenement, or hereditament."

In Rex *v.* Welbank (4 M. & S.) the Court refused to join "rent" with land as enhancing the value by the annexation of the profit, and held that "you cannot include something not liable per se with something that is liable to rate."

In the Liverpool News Exchange (1 Ad. & Ell. 1831), the Court (referring to several cases) said, "These cases establish the principle that the advantages attendant upon a building, either in respect of the situation or the mode of its occupation, are to be taken into the account in estimating its rateable annual value, whenever those advantages would enable the owner of the building to let it at a higher rent than it would otherwise fetch, but not the profits of a trade carried on in the building but not enhancing its rent."

In Queen *v.* Guest (7 Ad. & Ell. 1838) the machinery was attached to the land, and it was said, "Real property ought to be rated according to its actual value as combined with the machinery attached to it."

In the Monmouthshire Canal (3 Ad. & Ell.) Lord Denman said, "As to the cases cited where they (the Judges) say that the improved value is not to be taken into the estimate, they do not refer to the improvement in the value of the land as land, but to the improvement arising from its being used for the particular undertaking, and they decide against such improvement being liable to rate." Patteson, J., said, "In almost all the cases cited, the question was, whether in rating the premises the additional value arising from the tolls was to be taken into consideration."

All the cases underwent discussion and confirmation in the cases of Chelsea Water Works (5 B. & Ad.), Burn *v.* Wills (11 Ad. & Ell.), Queen *v.* Sawle (ore, 11 Ad. & Ell.), Queen *v.* Capel (tithes, 12 Ad. & Ell.)

Nor are these confirmations weakened by the remarks of some of the Judges (Mansfield in Rowles *v.* Gells) that "the poor-rate is not a tax on the land but a personal charge by reason of the annual profits which the lessee of the Crown receives out of the land, and which is not charged at all before to the poor," [as personalty in rate on inhabitant]. That (Holroyd in Calder Canal) "a rate on land is in effect a rate on the profits of the land; for where there are no profits there is no beneficial occupation."

Nor the remarks in the Birmingham Gas (1837, 6 Ad. & Ell.), by Lord Denman, "such machinery [fixed] constitutes a mode of occupying" [sole, and profit incidental,] "that really is clear from the beginning to the end of the cases."

In Bristol Poor *v.* Waite (5 Ad. & Ell. 1836), Lord Denman said, "The phrase 'beneficial occupation' is in frequent use, and it seems tolerably well to convey rather a popular notion than to give a rule for deciding the question of rateability in any case; if it means profitable, or anything like it, the expression is obviously fallacious. It would be nearer the truth to say that the presumptive liability arising from occupation is to be explained away in each case."

CHAPTER III.

These cases admit of considerable observation, but it is sufficient for my purpose to have extracted so much, and next to shew that the principle as to realty is carried out and further illustrated by the mode in which assessments on occupiers were made, and the deductions allowed to them, as well before as since the Parochial Assessment Act of 1836, which deductions were the expenses of cultivation, preservation, &c., and an allowance for tenants' profits, whilst in rating personalty allowances were also made for debts, interest on capital, &c., as will be seen when I consider the deductions made to occupiers and those to railways.

I anticipate it will be said that nobody disputes the principles laid down in those authorities, and that there is no intention of subjecting the profits of trade to rate in the rating of a railway. That the mode of assessment adopted arrives at the same result as these old authorities justify, and is but a new mode of calculation, of ascertaining the rateable value of the realty since the Parochial Assessment Act, and that the deductions made in that new mode do exhaust all the profits of the trade and personalty, and leave the value of the realty (of the occupation to a tenant), which is thereby ascertained; that there is no other course open for that purpose.

It may be convenient now to consider the two decisions on railway liability, [the facts, arguments, or judgments, in which the House of Commons' late Committee with difficulty, and then only imperfectly, ascertained, and could not understand, whilst it assumed the correctness of those decisions,] in which Lord Denman established the new principle and mode of computation as to occupiers by associating the profits of the Company's carrying trade (which until the Act of Victoria came under the inhabitants' non-liability for personalty) with the occupation of the realty. I shall advert but briefly to them, and without repeating the arguments so strongly put in the *Railway Times* of November 4, 18, December 30, and May 25 last.

The first, the South-Western (Mitcheldever) case, was decided in 1842 (1 Ad. and Ell. N. C.).

"The question raised being," says Lord Denman, "whether the Company, being in the occupation of its own railway, and, in fact, in the exclusive occupation of it, and for the purposes of a large carrying trade, the rateable value of such occupation is to be taken only on the amount of certain tolls which have been fixed under the Railway Act as payable generally by all carriers using the railway, or the general amount of the profits which the Company, in fact, receive from the occupation so devoted to trade, making the proper deductions;" and the Court adopted the latter mode.

But in that case it strangely appears that the Company admitted themselves to be "exclusive occupiers and users" of the railway, "exclusively carrying on the trade, and the only persons who used, or could practically use it and carry on the trade" (so that the Court inferred that it was attached and incidental to the bare occupation). That a yearly tenant would take the Company's general receipts for traffic, and would give a rent proportioned thereon, and for the part of the line in question. No specific distinction was made as to taking the line without the Company's trade. A mode of measuring the receipts and the rate by the whole length of the line was admitted, which removed another serious difficulty, and no separation was made of the receipts on each parish; yet, when the Court decided that the general receipts and profits were liable, they said, that "that case must be determined by its own state of facts, and that when a different state of facts arose, the rate must be altered to meet it." That different state of facts (being the use of the railway by others, the receipt of tolls from them, and the same Company using other lines) did arise in the Grand Junction case, and there the Court held (see verbatim judgment reported by the writer, Railway Times, 8th June, 1844) beneficial occupation sufficient, and retained the higher rate; and it was considered by the Court, that by taking the gross receipts, and then making deductions (besides the statutable allowances) for tenants' profits, keeping up stock, &c. &c., you would exhaust the profits of the trade or personalty, and arrive at the "estimated net rent which a yearly tenant would give," &c., for the "hereditament" (for the Company's interest and advantages). That calculation is entirely based on profits of trade, and must assume that the Company's trade is *attached* to the *realty*, and that nothing is to be deducted for custom, trade, &c., as in the old cases on personalty.

Lord Denman assimilated the South-Western to the cases of the Steel-yard, the Billiard table, and the Canteen, and distinguished it from the Bridgwater case; but by reference to those cases it will be seen how strongly the property savored of the realty, and that not only the *sole user* of, but the *sole right* to use, the machines, &c., were attached to the house and inseparable from it, and would necessarily be enjoyed with it by the occupier; the canteen was attached by statute, and it was incident to the occupation; so is toll, and that is for the actual and immediate use of the land, so was the news room.

I shall now quote a few sentences, shewing that the limitation to realty has been overlooked by Lord Denman in his judgment in the Grand Junction case. He said "it is the established principle of law that the rate is to be on the occupier, in respect of the "beneficial occupation," on how much net profit an occupier may be expected to realise;" [it is limited to the yearly worth of the realty, as between landlord and tenant.] "Parish officers are to look to the actual state and value of the land in occupation." [This again is too wide and indefinite.] "The Grand Junction case has different facts, but those differences did not vary the principle; each of the two Companies must be rated in respect of the occupation;—what is the value of the occupation" [of the realty only] "from whatever source derived?" "But if the ability to carry on the [a] trade added to the value [rent] of

the land, that value cannot be excluded, but it is referable to trade;" [not simple ability of personalty, but it must be profit of realty and its annexations; the ability to carry on the whole trade of the Company must be attached to the tenancy; it is the difference between *a* trade and *the* trade.] "It is the actual occupation" [of the realty only]—"the beneficial occupation, not the demise gives the rate"—[but you must either abide by the tenancy and estimated rent, prescribed by the statute or not; if you do, then you should suppose all the facts in a tenancy.] "It is not to be imposed in respect of the profits of trade, but it is to be imposed in respect of the value of the occupation," [only in respect of the profits of the realty, so as to exclude the trade which the phrase "value of occupation" includes.] "Whatever causes increase the rent also increase the rate," (only if attached to the soil or tenancy.) Take the case of the owner and occupier of a coach yard, or a profitless business, how would you rate?

Lord Denman assumes "the deductions exhaust whatever is referable to trade"—(this is a little inconsistent with preceding passages, and shews that trade profits are included, for the purpose of exhaustion; then do they exhaust?) "If they do, then the rate is fair."—"The case admits a tenant would give the higher sum in question for the railway and the corporeal hereditaments. Nothing could be paid for good-will, as none is sold, and the Company is not bound to surrender it. They could carry on the business." (It is custom; and is that attached to the railway so as to form part of the realty, a necessary and sole annexation to it and the tenancy?) "The tenancy is the only mode of ascertaining the existing value of the occupation to the existing occupier. There is no tenancy, and no good-will is in fact made;" (but the calculation proceeds on the assumption of a tenancy, with the Company's trade.) "The landlord underletting a room to a lodger having a profitable trade, would not pay larger poor-rates unless he took increased rent;" (would he take more or less rent on account of a larger or smaller profit by his tenant or his trade and personalty?)

The Parochial Assessment Act points to the "net rental" a tenant would give, and (like all the cases) to the realty and its direct produce only, by the words "hereditaments" and "rent," and does not say "the sum or profits derived from the use of land and trade thereon;" therefore, to bring the case within the statutes, it is necessary to *suppose* that the property is let. Consider what you can let, as well as what let for, without the addition of personalty, of custom, the rate being limited to realty.

You cannot let or demise the right of using it, but only the tolls, as trade on the railway can be exercised by all the world; a tenant would take under a demise, not the exclusive use of the railway, nor the Company's trade, as a necessary annexation, but only the perception of the tolls thereon, and the rent would be something less than the tolls, as allowances must be made (besides the statutable deductions) for tenants' profits, &c.; and then the Companies submit, that you have the net annual value (rent) on which the rate ought to be imposed. It is answered, that practically it never can or will be let—that the public have no right to the stations, &c.—that the Company could not let all their powers and advantages—that their trade is, in effect, attached to the occupation, and cannot be severed from the railway, and the ownership and occupier falling into the same hands, if only for a portion of the entire concern, is sufficient to warrant the increased standard of rating—"that the principle is, that it is the value of the land, however that value may be increased, the value in the hands of the landlord, the sum a tenant would pay for the use of the land and its advantages; the question is the application of that principle."—(Kelly). But the stations must afford access to the public to the railway, and you can erect other stations, the same as stage coach proprietors used to have on the highways. Demise the railway without the trade, the banking-house without the customers, a stage-coach yard without the trade, the tenant bringing his own, or the landlord carrying on his, and paying toll to the tenant, what would a tenant give? Denman says, "the Company would still preserve their trade." If so, what would a tenant give?

The sum or rent a tenant would give would be determined, increased, or diminished by whether he took or could have the Company's connection or not as a right, and whether he could exclude a competing conveyance or not? Does not all this shew, that you are paying in the supposed rent in question for something more than the mere rental or profit of the land? for trade and connection or custom in addition? Could you let it at the higher assessment, without the connection or trade? Then can the traffic receipts be considered as realty or appurtenant to it? Do you not obtain not merely the value of the realty as such, but the adjunct of the benefit of the Company's profits of trade—of their peculiar and personal connection and custom which enables them to earn so much more than any ordinary carrier on the same line would gain when he came into a simple occupation?

A tenant would only pay rent on the toll calculation, unless he had the trade, and then he would pay a larger sum, either in gross or yearly; therefore the computation assumes, that the Company's trade and connections are so attached to the railway that any other occupier would necessarily and exclusively take that trade with the hire or use of "the railway." The sum based on the gross receipts and admitted as rent is not *rent*, but is a sum given for the land *and* the Company's trade. The true question is, what is the rent (a word exclusively savoring of realty) carrying on any business, and not to carry on *the* whole business of the Company treated as an annexation. As to assimilating the profits of the railway to the profits of the canteen, the billiard table, steel-yard, &c., and to the higher "rent" which those promises let at, with those inseparable annexations exclusively enjoyed

by the occupier, the rent there is for the business necessarily and exclusively attached to the house, without reference to the occupier's own customers in addition; but you treat the trade of the railway which earns the profit as exclusively passing to a tenant, or as a like annexation to the realty. That is the fallacy—the general receipts of a Railway Company are not the direct produce of the land, nor do they arise out of the hereditament, they are the produce of personal property running on a public road, and increased by the application of connection and trade, the same as the old stage-coaches; the general receipts are not for the direct and mere use of the land, but for the carriage of personalty in personalty, and are two degrees removed from the realty.

Even the junction of locomotive and other personal property with the land does not (as in the case of agricultural implements) produce a realty profit, a third contributor has to be introduced, namely, passengers or goods, for carriage, like freight in a ship or on a canal; this assessment, therefore, is a rate not on the natural production of the soil, nor to work out the produce of the soil, as in the case of arable land, but on the artificial production (if it be produce at all) with the adjunct of independent personal property, on locomotion, on freight; the earnings of stage coaches running on the proprietor's own yard, were never included under colour of being an occupation of land. Take a house tenanted by a bankers, their profits are derived, not from the soil, or from being attached, but from their own connections; the "estimated rental" of their house is not to be computed by what another tenant would give carrying on the same business and obtaining the same profit (less an allowance for tenant's profits), but as the ordinary rental as a house, or as a banking house, without reference to the amount of profit made by a tenant, though it might let at a higher sum for one trade than for another; the next tenant might not have the same amount of business, yet you rate the present tenant for the value of the connections purchased by him (as is the case with railways) of other and competing traders, and not necessarily attached to the soil or incident to the occupation; if the Companies published no accounts, where would be the difference between them and a private trader? The occupation solely affects the trading profits, the letting value is a subject of independent definition. If occupancy renders profits liable to rate, then the assessment is improperly depreciated by the property being let, if rental be the true principle, then it should be assumed without reference to the quality of the tenant. If the whole benefit of the occupancy is to be the guide, does mere toll or mere rental correctly give it in any case?—You say you arrive at the rent by exhaustion of the trade profits; that equally supposes the trade of the Company is attached to "the railway," and would pass to a tenant; it is a rate on what business you may do, net on what you have done, as in tolls on canals. The Company have obtained a trade or private custom, and they could (as Denman said) "carry it on, they need not surrender it." The additional deductions for "tenants' profits" does not exhaust their trade profits, because a lessee would have to pay for their trade or goodwill, which you assume would be included in the "rental."

But it is said that there was no other mode of rating railways; that if this mode be incorrect none other could be adopted, and railways would escape altogether. If that were *un fait accompli* I do not think it would be very unjust or over liberal, seeing that railways are acknowledged by statutes to be "great public benefits," and (in the words of the Judges in the Canal cases) "might well be exempted;" but for the event of there being no toll *de facto*, the Legislature provided expressly its equivalent for the purpose of rating, and Lord Denman says "the framers of the railway statute no doubt intended to limit the rate to the tolls alone, by the clause to keep an estimated toll;" but that is not the only meaning; the Legislature also intended to say, that as tolls only were liable to rate, as appertaining to the realty, and as no tolls might, by reason of the Company's doing all the trade, be received on the railway, therefore they should pay on an estimated toll, and not escape altogether from rate by not taking toll—thus also keeping in view the distinction between "realty with occupation," and "personalty on inhabitants," and the sole liability of the former for rate in respect of "occupation."

It has provided for the measure of the realty by the supposed tolls; but Lord Denman says that "as no words of restriction of the common law liability are used we cannot excuse from rate," the difference between the rent for a lease of "the railway," (as shewn by the tolls,) and the admitted [rent or] sum for a lease of the realty, joined with the Company's trade, connections, &c. not necessarily attached to the soil, (which is shewn by the gross receipts, less the statutable and other deductions referable to trade or personalty.) Suppose the Company simply let the railway, and separately sold or let their customers? that tests the annexation; but many other illustrations of the argument might be adduced, shewing that toll and not gross receipts give the proper liability for rating; that the trade profits are not exhausted in this new mode of calculation, which, whilst it includes personalty on the one hand, does not give the benefit of personalty deductions on the other, as I shall proceed to shew.

CHAPTER IV.

COMPUTATIONS AND DEDUCTIONS.

The computations and deductions for the purpose of ascertaining the amount of rateability, were always governed by either the actual rack-rent where the property was in the hands of a lessee, or an "estimated rent" where it was in the owner's occupation. From the first there was only to be deducted the statutable allowances, and the remainder gave the

assessable value; but in the second case certain deductions had to be first made, in order to arrive at the supposed rent, and from that the statutable deductions had next to be made; and this distinction it is important to bear in mind. The principles of the computations will be gleaned from the following cases:—

Rex *v.* Joddrell (1 B and Ad. 1831), where the liability of farmers (as well as in R. *v.* Brown 8, East) was much discussed, Bayley, J., said, "Here the farmers were rated at the bona fide amount of the rack-rent at which the farms were letting, or which they were worth to let, the tenants paying the compensation for tithe, and the Rector contended that they ought to be rated in addition upon that compensation and upon their share of profit beyond the rent. *The great point* to be aimed at in every rate *is equality.* In the case of land, the rateable value is the amount of the annual average profit, or value of the land, after every outgoing is paid, and every proper allowance made, not however including the interest of capital as the sessions have done, for that is a part of the profit;" and Parke, J., "Of the whole of the annual profits or value of land, a part belongs to the landlord in the shape of rent, and part to the tenant, and whenever a rate is according to the rack-rent (the usual and most convenient mode), it is in effect a rate on a part of the profit only."

Rex. *v.* Chaplin (1 B. and Ad., 1831) was a rate as occupiers of land for a towing path in its improved value, Lord Tenterden said, "in the cases of this kind, which have hitherto occured, the canal has been in the hands of the original proprietors, and the object has been to ascertain what it would be worth to let, which has sometimes been difficult, but here the canal is actually let and no occasion to speculate on the point." Taunton, J., said, "the tolls of a canal like the profits of land are to be valued at what they would let for, communibus annis. In ascertaining what a property is worth to let, the best criterion in general is what it actually does let for;" and Patteson, J., said, "where the land is not actually let it becomes necessary to calculate what a tenant would pay for it, where it is let the actual rent is the criterion, unless it can be clearly shown that that is too small."

In King *v.* Adams (4 B. and Ad., 1832) the defendant was owner and occupier, Parke, J., said, "now it is quite clear the rate ought not to be made according to the profit derived by the occupier himself, for if that were so the rate must vary according to the nature of the occupier's interest. An occupier who is tenant at will at rack rent, and therefore receives a less share of the profits of the land than one who is tenant for years at a small rent, and still less than one who is a tenant in fee simple and pays none at all would be rateable at a less sum, a proposition which was never yet contended for. Again, it is quite clear that though the occupier is the person who nominally pays the tax, it is in reality paid by the beneficial owner, and is a charge upon the land. In order to make an equal rate, the nature of the occupier's interest must be disregarded and the rate imposed according to some value of the subject of occupation; usage and convenience have established this value to be not that of the estate or property itself, but that of the profit which is or might be made from the estate or property; the rule has been to assess according to the annual profit of the land, or where the produce is not matured in one year then upon an average of years, from which profit deductions are allowed for all the expenses necessary to its production. Further, if the subject of occupation be of a perishable nature or require annual expense to secure its existence, an allowance ought to be made on this account, for the total annual profit is not the net annual profit; a part must be set aside for the restoration and maintenance of the subject of occupation. It is on this principle that buildings have been permitted to be rated at less in proportion than arable and other land. "The cases, more especially those of a more recent date, in which the principle of rating has been more fully discussed and considered, will be found to have established this rule of rating, which is, in other words, that all lands are to be assessed in proportion to the net rent which a tenant at rack-rent would pay, he discharging all rates, charges, and outgoings."

In Rex *v.* Cambridge Gas. (8 Ad. & Ell. 1838.)—The Company claimed to deduct an annual sum for tenants' profit, which was in effect a claim to be assessed on the rack-rent only—as to which Lord Denman says,—"This claim it is presumed has arisen from the fact stated, that profits in trade are not assessed in any parish in Cambridge. Nor are they in this instance. The 'rent which it is found' a tenant would give by the year, after certain deductions, is not the amount of profits: those necessarily are something independent of and beyond the 'rent,' upon which the person taking the apparatus must calculate or nobody would become tenant at all; they are therefore perfectly distinct. The rent which a tenant would give for lands after certain deductions (which is the criterion for the due assessment of it) is one outgoing, the expense of cultivating another, and all beyond whatever that may be obviously comes under the denomination of profits. Since, therefore, the 'profits' are in their nature wholly distinct from the 'rent,' and are not only not a deduction from it, but the reverse, something beyond and in addition to it, we cannot perceive that this claim rests upon any just principle, and are of opinion that it has been properly disallowed." This shews that the lands in the parish were not assessed at rack rent only; otherwise the Court would, upon their own reasoning, have allowed the tenant's profits to the Company, and it shews further that the tenant's profits do not stand upon the same footing as the profits of trade. There the case found that the property "would let to a tenant at a yearly rent of 2,400*l.*," including 350*l.* for the repairs, which the Company also claimed to deduct.

In Queen *v.* Capel (12 A. and E., 1840) appeal by Vicar against a rate on tythe, after the Parochial Assessment Act, it was argued (against the rate) that independent of the Parochial Assessment Act, the rack rent which could be got for the land if a new tenant were to come in is the proper value on which a landholder is to be taxed as occupier. That is the principle of Rex *v.* Granville, Rex *v.* Attwood, (6 B. and C.) and Rex *v.* St. Nicholas. The remaining produce or profit is also a fit subject of rate where parties are rated merely as inhabitants; for then the means of all kinds are to be rated, including personalty. The only reasonable principle, therefore, upon which landholders can be assessed as occupiers is to take the competition or rack rent of the land for the time being. The other profits fall within the principle explained by Lord Tenterden in Rex *v.* the Birmingham Gas Company, they "are obtained by

applying the skill and industry of man to capital brought from a distance for that purpose, and are not rateable in a rate in respect of occupation of lands." This will be found the general result of the authorities; it does not follow that the rack rent does not represent the full net annual profits of occupation, though there are also profits which countervail the interest of capital, compensation for labour, and expenses. But these latter are not (within the statute of 43rd Eliz.) profits of occupation. The profit on tenant's capital and labour never can (as was shown) bear a fixed ratio to the rent. Lord Denman decided in favour of the rate; and, going fully into the subject, observed, "that if the landlord held the farm in his own hands, the annual value would consist of the amount of the rent for which it might be let, with the addition of the tenant's profits, he would have nothing to deduct but the ordinary outgoings and his bailiff's wages," &c.

Coming more to the detail of the deductions, in Rex *v.* St. Nicholas, Lord Mansfield said, "A liberal allowance ought to be made for wear and tear, labour, and attendance."

In Rex *v.* Oxford Canal, (10 B. & C., 1830) Bayley, J., said, "There can be no doubt the poor rate, the annual repairs, and the expense of collecting the tolls, must be allowed, the sum which remains after making such deductions constitutes the net profit." And Parke, J., added, "In strictness all the profits ought to be rated, but inasmuch as tenants profits in respect of other lands in the parish are not rated, the tenants profit in respect of land occupied by the Canal Company ought not to be rated." This was very shortly before the decision of Rex *v.* Joddrell, and before the personalty exemption Act of Victoria.

In Lower Mitten (9 B. & C.) Bayley, J., said, "The sessions must rate the Company according to the annual profit or value which the subject of occupation within the parish produces. This in general would be properly estimated at the rent which a tenant would give he paying the rates and repairs and the other annual expenses necessary for making the subject of occupation productive, and a further deduction from that rent where the subject is of a perishable nature towards renewing or reproducing it. This is the rule laid down in Bridgewater and Tomlinson."

In the Liverpool Exchange (1 Ad. & Ell.) the Company were held liable only for the profits, but not the value of the privileges of those proprietors who attend the room and receive yearly sums, and not in respect of their annual divisible profits derived from the room according to the sum for which it would let with the attendant revenue from proprietors.

In Rex *v.* Bridgewater Canal, the Company carried goods for freight, and were held liable only for toll thereon, and that in the same proportions as lands. The Court, instead of examining into the average proportion of the farmer's profits to the rent, sent the case to the Sessions to enquire what the canal would let for to a tenant who had to pay all expenses (not taking gross receipts or annual value.)

In King *v.* Attwood (6 B. & C., 1827) the lessee of a coal mine, and another case an owner, claimed deductions for planting the mine and setting it to work, but they were held not entitled to them, the outlay being assimilated to the expense of building a house or improving a farm, but a tenant's profit was to be allowed to the owner.

King *v.* Chaplin, (1 B. & Ad.) the only case of a demise to the appellants of tolls subject to pay interest on a mortgage debt borrowed to make the canal, deduction was claimed for that; 10 per cent. was allowed as reasonable profit to a tenant to occupy. Also the annual expense of repairs and taxes. Lord Tenterden said, "The interest is so much rent; they are lessees undertaking to pay the interest as so much rent. There is no ground for saying that the interest is not such a sum as may be properly considered the value of the navigation," and liable to rate. Taunton, J., "it is however in the nature of rent. Instead of the lessees paying it to the proprietors, and their handing it over to the mortgagee, the lessee pays it to the mortgagee at once." And a similar principle was laid down in the Blackfriars Bridge case, 1839, (9 Ad. & E.)

King *v.* Tombleson (9 B. & C.) was a question as to rating coal mines in the same proportion (two-thirds) as other occupiers, or allowing more deduction, Bayley, J., said, "The rate is to be made on the occupier according to the annual profit or value which the subject of occupation produces, and it makes no difference in the amount of the rate whether the occupier be tenant or owner, some portion of the rent ought to be set apart to form a fund for repairing." The session mean by the words "net rent," "only that part of the rent which goes into the pocket of the landlord, and which is the rent paid by the tenant after deducting taxes and collection. If the rate had been according to different proportions of the clear annual profit or value of the subject of occupation, it would have been otherwise, but annual rent is not annual profit or value. And as the case finds 10 per cent. is a reasonable deduction for tenants profits it must be made in order to equalise the rate."

In Rex *v.* Woking (4 Ad. & Ell.), the gross receipts were taken on the one hand, and the gross expenditure on the other, and apportioned to the parishes. The Company claimed deductions — 1st, 10 per cent. on the net profits (admitted to be a reasonable deduction) from the net income for tenants profits. 2nd. Compensation to landowners out of the profits (toll) like the tolls in Aire and Calder case. The cost of repair must be excluded (Kingswinford, 7 B. & C.), and according to Oxford Canal case, 10 per cent. admitted to be reasonable for tenants profits. Also allowed in Joddrell's case. The parish admitted the expense of repairs.

Denman, Lord, "The necessary expenses and repairs must of course be deducted. The compensations are payable out of the profits of the canal, and are in truth nothing more than rent charges, they do not affect the value of the occupation or the rent which a tenant would give, but only show amongst whom and in what manner the rent or profits are to be divided." His Lordship took the gross receipts deducted for repairs and expenses, excluding compensation, and from the balance "must be deducted 10 per cent. for tenants' profits, according to the rule laid down in the Bridgewater case."

The Parochial Assessment Act passed in 1836, enacted that the assessment should be upon the net annual value, or estimated rent, after certain deductions, and a question was raised whether that Act exempted personal property.

In the Queen *v.* Lumsdain (10 Ad. & Ell. 1839), a rate omitting stock in trade, was objected to. Lord Denman said, "it is not improbable that the legislature intended to alter the law upon the subject of

rating personal property, but I am clearly of opinion that the intention has not been carried into effect; the object of the Act does not appear to have been to introduce any new principle of rating, but to affirm that which has been already established by decisions of the Court."

The Act of 3rd and 4th Victoria, exempting inhabitants from liability for personalty, and leaving only "occupiers," did not pass till after the decision of these cases, and after the South-Western Railway case.

These cases amply establish that deductions or allowances from the gross rent, have always been admitted for cost of production, preservation of the property to produce the admitted gross rent, rates, taxes, insurance, and other outgoings specified in the statute, &c. That when there was no lessee a further deduction was made for tenants profits in order to arrive at the supposed rent.

In all the cases the sum on which the rate was imposed has been *admitted to be the estimated rent* which a tenant would give to take the property, and those tenants profits admitted to be a fair tenants profits, so that the question litigated has generally been one of liability only and not of quantum.

The figures in the South-Western case (as to which much ignorance was shown before the Railway Committee) were thus: the line was 77 miles in length, 4½ miles of which ran through Mitcheldever; the estimated tolls for which would have been 3,470*l.*; the total receipts (including that amount) 13,880*l.*; 1,293*l.* was the estimated rent a tenant of the tolls would give. The parish submitted that a lessee of the line with its advantages would give a rent of 70,000*l.* for the whole line, giving a proportion for this parish of 4,320*l.*

These figures are very ably discussed in the *Railway Times* of 8th June last. The deductions made by the parish were 69 per cent. upon the gross receipts; the Company claimed 63 per cent. upon the toll, and the difference of rate stood thus: if the parish were right, the rate was to be on 2,800*l.*; if the Company, then on 1,400*l.*; and the Court upheld the parish assessment.

This was in 1839, when parishes were endeavouring to uphold the toll computation, and were contented with it; but the decision led to the general increase of rating on the receipts. These figures afford some idea of the general and oppressive nature of the assessments on railways, and in the evidence (Railway Committee 475) it is stated that tolls amount to as much as one-third of the gross receipts, that the railway pays nearly half of the rates in Mitcheldever, that there are 10,000 to 12,000 acres in the parish, and that the line occupies 20 acres, and pays half of the whole rates!!

In the Grand Junction case (3 Ad. & Ell. Ns. 1844) the Company took the gross toll for a mile of the particular parish. They sought to deduct therefrom 20 per cent. for tenants' profits, subsistence, &c., 2½ for collection of tolls, 35⅔d. for maintenance of way, 4½ per cent. rates, tithes, &c., 2 per cent. renewing and reproducing, bringing down the net rateable value (on toll calculation) to 712*l.* 10s. per mile. But the Court rejected the toll principle and upheld the rate on the gross receipts, and the parish calculations and deductions, which stood thus:—Total gross receipts and profit, 440,000*l.*; deductions, 5 per cent. for interest on capital of 255,000*l.* invested in moveable carrying stock, &c.; 20 per cent. on same sum for tenants' profits and subsistence; 12½ per cent. on same for depreciation of stock. The total working expenses 198,000*l.* Also 30*l.* per mile for renewing or reproducing, and the rent or value of the stations separately assessed. These deductions amounted to 306,000*l.*, leaving 133,000*l.* as the net annual value of the whole railway, or 1,050*l.* per mile. There, too, the sessions found, and the case admitted that "a tenant would give that rent for the Company's hereditaments with the stations, and being assumed to have the Company's power of using the railway," &c.

The deduction of 20 per cent. for tenants' profits was not disputed by the parties; the Company sought an allowance for goodwill; but the Court rested on the rent found by the sessions, and denied that there was any goodwill.

The Liverpool and Manchester Railway (in *Railway Times*, Nov. 11, 1843) appealed to the sessions against a rate. The parish had taken the gross receipts and deducted working expenses, depreciation, rent of buildings, 20 per cent. upon the net profits, &c. The Company sought larger deductions, and 20 per cent. on gross receipts, but the sessions refused them.

The Brighton Company (*Railway Times*, April 13, 1844) appealed. The parish had allowed 5 per cent. on gross receipts for tenants' profits, 2 per cent. for depreciation, and the actual expenses, &c. The Company claimed to deduct rents of premises, larger depreciations, wear and tear, &c., 10 per cent. on cost of moveable stock for profit as carriers, besides 20 per cent. on the estimated rent the railway would let for for tenants' profits. Those deductions would have brought the rate from 800*l.* a mile to 376*l.*, from which was to be deducted the enormous sum of 5s. 8d. in the pound for other rates. But the sessions confirmed the parish computation—thus assuming that for 8,000*l.* a year a tenant would risk 145,000*l*, in carrying stock alone. I think it will be found that instead of 5 per cent. on gross receipts it is better to take 10 per cent. on tenants' capital.

The Great Western Railway and Tilehurst is an appeal now before the Court of Queen's Bench, and the following are the figures which involve a new mode of deduction. The railway is 2.$_{1}^{1}{}_{6}$ miles in the parish, and contains 30 acres. The parish take the gross receipts, and allowed 38½ per cent. of gross receipts for working expenses, and 20 per cent for interest on cost of or capital invested in plant, &c., (being 5 per cent. on it in its present condition, 10 per cent. profits on that capital and risk, and 5 per cent. depreciation of plant, different from the ordinary sum for repairs, for its restoration). This calculation made 1,200*l.* per mile.

The Company reduced it to 570*l.* assessable value

by their mode. They took the actual gross receipts for each mile of this parish at 3,700*l.* They deducted therefrom "allowance for losses by bad debts, lessees profits, &c., 20 per cent." being 740*l.* The next head of deduction was "expenses to obtain and carry on the trade," comprising 1st, "capital in engines, carriages, &c.;" 2nd, "stations, buildings, &c.;" 3rd, "engine house, tools, and machinery;" 4th, "other outlay, (excluding cost of land, permanent way, &c.)" consisting of "expenses incurred in forming the Company, raising the capital and expenses, obtaining the Act, &c." Those four items amounted to 1¾ millions (being the actual outlay before and since the Company was formed), and the Company deducts the "interest" thereon at 5 per cent., amounting to 86,950*l.* 5th, "wear and tear, and depreciation of the railway itself, supposed to last 50 years," giving "annual deduction of 22,400*l.* (at 2 per cent. on the cost 1¼ millions)." The next head of deduction was the "expenses in cash disbursements," comprising, 6th, "locomotive power, salaries, coaching expenses;" 7th, "income tax;" 8th, loss by rent of branch lines; 9th, additional parochial assessments outstanding or delayed in 1843, amounting together to 307,740*l.* These three total sums distributed over 175 miles, gave a further deduction of 2,383*l.* per mile, and reduced the assessment to 576*l.*

The parish contended against that computation, that a demise to a tenant is calculated on the principle of a rack rent, the test adopted by the Parochial Assessment Act, and (according to Reg. *v.* Capel) represents the fair annual profit of the occupation—that "permanent improvement falls into rack rent, and the question is, what would a tenant give beyond the outgoings? (according to 1 T. R., 6 and 9 B. and C.) That the rack rent is the consideration which it is worth while to give, (Capel) it does not include tenant's profits (Woking and Joddrell's cases) which are independent of rent, (Cambridge) and beyond and in addition, and are to be calculated by per centage on the capital required to carry on the traffic. I suppose they will say, that the improved rent makes up for the outlay and improvements which are permanent, and cannot be separated from the land.

The supposition that any tenant could be found to take the line unless you included the Company's carrying trade, or gave a non-competing engagement, is absurd; so are the admissions made in the several cases that any one could be found to rent the line, or sink the capital for the small sum allowed for profits in the parish calculations; and I hope the next case brought before the Court will mark more distinctly different calculations on the various views which I submit this question presents, and exhibit the fallacy of the supposed rent, and of the admissions on the cases presented, as I have before suggested.

Should these additional deductions be established they will materially reduce the oppression of the present principle of assessment; and it seems but fair that if the trade receipts are to be included in the calculation, that the cost of obtaining and producing that trade and receipt are to be deducted.

This computation still excludes the deductions allowed in rating inhabitants for personal property, which is another mode worthy of consideration; for were the Courts wholly to adopt the old personal property rating principle (instead of partially for the benefit of one side, by taking the profits and not allowing the deductions) there would be some equity in such assessment.

In the cases of inhabitants wherever stock in trade was rated, an allowance (beyond the usual allowances) was also made for the debts owing, for the capital invested in the trade, &c. Still it was (in the words of the Poor Law Commissioners) found "so difficult, inquisitional, and uncertain to carry out the statute, as to liability for profits of trade, that with almost universal consent parishes omitted the rating of the profits of trade." However, in 1839, the case of Queen against Lumsdain decided, that a rate was bad which did not include them. That led to the passing of the statute of Victoria, and the only persons now left for assessment are occupiers in respect of land, and its produce or profits as before set forth.

In Rex *v.* Shalfleet (2 Burrows) Lord Mansfield said, "Personal property is the surplus of a man's estate and effects, after payment of debts, the maintenance of his family, and necessary expenses."

Rex. *v.* White (4 T. R.) Lord Kenyon mentioned a remark of Yates, J., in 1769, in Burrows, "That if personal property be rated, it is not to be done at random, and to leave the party rated to get off as he can, but the officer making the rate must be able to support what he has done by evidence, and no personal property can be rated, but the clear liquidated surplus after paying all his debts."

Rex. *v.* Dursley (6 T. R.). Lord Kenyon said, "They appeared, indeed, in the possession of stock in trade, but the sessions have not stated whether or not this property belonged to the several persons whom the appellant wished to include in the rate, or if it did, whether or not it produced profit, or whether or not it was liable to incumbrances equal to the value of the property itself, and he might deduct the interest of borrowed capital, that being in the nature of an incumbrance upon his goods." The application of this principle would make a material difference in the rating of railways.

CHAPTER V.

STATISTICS OF RATES, ETC.

I WILL now proceed to illustrate the operation of these constructions of the liability of railways, and the oppressive and unequal nature of the contribution which they make to the local taxation of the country. I shall show the amounts contributed by land, in comparison with those contributed by railways, but I shall not be minutely precise as to figures, as average totals will be sufficient to give a general idea on the subject.

"The most important of all the local rates is the poor rate, it is the largest in amount, and forms the basis of all the other rates. It is imposed on the occupier on the net yearly value of his occupation, which is the rent, less certain deductions which lessen it more than one-third." This is admitted by the Local Taxation Report, which says that there is (at common law and by statutes) authority to levy and apply 24 different rates for 200 local puposes (besides those authorised by local and special acts and customs) and amounting

in the whole to 12,000,000*l.* yearly for England and Wales, independent of the state taxes. It is admitted (see Local Taxation Report) that the poor rate assessment was found the easiest standard for local taxation, and was extended during its first century to two of the most important of other rates (the constables and the county rates), and in the last 30 years it was extended by Parliament to 11 other rates, and it is unauthorisedly extended to all other local rates, it also forms a guide (though not the legal basis) to the tithes, church, and sewers rates, the land and income taxes, and, in some cases, to the state taxes. Indeed there are only two other assessments, those for the county and sewers rates, and they are on similar estimates. Great as are (continues the Report) the differences in law, they are all neglected more or less in practice; the church rate is almost always imposed as the poor rate; the sewer rate frequently so. The whole of our local taxation is imposed either by law or by usage regardless of law, on the same basis as the poor rate. Great temptation and opportunities for abuse which exist, cannot exist without a great amount of illegality and extravagance, besides the general adoption without authority, and indeed in defiance of the law, of the poor rate assessment as the substitute or model and standard for the other local taxes.

By the Poor Law Commissioners Ninth Report and Appendix it appears, that in 1842 the total amount raised for the relief of the poor in England was 6,397,947*l.*; and for Wales, 356,457*l.*, making a total of 6,754,404*l.* or (Local Taxation Report) 2s. 4d. in the pound, on the assessed value of real property, and including the county rate for England of 957,808*l.*, and for Wales of 45,843*l.*, being about 5d. in the pound on that assessed value hereafter stated.

The highway rate I find to vary from 4d. to 1s. in the pound, and sometimes there are two rates a year. The Local Taxation Appendix states the amount expended for England at 1,127,514*l.*, and for Wales at 42,377*l.*, or about 4½d. in the pound more on the said real value.

The church rate I find to vary from 2d. to 9d. in the pound, and in some places there are two in a year. The Local Taxation Report states the amount levied for 1842 at only 492,483*l.* for England, and about 14,329*l.* for Wales, or about 2d. in the pound more.

By the "real property" return (1842) it appears that "the annual value of real property assessed" to poor rates was in England (including lands at 30,448,991*l.*), a total of 59,685,112*l.*, on an area in English statute acres of 31¾ millions, being an annual value of 19s. 2d. per acre, and for Wales (including land at 2,206,146*l.*), 2,854 618*l.*, or 9s. 3d. each acre, and making a total for England and Wales of 62½ millions sterling value; upon which these four rates (the poor, county, highway, and church) were levied, and the yearly amount contributed by England was about 7¾ millions, and by Wales about half a million; to which have to be added the sums levied by local authorities, and which (Report on Local Taxation) brought up "the total levy for local taxation to 12 millions sterling yearly," or about 10¾ millions for England and about 1½ for Wales, independent of tithes estimated at 3½ to 5 millions sterling, and land tax now only 1¼ millions, and assessed sewers, income, and other taxes omitted from these calculations.

Of this total levy of 10¾ millions for England, 52 per cent., or about 6 millions was levied on 30½ millions net value of land in England, and which (according to Porter, M'Culloch and others), consisted of 25½ millions of acres of cultivated land, 3½ millions of acres capable of cultivation (besides waste), or about 4s. an acre a year on land for these four rates, at an average rental and net rateable value of 15s. to 20s. an acre (independent of the other taxes as before stated.) And it is to be observed that lands are usually rated (assessed) at about three-fourths of the rental.

In confirmation of that estimate I will give a few details from various authorities.

I find in Bucks a farm of 400 acres (paying a rent of 400*l.*) pays 4s. an acre for tithes, or 80*l.*, and 6s. an acre for poor, highway, and county rates, or 120*l.* Davis, in his "Farmers' Resources," states that the rent of arable land in all England averages 20s. an acre, the assessment of which would be 15s. net. Mr. Carrourdine, in Essex, adduces many farms which pay an average rent between 13s. and 25s. an acre. Mr. Painter, of Worcestershire, says that an acre of wheat costs 6*l.* in this way, rent 30s., poor rates 2s. 6d., road rates 1s. 6d., cultivation 3*l.* 12s., making 6*l.*; besides tithes above 4s., church rates and others about 2s. 6d. an acre, thus averaging 10s. 6d. an acre total taxation. In Essex Mr. Baker estimates the tenant's taxes, tithes, &c. on 100 acres of land at 55*l.*, or 11s. an acre. Lord Worsley estimates a farm at 30s. an acre rent, 3s. an acre parochial charges, and 5s. an acre tithes. In Norfolk the rent, tithes, taxes, &c. paid by a tenant averages 2*l.* 6s. 6d. an acre yearly. I find the averages stated by Mr. M. Martin, were that a landed proprietor having an income of 3,000*l.* a year would pay 750*l.* a year to poor rates alone, then there are other rates which would make up to 1,000*l.*, or one-third. Bayldon in his work estimates for 200 acres the occupiers rates and tithes to average 145*l.* every year.

These variations are caused by the localities, but it has been before shown that for England alone, poor rate, with the other local taxes of highway, county, and church rates, averaged on land about 6s. 6d. in the pound, besides tithes and other taxes; this extended over nearly 14,000 parishes, and the Report on local taxation states that "this burden of taxation was so intolerable as in some places to throw land out of cultivation."

Having now shewn the totals, I will exhibit the inequality and disproportion borne by railways of those rates and taxes which a tenant or occupier pays and those which the landlord or owner pays, and both of which railways bear, being owners as well as occupiers. I have by various modes ascertained the average number of acres of land to a mile of railway; I have taken the evidence before Committees this session on projected railways, the evidence on old railways, the actual facts by the quantities of land purchased, and the lengths of lines of railway occupying it, and I found 10 acres to a mile of railway to be a full and liberal average. In the evidence before the Committee of the House of Commons (1844), Mr. Laing stated, "between 8 and 10 acres to a mile of railway," and that 3*l.* an acre would be *above* the full average for the annual value of the land, now assessed at the rate of 2,000*l.* a mile. In the debate (1843) on the burdens of land, it was considered that 8 acres would average a mile of railway.

I have analysed (statement A) the Reports issued by 27 of the principal English railways, length above 1,200 miles, (say 12,000 acres) as to their receipts and expenditure for the last six months of 1843. It appears that for those six months their gross traffic

receipts were above 2,501,002*l*. Deduct for working expenses necessary towards earning those receipts about 811,462*l*. Interest on loans, &c., 384,696*l*. Government duty, 80,540*l*. 10s., leaving about a million and a quarter. Next, deduct the local rates and taxes paid of 55,500*l*., (besides tithes, assessed taxes, land-tax, or its redemption, &c.) and other outlay, so that the ultimate result of those six months was that out of two and a half millions of gross receipts, about one and a half millions went for expenses, as there was left and divided only about 1,055,646*l*., and that was subject to Income Tax, &c.

These give an average for a whole year on 1,200 miles of the principal railways, of traffic receipts five millions, or 4,200*l*. per mile; working expenses, one and a half millions, or 1,400*l*. per mile; Government duty, 161,000*l*., or 175*l*. per mile; local rates, &c., 111,000*l*., or 92*l*. per mile; and interest on loans, &c., &c., so as to leave only about two millions for division subject to Income Tax, &c.

It will be seen that those local or parochial rates nearly equalled the Government duty of 5 per cent. (being 7-10ths), they were above 2¼ per cent. on the gross receipts of large and small lines (but it must be borne in mind that on the large lines they are nearly double that), and above 5 per cent. on the profit.

For a year these figures give an average annual value for assessment of the 1,200 miles (or 12,000 acres) of above 555,000*l*., or nearly 48*l*. per acre, which at 4s. in the pound for rate gives a yearly payment for rate of about 9*l*. 2s. per acre; whereas as ordinary land the assessed value of it was less than 8,000*l*., or 15s. per acre, which assessment would have paid for total local rates less than 2,400*l*., or 4s. per acre, according to the preceding averages. This is an increase in the proportion of 4,800 to 100—being at least 48 times the amount originally paid for the same land, and on the principal lines it is nearly double that!

I will now advert to the remaining English railways, say 28 (Statement B.), omitted from the above calculations. Those, with the additions made, and which will be further made this year with several minor railways not enumerated, will make up say 800 miles more of length of railway. From those I have been unable to obtain returns, and have therefore considered the averages of the other lines, and the earlier receipts, and compared them with the preceding calculations.

Before entering upon those calculations, I will advert to some earlier official figures, which will bear out and support those which I shall adduce:—Appendix 2 to "Railway Report, 1844," states the total traffic receipts for 1842, on all the railways in the United Kingdom, at 3,100,000*l*. passengers, and 1,700,000*l*. for merchandise, &c., making nearly five millions. By "Railway Reform" it appears two-thirds of the receipts come from the passengers. Its Tables 5, 6, and 7 comprise 55 railways, 1,732 miles in length, and show the expenditure to be above two millions, and that "50 per cent. on receipts is a fair average for expenditure" (the amount is less, but that is not material), leaving a net profit of nearly three millions on that year; but whether interest on loans, &c., are to be paid thereout does not clearly appear—I apprehend it is. It also estimates that for 1843 the gross receipts will have increased to six millions; and if from that be deducted (he says 50) say 40 per cent. expenses, there would be left (three to) four millions profit on the whole year, of all the railways. Mr. Galt, in his evidence, 1844, says that the Railway Companies get six millions, and work at 35 per cent. upon that; but he appears to omit interest on loans. It will be seen that the increase is much more, and that in 1843 the 27 railways (1,200 miles) earned an average of five millions, which had in 1842 only earned four millions.

Several of the railways omitted from statement A. and included in B. are noticed in "Railway Reform," and in the Appendix to "Railway Report, 1844." I find there the following figures for 1842, for 16 of those railways, which I include in B., and extending 245 miles:—gross receipts 486,100*l*. (or nearly 2,000*l*. per mile); expenses 162,450*l*.; net profit 323,650*l*.: but "Reform's" 7th table makes no deductions from the gross receipts of some of those for expenses, nor for interest on loans, &c.!!!

In 1843, there was a vast increase of receipts on the 27 railways in A., as is before shewn. The "Railway Report" says, that during 1843 the receipts increased 5 per cent. and the expenditure diminished to 40 per cent., making a difference on the official calculation of 300,000*l*. The Pontop and South Shields Railway in 1842 received 40,000*l*., or about 1,700*l*. per mile, and in six months of 1843 received 30,699*l*. (averaging 3000*l*. a mile per year), and paid 1,058*l*. for rates, 5,000*l*. for interest, in a total expenditure of 25,000*l*. for six months.

I feel justified in taking the remaining railways' gross receipts for the year at 2,000,000*l*., being 800 miles, at 2,500*l*. per mile.

Taking the preceding average for small lines, of only 2¼ on the gross receipts for rates paid, we have a further yearly payment of nearly 45,000*l*. towards local rates, &c., (independent of tithes, &c.,) being only 56*l*. odd per mile, or 5*l*. 12s. 6d. per acre, on an assessment of 225,000*l*., instead of the ordinary payment of 1,600*l*., being 2*l*. a mile, or 4s. an acre, on an ordinary land assessment of 6 to 8,000*l*. We may, I think, take the Government duty at about 30,000*l*.—the passengers are 2-3rds of the total traffic—and I observe that the Parliamentary Return for 1842, No, 151, gives on 400 miles of these railways a yearly duty of 11,244*l*.

From the above gross receipts deduct 40 per cent. for working expenses, or 800,000*l*., and there would be left above 1,200,000*l*. to meet interest on loans, &c., before paying any dividends, and which we may estimate at less than 1 million a year on this 800 miles.

I may as well add a few words as to interest on loans, &c., which is a charge upon the traffic receipts, as much as any other outlay. Parliamentary paper, 1844, shews loans 21½ millions; the amount for English railways alone is about 18½ millions; besides loan notes 2¼ millions (Laing's Evidence, 1844); and upon these interest at say 4 per cent. would have to be paid, amounting to about 1,000,000*l*. yearly.

From these calculations I have entirely omitted Welsh, Scotch, and Irish Railways, as their taxation is almost nominal!

In taking 10 acres to a mile (which I believe to be sufficiently correct for illustration), that would give 20,000 acres to the 2,000 miles of English railways.

Those 20,000 acres would have paid on these four rates every year about 4,000*l*., or 4s. per acre, and the same land now pays in the hands of the Railway Company, the enormous sum of say 156,000*l*. (besides tithes, land, and income taxes, &c.)

The following Table is a Summary for a Year —

No.	Miles.	Gross Receipts.	Working Expenses.	Duty.	Interest.	Local Rates.	Total Expenditure.	Dividend.
		£	£	£	£	£	£	£
A. 27	1,200	5,002,004	1,622,924	161,081	770,000	111,000	2,894,834	2,111,000
B. 28	890 Estimate.	2,000,000	800,000	30,000	300,000	45,000	1,130,000	1,000,000 subject to Income tax, &c.
				191,081		156,000		

The following Table for a Year shows the Comparisons:—

Acres.	Rates paid.	Total assessment on railways yearly.	Actual yearly value of land to assess.	Total rate of land.
	£	£	£	£
A. 12,000	111,000	555,000	8,000	2,400
B. 8,000	45,000	225,000	6,000	1,600
20,000	156,000	780,000	14,000	4,000

Thus the *two* classes containing 2,000 miles (20,000 acres) pay an *average* rate of 6*l.* 16s. 3d. only per acre, give a mean assessment of 390*l.* a mile, and a mean rate of 68*l.* 2s. 6d. per mile for 1843; but it must be borne in mind that they are fast approaching double this amount!

This amount of contribution to local taxation by railways is in no fair proportion to the whole amount of the local taxation, nor to the quantity or extent of the property assessed; it is based upon receipts arising not simply from or out of the land, but from something besides, from the addition and profits of trade as carriers, and not the mere worth of the land as cultivated land. In Ireland, Scotland, and on the continent, the railways are not assessed on so excessive and oppressive a principle, their taxation in those countries is trifling; and even in England canals pay only on the small scale of toll. The Regent's Canal for six months in 1843, received 19,800*l.*, and paid for rates and taxes on canal, docks, &c., &c., 210*l.* 4s. 9d., their expenses being only 7,700*l.*, and so every half-year averages. For the closing half-year their receipts were 20,000*l.*, their rates and taxes only 177*l.*

It may be as well to give a few illustrations and authorities confirming my computations, and showing the oppressive operation of the rating on gross traffic instead of on the toll principle.

Appendix No. 2 to Railway Report, shows for the half-year to December, 1842, an expenditure for "parish rates and taxes," on the Manchester and Leeds Railway of 4,710*l.*, being 4 per cent. on the receipts. On the South-Western of 7,493*l.*, being above 4 per cent. on the receipts.

By a table in the RAILWAY TIMES of September 1843, the average on several lines to June 1843, per cent. was, of rates, $2\frac{3}{4}$; of Government duty, $2\frac{3}{4}$; interest, $16\frac{1}{2}$; profit, $40\frac{1}{2}$; and the centage of rates was shown as follows:—on the Blackwall, Government duty, $4\frac{1}{2}$; rates and taxes, $7\frac{1}{2}$;—Greenwich, duty, 4; rates, $12\frac{1}{2}$; (this railway pays taxes 1,000*l.*, the net divisible profit is 100*l.*)—South-Western, duty, $3\frac{1}{4}$; rates, $3\frac{1}{2}$;—Eastern Counties, $3\frac{1}{2}$ each;—Manchester and Leeds, duty, $2\frac{1}{2}$; rates, $4\frac{1}{2}$;—North Union, duty, $2\frac{3}{4}$; rates and taxes, $4\frac{1}{4}$; and others are gradually approaching those amounts.

In 1843, the Manchester and Liverpool paid $4\frac{1}{2}$ per cent. of their gross receipts. The Great Western were increased from 19,000*l.* to 26,600*l.*, in comparison of 1842 and 1843, being one-third increase, and about $4\frac{1}{2}$ per cent. of their receipts.

The Birmingham Railway assessments were increased in the rural parishes in the year 1843, 3,000*l.* over the preceding assessments, making 18,000*l.* yearly payment for local rates! besides which that railway paid 5 per cent. passengers duty, amounting to 27,000*l.*, income tax 36,300*l.*, and stamps, together making up a yearly payment to Government and taxation of 76,700*l.* per annum, besides other collateral sums paid indirectly by this one Railway Company, for various matters. Appendix No. 3 to Railway Report is a valuable exposition of the enormous impositions of local taxation; it is a statement of rates, &c., on the Birmingham line, showing the average rateable value of the parishes through which it runs to be about 30s. per acre. The rate per mile of railway to vary between 800*l.* and 2,000*l.* (say 1,200*l.* a mile); the value of the land occupied by railway at the average rateable value per acre of the parish to be for the whole line of 112 miles only 2,445*l.* 2s. 7d., whilst the total value assessed on the railway and buildings is 134,159*l.* In one parish, Milton in Northampton, it is rated at 2,000*l.* per mile, the real value being 10s. 8d., and the total rateable value of the rest of the parish being only 1,355*l.* Yet this line is the lightest rated and most profitable!

I find that on the South-Eastern Railway (Dover) the working expenses (June, 1843,) were $49\frac{1}{2}$ per cent. on the traffic receipts, out of which 17.5-8ths per cent. were expended for "rates, duty and toll." The South-Western Railway Company (for the like period) paid for "rates and taxes, 18 per cent. of their receipts." These of course include Government duty, as well as local rates and taxes.

The first judicial decision as to rating of railways was in 1840, as to Mitcheldever parish, on the South-Western Railway. That was a poor-rate made in November, 1839, on the railway, for $4\frac{1}{2}$ miles through Mitcheldever, and the Court held that the poor-rate, which was for a proportion of the whole receipts of the line (including passengers and other traffic), was correct, and established the assessment at 3,800*l.* a year.

Mr. Laing says, the rating before that was 600*l.* to 800*l.* a mile. Mr. Swift's evidence shows, that before that case they were rated on the toll principle (about one-third of gross receipts) less the deductions, and that the lowest on the Grand Junction is 600*l.*, and goes up to 900*l.*, a mile. In Warrington it pays on 850*l.* besides the stations.

From 1836 to 1843 the Liverpool and Manchester

Railway Company were assessed at 2,000*l.* a mile in the parish of Wavertree—that was an average of the whole line—they appealed to the sessions, but were of course unsuccessful.

The Grand Junction Railway for one mile of land in the parish of Sleighford, in Staffordshire, was rated at 1,050*l.* per mile for the poor-rates alone, and the validity thereof was established this year, and various parishes which had waited that decision still further increased their assessment.

On the Great Western Railway the assessments to rates increase every year, and vary up to 1,000*l.* a mile. Mr. Saunders, in his evidence, states, that "there is always a tendency upwards; that at Paddington they are rated at 1,200*l.*; at Bristol, 1,600*l.* to 1,700*l.*; in the middle of the line, 800*l.*, which is the lowest; at Reading, about 1,200*l.*, besides rates on the stations, and that they are gradually progressing up to 2,000*l.*"

In the parish of Burnham, in Bucks, the railway passes nearly two miles of length, being 3,426 yards; the Company paid poor rates on an assessment of 1,000*l.* a mile, their gross rental being estimated at 2,919*l.*, and their rateable value at 1,946*l.*, but the Company at a later and at the present period pay on a rateable value of 1,500*l.* a mile, the gross rental having been suddenly increased to 4,671*l.*, and the rateable value to 2,920*l.*

I will now glance at some of the remaining taxes, such as tithes, land tax, income tax, &c. The amount of assessment to the poor rate forming the guide for the other local rates, and for the tithes, land tax, occupiers tax, &c., the Companies pay upon the increased assessment of 700*l.* to 1,000*l.* a mile, or 70*l.* to 100*l.* per acre, instead of a few shillings.

As to the amount of Tithes I find (Jones, the Tithe Commissioner), that the clergy are rated for the tithes as one-fifth to one-seventh of the gross assessment of their parish. Carwardine also says that they are estimated as one-fifth of the estimated rental (of land) of the parish, and he adduces several farms to show the rental and amount; it is evident they allude to agricultural parishes only, as the total tithes were according to Sir Robert Peel's financial statement, 1842, estimated at 3,500,000*l.* (and vary up to five millions) but as more than one-third of the cultivated land is tithe free, the tithes levied on twenty millions of land would be about 4s. an acre, and this amount is below the average stated before. Wherever the railways pay it, it is on the increased value, as estimated by the poor rate assessment!

With reference to Land Tax it is difficult to form a correct estimate of the proportions, as on many railways it has been redeemed to the extent of several millions of money. It now amounts every year to about 1,200,000*l.* for England and Wales. That tax appears to be authorised by statute at 4s. in the pound on the annual value. It was by Parliament confined to the valuation of 1692. It varies from one farthing to 4s. in the pound on the present value. It was made perpetual in 1798 at 4s. in the pound on the valued rent. It is not an uncommon manœuvre for the owners of land, part whereof has been taken by railways, to refer to the parochial rates for the value of the railway assessment, to deduct that sum from the total original assessed value of their whole land, and claim to pay on the difference only for the land left in the owners occupation, although it happens to be a considerably larger proportion of the original total than that sold to the Company which is charged with the difference.

Wherever it was not redeemed, the Company pay in the increased proportion.

As to the Income Tax, the average net sum divided between the shareholders for the latest 12 months on the 27 railways amounted to about 2,111,292*l.* per year, and taking the proportions for the other 28 (in B.) at a net yearly dividend profit of about 1 million, making a total of 3 millions, the income tax paid every year by railways would be about 90,000*l.*

Thus it will be seen that 2,000 miles of railway have paid yearly, Government duty 191,000*l.*; parish rates, 156,000*l.*; interest on loans, &c., 1,000,000*l.*; income tax, 90,000*l.*, making a total of nearly one million and a half, besides their working expenses, and leaving a profit of less than three millions, that their property is assessed for the purposes of taxation at 48 times its legitimate amount, and which is gradually increasing to double, and forms the guide for railway contribution to the 12 millions of local taxation, the 5 millions of tithe, and the 1¼ millions of land-tax, besides assessed taxes, sewers, and the State taxes.

It has been said that the Companies would submit to the toll principle of taxation, which the evidence of 1844 shows to be about one-third of the gross receipts, even that would be an enormous and oppressive amount, although much less than the present taxation, the amount of which was as little anticipated as its impolicy was forcibly illustrated by Sir R. Peel, in March, 1842, when he said—"I do not think I need argue therefore against the revival of the duties on salt, leather, or beer. Shall I then revert to locomotion for the purpose of finding a substantial revenue; shall I increase the taxes on railways? I confess nothing but a hard necessity would induce me to derive revenue from locomotion. I should contemplate with great reluctance, and regret the necessity for increased taxation upon railways. I range the taxes on locomotion and the taxes on gas-lights in the same category with the taxes on salt. I should be unwilling to look for revenue from either." He did but confirm the views entertained by the Legislature and by the judges when they exempted canals from taxes as being most laudable undertakings, and to be encouraged and relieved in every possible way.

CHAPTER VI.

IMPOLICY—REMEDIES.

THIS power of taxation, and expenditure, to the extent of above twelve millions yearly, is entrusted to 150,000 persons, and affords (L. T. Report, Part I.) "such great temptations and opportunities for abuse, and cannot exist without a great amount of illegality and extravagance." "Some taxes are incapable of being levied if resisted; others may, with great difficulty and cost." (Local T. Report, p. 84). "Such was the state of ignorance in England at the time the statute of Elizabeth passed," said Lord Denman in Yarborough case, 1840, "that the justices were to allow the rate," because the overseers were persons generally who could not write." "Even now it is not uncommon," says the P. L. Report, "to find overseers appointed who can neither read nor write, and are utterly incapable of the slightest man-

agement, and the heavy amount of poor rates was to be attributed to peculation and bad management almost exclusively." The result of power placed in such hands is, that the amount of rates is regulated by mere caprice or ill feeling, and is maintained with obstinacy, regardless of fairness or policy.

The principle of computation applied to the assessment of railways is new, and is contrary to usage under the statute; and there are several authorities expressly against the adoption of new computations.

Passing to the operation of the principle, the mode of computation itself is very uncertain, admits of much litigation, and renders a fixed rule of rating much to be desired, not only by the Companies, but by the parishes; and until that rule be laid down, frequent and expensive litigation will continue. For every rate the parishes have to ascertain the amount, and they are bound by law to make actual calculation, and not "guess at random." They should inspect the Company's books, take and dissect the accounts of traffic, &c., and ascertain how much of each day's earnings went over that parish; also apportion the expenditure, &c. &c. Surveyors have to be employed, and to be ready to support their "estimated rent," in case of an appeal to the sessions, either by the Company for excess, or by a parishioner for insufficiency; while at sessions, surveyors, witnesses, lawyers, counsel, briefs, &c., are to be provided. The expense of an appeal is not less than 100*l.* to each party, and oftener double that amount, and always far exceeding the amount in question. The trial of such appeal is most unsatisfactory, the persons composing the tribunal being interested in maintaining a high assessment on railways, and their bias is so strong, and their conduct so partial in these cases, as to have earned for them the appellation of "Benches of (In) Justices." (*Times*, 24 September.) In one parish appeal (see *Railway Times*, September 28th) I observe that one surveyor was paid 50 guineas to make out and substantiate his assessment, besides travelling expenses, maps, surveys, &c.; and an appeal having been lodged, the law expenses to each party were above 200*l.* each, and being afterwards carried into the Court of Queen's Bench, a like expense of 400*l.* was again incurred; and all upon a rate of 100*l.* These parish officers are yet engaged in serious litigation, likely to result in great personal loss. In another parish the overseer informed me that he was six weeks copying out and dissecting a Railway Company's accounts before making one rate. "The Companies find most trouble (says Mr. Saunders, in his evidence on railways in 1844) where there is a needy or quarrelsome lawyer," and his remarks would equally apply to some metropolitan "houses," whose gradual decay of business has led them also to discreditable practices of creating business, which would not be done if subject to the fear of publicity.

Of all properties, English railways have the strongest claim to be considerately and moderately treated, and if the law admitted of two constructions (as Tindal intimated in Crease *v.* Sawle, and that it was to render rateable all occupiers of *real* estate), either apparently right, or of equal doubt, surely it should be determined in favour of the Companies, and not strained against them. They do not seek to be wholly exempted from taxation, they are willing to pay liberally, and paying on the toll calculation would be extremely so. Railways are declared by Acts of Parliament to be "great public benefits," and on that ground alone ought to be wholly exempted, as other "public property," and some canals have been. They have benefitted the parishes through which they pass, and the surrounding property; they cast no poor on the parishes, but on the contrary, employ many thousands of poor, and in their construction alone have already expended in manual labour above twelve to thirteen millions sterling, and will again expend as much on the new lines. They have paid enormously high for their lands and for their enterprise. They support their own police, highway, lights, &c., yet contribute to those of the parishes, and to all the other rates and taxes, (church, tithe, land tax, &c.) from which the railways have not the benefit that other landowners or occupiers have, and that contribution is in an excessive proportion, although the equity of the matter is in their favour, and the law is strained and is very doubtful in its construction against them; in short these local rates, consuming about one-fifth of their nominal profits, it is manifest that the fares and public benefits are regulated accordingly. Railways experience an additional burden in the Government passengers duty, which is all that should be laid upon them.

The question is not to be viewed through the narrow medium of legal technicality, but is to be treated in a liberal and statesmanlike view, and on the broad ground of public benefit, policy, and justice. Yet the difficulty is to propose a satisfactory and easy rule of rating, and upon that I shall only sum up a few of the means of redress which occur to me,

1st. Carry out the principle recognised by the Government "Equivalents" and Commons' Report, and laid down by the Poor Law Commissioners, in their official paper on valuation and rating, "that when canal or railway proprietors are also carriers, whether of goods or passengers, their profits in that capacity must be thrown out of the question in estimating the rateable value of the property," and assimilate railways to canals by adopting the toll principle only. This appears the most equitable to those who have mastered the subject.

The Leeds Canal (5 East), the Calder and Hebble Navigation, the Grand Junction Canal (1 B. and A.), the Birmingham and Fazely Canal, the Bristol Docks, the Monmouth Canal (3 Ad. and E.), and others, are some exempt from any taxes, others exempt from paying taxes on more than toll, or on more than the land had previously contributed, their Acts declaring "that they are great public conveniences."

In the Regent's Canal case, Bayley J. said, "the making of a canal being a work of great public utility, and attended with great expense, it is perfectly just to relieve the undertakers of it from a burden which will attach only by reason of the improvements they make at very heavy expence. It is not unusual therefore to insert in canal Acts clauses exempting the undertakers from contributing a larger sum to the poor than would have been contributed in respect of the same land if it had not been so used."

In the Grand Junction Canal case, Abbott J. said, "by the Act the Company have the power of taking lands for reservoirs; now, in that state the land is wholly unproductive. If the Company, notwithstanding that, are rated for it as land, there seems good reason for the legislature to exempt them from paying the full extent of the tolls on the other parts of the canal, for otherwise there would be this injustice done

to them, that where there was no profit, there they would still be rated, and where there was considerable profit, there should be no diminution of their burden."

In the Leeds canal case, Lawrence J. said, "the object of the clause of exemption was to take care that when the Company were engaging in a hazardous undertaking which was considered to be beneficial to the public, they should not be liable to any other taxes than those which the land made use of in the undertaking was before liable to."

In the Lead Company *v.* Richardson (3 Bur.), Lord Mansfield said, "as all these undertakings are attended with infinite hazard and expence, and often ruined the projectors, it is no improbable conjecture that the legislature meant for this reason, and in order to encourage them to proceed in undertakings of this public utility to exempt them from any other burden than those that the miner's law had imposed."

In the Calder and Hebble case, Lord Ellenborough said, "but inasmuch as the canal is for the public good, and not merely for the private benefit of individuals, it is possible the legislature may have intended to give this general exemption."

In the Bridgwater Canal case, the profits ultra toll were excluded; and Lord Tenterden, in the Birmingham Gas case, said, "they are obtained by applying the skill and industry of man to capital, and are not rateable in a rate on occupations."

The Great Dover-street Road Trustees (1 Ad. & E.) were authorised out of tolls to pay interest to shareholders who had made advances, &c.; the 3 Geo. 4. c. 126 (section 4 of which extended it to all roads), enacted that no tolls, &c. should be rated to the poor, and it was held not liable to rate even for the interest portion.

2d. The enactments in the Railway Acts for keeping an account of estimated toll, &c. might be carried out and its admitted purpose and liberality effected, by a simple legislative declaration that such account of estimated toll, &c. should form "the only basis of assessment to the rates, &c.," or an Act declaring that a fixed proportion (say one-third) of the gross receipts, should be the gross estimated toll from which an ascertained per cent. should be deducted for working expenses, &c., so as to give an ascertained and certain standard for rating.

3d. The "personal property" principle might be altogether adopted; make allowances for loans, capital sunk or interest on capital, &c., or on so much of it as is sunk (beyond the fair purchase-money of the land) to bring the land into that state which produces the larger return than as mere land it would give.

4th. Fix the poor-rate assessment at the sum the land paid before the railway was made, and levy an additional passenger tax, to be applied for the general benefit of the whole country parishes affected, whereby those parishes where property is deteriorated would derive some benefit.

In concluding these hasty chapters, I may observe that I have endeavoured to comprise the whole facts and views which the subject presents, fortified by authority, and that I shall be glad to find that they have afforded any service to those interested in the subject.

Until some alteration of the principle be obtained, the Companies are justified in resorting to a scrutiny of the steps preliminary to every rate, viz., the appointment of overseers, the form, making, allowance, and publication of every rate, the demand, summons, levy and distress for it, and the audit of the overseer's accounts. I know that in very many cases these will give at least a weapon of defence against the oppression of parish officers, and force the subject upon the justice and policy of the country.

THE END.

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