crossing its line, or frequenting its premises, they will be responsible in damages to a member of any one of these classes who is injured by their negligent omission to discharge, or secure the discharge of, that duty properly, but the injury must be caused by the negligence of the company or its servants. If, as in the example taken by Lord Cairns in *Dublin, Wicklow, and Wexford Railway* v. *Slattery* (39 L.T. Rep. 365, 3 App. Cas. 1155, 1156), the folly and recklessness of the plaintiff, and not the admitted negligence of the company, be the cause of the injury to the plaintiff, then the negligence of the servants of the company in omitting to whistle, for instance, as the train approached a station or level-crossing would "be an *incuria*, but not an *incuria dans locum injuriæ*." In *Davey* v. *London and South-Western Railway Company* (49 L.T. Rep, 739, 12 Q.B. Div. 70) this principle was applied.

In the last passage quoted from the charge of the learned Judge in the present case he never pointed out to the jury that it was necessary, in order that the plaintiff should recover, that the omission to whistle or to give the warning, or both combined, and not the folly and recklessness of the plaintiff himself, caused the accident. For all that appears, the omission to whistle might not have contributed in any way to the happening of the accident. The jury, instructed as they were, may well have been under the impression that the two alleged breaches by the company of its statutory duties—the two faults of which the jury found them guilty—rendered them liable whether or not those faults caused to any extent the injury to the plaintiff or the contrary. These are in the main the reasons which led their Lordships to the conclusion that a new trial should be directed. Since the parties have arrived at a compromise, their Lordships have now, however, only to intimate that they will humbly advise His Majesty that the appeal ought to be allowed.

Their Lordships allowed the appeal.

Counsel for the Appellants—Atkin, K.C. —E. F. Spence. Agents—Batten, Proffitt, & Scott, Solicitors.

Counsel for the Respondents—Macmaster, K.C. — Harold Smith. Agents — Hills, Godfrey, & Halsey, Solicitors.

HOUSE OF LORDS.

Thursday, July 24, 1913.

(Before the Lord Chancellor (Haldane), and Lords Shaw and Moulton.)

TOTTENHAM URBAN DISTRICT COUNCIL *v.* METROPOLITAN ELECTRIC TRAMWAYS, LIMITED.

(On Appeal from the Court of Appeal in England.)

Local Government—Assessment to Rates—Railway or Tramway — Public Health Act 1875 (38 *and* 39 *Vict. c.* 55), *sec.* 211, *sub-sec.* 1 (*b*).*

A company owning a tramway and a light railway which were run as one system claimed to be assessed under the Public Health Act 1875* on one-fourth of the annual value of its whole undertaking. The local authority claimed to rate the tramway on the full annual value. *Held* that a tramway is not a railway within sub-section 1 (*b*) of section 211 of the Public Health Act 1875. Decision of the Court of Appeal (1912, 2 K.B. 216) *reversed*. [* A similar exemption is conferred upon railways in Scotland by the Public Health (Scotland) Act 1867 (30 and 31 Vict. cap. 101, sec. 94 (2) 1, and sec. 95 (1) 1), but the question of rating of tramways in Scotland depends on other considerations—see *opinion*.]

Their Lordships' considered judgment, in which the *facts* are given, was delivered by Lord Moulton (the Lord Chancellor and Lord Shaw concurring) as follows:—

Lord Moulton—This is an appeal from a judgment of the Court of Appeal in England upon a Special Case stated by two of His Majesty's Justices of the Peace in and for the county of Middlesex under the provisions of the Summary Jurisdiction Acts 1857 and 1879, for the purpose of obtaining the opinion of the High Court on a question of law which arose before them upon an application of the appellants, the Tottenham District Council, to enforce the payment of the balance of a certain rate amounting to £499, 12s. 6d. by the respondents the Metropolitan Tramways Company, in respect of a tramway owned and worked by the respondents in the district. The respondents had paid a sum equal to one-fourth of the said rate, and claimed to be exempt from payment of the other three-fourths by reason of the provisions of section 211 of the Public Health Act 1875. The Magistrates held that the respondents were not entitled to the benefit of the exemption, and affirmed the rate, but at the request of the respondents stated the present Special Case in order to obtain the decision of the Courts upon the point.

The Special Case came before a Divisional Court of the King's Bench Division, which affirmed the decision of the magistrates, it being admitted by the respondents that the case was covered by the decision of a Divi-

sional Court in the case of *Swansea Improvements and Tramway Company* v. *Swansea Urban Sanitary Authority* (1892, 1 Q.B. 357), and that such decision was binding on the Divisional Court. From this decision an appeal was brought to the Court of Appeal, which reversed the decision of the Divisional Court, and in doing so expressly overruled the *Swansea* case. From this decision of the Court of Appeal the present appeal is brought.

The tramways in respect of which the rate is claimed were constructed by the North Metropolitan Tramways Company under the North London Suburban Tramways Order 1879 (confirmed by the Tramways Order Confirmation Act 1879), the North Metropolitan Tramways Act 1892, and the North Metropolitan Tramways Act 1897. To these Acts the provisions of the Tramways Act 1870 apply. It has not been suggested (nor could it have been so with any show of reason) that any portion of these tramways stands in a different position to the others with regard to its right to the exemption claimed. It will therefore conduce to clearness if the question of the exemption be considered in respect of some one of the tramways, say that constructed under the Order of 1879. The right to the exemption in question, if it exists, must have accrued at the date of its construction, because there has been no subsequent legislation which could in any way affect it.

Section 211 of the Public Health Act 1875 deals with the assessment and levying of general district rates under the Act, and provides that they shall be levied on the full net annual value of such property. But there are certain exceptions, the only relevant one being as follows:—"211.—(1) (*b*). The owner of any tithes or of any tithe commutation rentcharge, or the occupier of any land used as arable meadow or pasture ground only, or as woodlands, market gardens, or nursery grounds, and the occupier of any land covered with water, or used only as a canal or towing-path for the same, or as a railway constructed under the powers of any Act of Parliament for public conveyance, shall be assessed in respect of the same in the proportion of one fourth part only of such net annual value thereof."

Speaking for myself, I cannot think that if the question of the exemption or non-exemption of a tramway from the full incidence of the general district rate had come before the Courts soon after the date of this Act the Courts would have found any difficulty in deciding the question, or would have had any doubt that tramways were not included in the term "railways," for to my mind these two terms had, in the public legislation of this country, different and distinct meanings attached to them by the highest sanction that it is possible to give, *i.e.*, that there existed two independent groups of statutes of a public nature, the one applying to railways and the other to tramways, framed on distinct lines and recognised as applicable to distinct subject-matter, and neither finding it necessary to give any definition of such subject-matter. Nothing could be more striking than the careful and elaborate research of the counsel who appeared on behalf of the respondents before this House in the argument of this appeal, and yet they have been unable to find one single instance of confusion in the use of these terms in public legislation, or of doubt as to the limits of the applicability of any piece of public legislation in this respect at all events before the passing of the Light Railways Act 1896. Indeed, if the public Acts relating to railways be examined, it will be found that in the one or two instances where the legislation is intended to apply to tramways also, it is effected by the insertion of a special interpretation clause providing that in that Act the term "railway" shall include tramway. But in the great bulk of the public legislation relating to railways there is no such definition clause, and that legislation has universally been understood and interpreted by the Courts as applying only to that which is popularly known as a railway, and not to that which is popularly known as a tramway.

To my mind, therefore, the fact that the Legislature uses the word "railways," and does not say "railways and tramways," in section 211 of the Act of 1875, is conclusive as to whether it is intended that tramways should enjoy this exemption. For in the year 1875 tramways loomed very large in public view. The demand for them, and the necessity of regulation of the terms on which the privilege of constructing them should be granted to private undertakers in view of the interests of the public, had during the preceding few years become so marked that a most important general Act regulating them—*i.e.*, the Tramways Act 1874—had been passed, after much discussion and careful examination in its passage through Parliament. It is to my mind impossible that the Legislature should in 1875 have used the word "railways" as including tramways without inserting a definition clause expressly including them as it had done in certain previous Acts. But if it had intended that the exemption should apply to tramways, it would, in my opinion, have in all probability taken the simpler course of saying so expressly in the clause itself, and I am confirmed in this opinion by the language of section 147 of the same Act, which deals with the power of an urban authority to adopt bridges within their district. Here the words are: "Any urban authority may agree with the proprietors of any canal, railway, or tramway to adopt or maintain any existing or projected bridge, viaduct, or arch within their district, over or under any such canal, railway, or tramway."

In the exemption that is to be found in section 211, sub-section 1 (*b*), canals and railways are mentioned, but there is no mention of tramways, and it would, in my opinion, be contrary to sound principles of the construction of statutes if we were to interpret railways as including tramways in this section in disregard of the consistent usage of the words in public statutes, and the evi-

dence which the statute itself gives in section 147 that it recognised the distinction between the two terms.

The respondents attempt to meet these difficulties by a very ingenious argument. They point out that the Public Health Act 1875 was a consolidating statute, and that clause 211 is taken from the Public Health Act of 1848, and they argue, therefore, that it should be interpreted as the language would have been interpreted in 1848, and not in 1875. There are two answers to this argument. In the first place, the Public Health Act 1875 was not purely a consolidating statute. It purported to amend as well as to consolidate the existing Public Health Statutes, and did so to a very substantial extent. But the main answer to the argument is that no assistance is obtained by going back to the Act of 1848. At that time public tramways, in the sense in which the words are always used, were unknown, and certainly the term "railways" could not have been used by the Legislature with the conscious intention of including therein what we now know as tramways. If this House had to determine the question as if it arose in the year 1848, one would have to look closely at the language used in order to learn from it what were the grounds on which railways were granted the exemption in order to decide whether those grounds applied to the new type of works known as "tramways." It is always a dangerous and generally an unfruitful task to seek for the motives which influence the Legislature in any particular legislative Act, but if I were to permit myself so to do, I should base my conclusions on the company in which I find railways standing in the exemption. Its companions are "land covered with water," "land used only as a canal or a towing-path for the same," and it itself appears as "land used only as a railway constructed under the powers of any Act of Parliament for public conveyance." In view of the common characteristics of these three it appears to me to be that the Legislature is dealing with a class of lands stricken with a certain disqualification for partaking in the advantages of municipal expenditure by reason of the nature of the user of those lands—namely, either as being covered by water or being used solely as a canal or solely as a railway. And I may add that if I were considering the question as in 1848, I should have concluded that "lands" was used in the section in its ordinary and natural meaning, and not in the extended meaning which is given to it in questions of rating. I do not believe that the Legislature had before it at that date the conception of a railway running on lands other than those which it had acquired for itself and which were dedicated to the use of the railway properly so called. But in 1875, when the existing Public Health Act was passed, the Legislature must be taken to have been fully seised of the existence of tramways availing themselves of the public streets, and also to have been aware that, in the language of public statutes, these new constructions were always called by the special name of "tramways," and under such name were subject to special legislation. The fact that the word "railways" did not include "tramways" is, as I have said, recognised in the statute itself, and it would, in my opinion, be pushing the doctrine of tracing back the origin of sections in consolidating statutes too far if under such circumstances we were to hold that in the Public Health Act 1875 a different meaning ought to be given to the word "railways" in section 211 from that which it would naturally bear at that date.

If it were admissible to speculate as to the motives of the Legislature in exempting railways from the full burden of the rates, I should be inclined to adopt the view expressed by Erle, J., in the case of *South Wales Railway Company* v. *Swansea Local Board of Health* (4 E. & B. 189). He there says — "The general scheme of the enactment is that the occupiers of the classes of property most benefited by the expenditure of the district rates shall be liable to be rated at a higher rate, the occupiers of the classes less benefited at the lower rate."

This fully accounts for the exemption of railways running on their own lands and partaking of few, if any, of the advantages of municipal expenditure so far as their line is concerned. But tramways are not in a like position. The public streets provide them, not only with support for their rails, but also, as it were, with arrival and departure platforms, for they collect and deposit their passengers all along the route which they take. I can think of no class of property within a town which more directly and to a fuller extent reaps advantage from municipal expenditure in the way of the construction, maintenance, lighting, and sewering of streets (which forms so large an item of municipal expenditure) in addition to its dependence on the general prosperity of the town, which is secured by municipal expenditure on other objects. Tramways seem to me so little *in pari casu* with land solely occupied for railways in the matter of meriting exemption from rates that I have the greatest doubt whether any responsible authorities in 1875 would have proposed to exempt tramways from the full burden of rates, or if they had proposed it the Legislature would have granted it. One cannot forget that in the year 1875 tramways were entirely in private hands, and there is no trace in the legislation of that period of any desire on the part of the Legislature to put them in a favoured position.

One other argument of respondents' counsel must here be noted. It was urged with great elaboration that "tramways" etymologically fell under the denomination "railways" by reason of the fact that the cars run upon rails. In my opinion such arguments have little or no value. The meaning of words is fixed by usage, and if, as in my opinion is the case here, the two words "railway" and "tramway" had in popular and legislative usage distinct meanings, it makes no difference whatever whether those meanings flow from the etymological genesis of the words or not. When people spoke of tramways in 1875 there is in my mind no

doubt that they meant something different from railways, and when the Legislature used these two words in the two streams of legislation relating to railways and tramways they recognised and followed this distinction of usage, and that is all that is necessary and sufficient for the purposes of the construction of the relevant statutes.

Before passing to the events of 1896 and subsequently, which have in my opinion given rise to all the difficulties in this case, I must notice the case of *Swansea Improvements and Tramway Company* v. *Swansea Urban Sanitary Authority*, which was decided in 1892 by a Divisional Court of the Queen's Bench Division, consisting of Wills and Hawkins, JJ. This raised the precise point in issue in the present case. The tramway in that case was a tramway running through the streets of Swansea which was continuous with what was known as the Oystermouth Railway, which was a railway constructed under the powers of 44 Geo. III, cap. 55, upon land belonging to the company. It was admitted that the company were entitled to the exemption with regard to the Oystermouth Railway, but the sanitary authority contended that that exemption did not apply to the tramway. The Court upheld this view. I entirely adopt the language of Wills, J., in his judgment in that case, where he says—"The objection which has been taken on the part of the urban sanitary authority, and which in my opinion is a good one, is that tramways are something essentially different from railways, and that in the legislation of 1875 where railways are spoken of they cannot possibly be supposed to include tramways. By that time tramways were so completely part of the ordinary communication made use of in this country, that in 1870 a Tramways Act had been passed consolidating the provisions which in all ordinary cases for the future were to apply to tramways. The Legislature when it passed that Act did not think it necessary to define a tramway, and as definition is always *periculosæ plenum opus aleæ*, I shall follow the example of Legislature and not attempt to define either railway or tramway. It appears sufficient to say that no ordinary person has any difficulty in distinguishing between the two. It seems to me, therefore, that the exemption in favour of railways cannot have been intended in the Act of 1875 to cover tramways."

The decision in this case remained unchallenged until it was overruled by the decision of the Court of Appeal, from which the present appeal is brought.

I now turn to the matters out of which, in my opinion, any difficulties that exist in the present case have arisen. In the year 1896 the Legislature passed the Light Railways Act 1896. Its full title was, "An Act to facilitate the construction of light railways in Great Britain." It established a board of three Commissioners who were to receive applications for powers to construct light railways and to make orders therefor, which upon confirmation by the Board of Trade were to have the same effect as if enacted by Parliament. With the exception of certain Acts specially named in the Act, and subject to any special provisions contained in the order authorising the railway, it was provided that "the general enactments relating to railways shall apply to a light railway under this Act in like manner as they apply to any other railway." It is clear from this language and from the language of other portions of the Act that the Legislature intended these light railways to be, and to be treated as, railways in the full sense of the word, though exempted from many of the obligations of railways, and entitled to special privileges. These special privileges were very great, and indeed if the Commissioners thought fit they might make them exceptionally so, because the powers of the Commissioners with regard to the terms on which the railways should be authorised were subject to very few restrictions. In many ways these light railways were also exceptionally favoured. The Treasury might make loans for their construction, or even special advances in the nature of free grants. Persons with power, either by statute or otherwise, to sell and convey land, for the railway might, with the sanction of the Board of Agriculture, do so wholly or partially without payment of its value. The provisions for assessing the compensation for lands compulsorily taken differed from those up to that time applicable to the compulsory acquisition of land, and were exceptionally favourable to the promoters of the railway, and in other respects the statute shows that the Legislature intended to place these light railways in a highly favoured position in order to stimulate their construction.

Now there is not the slightest justification for viewing the Light Railways Act 1896 as indicating or expressing any change of policy on the part of the Legislature with regard to the treatment of tramways. It is evident from a perusal of the Act that what the Legislature sought to facilitate thereby was the construction of railways for the purpose of opening out agricultural districts or other isolated centres of production and bringing them into communication with the towns and the general railway system of the country. Unfortunately, this, which is the plain object and intent of the Act, had not been adhered to. Tramway promoters were astute enough to see that undertakings which were purely and simply schemes for the construction of tramways in the ordinary sense of the word might be put forward under the guise of being schemes for light railways, and that if they could successfully elude the vigilance of the authorities they would thereby gain for the tramways the exceptional privileges intended only for undertakings of a widely different character. In this attempt they were only too successful, and by reason of what I have no hesitation in regarding as an abuse of the Act, schemes were sanctioned under the authority of the Light Railways Act 1896 for the construction of what ought to have been regarded as tramways, and subjected to the carefully considered conclusions of the Legislature in respect

thereto which are embodied in the Tramways Act.

The undertakings so sanctioned have secured irrevocably the status and privileges of light railways however little they have merited it. But the lines to which the present case directly relates are not in this position, because they were constructed under Tramway Acts, and therefore it is only indirectly that this House is concerned with what has been done under the Light Railway Act 1896. It has, however, become necessary for me to refer to that Act as I have done because of two decisions of this House upon which respondents' counsel relied strongly—namely, *Thornton Urban District Council* v. *Blackpool and Fleetwood Tramroad Company*, 1909 A.C. 264, and *Wakefield and District Light Railway Company* v. *Wakefield Corporation*, 1908 A.C. 293 — and I shall now proceed to examine these decisions.

In *Thorburn Urban District Council* v. *Blackpool and Fleetwood Tramroad Company* the question to be decided was whether a tramroad which was placed on raised rails laid on sleepers, and was constructed on land the exclusive property of the company, and which was fenced off from adjoining land except at the level-crossings of roads, was entitled as a "railway" to the benefit of the exemption. It was constructed under Acts which incorporated the Lands Clauses Act and large and important portions of the Railways Clauses Consolidation Act 1845, and for the purposes thereof the tramroad in question was to be deemed a railway, and the company was to be deemed a railway company. So much for the nature and legal status of the tramroad. But the undertaking also included a tramway, and so far as that portion was concerned, and that only, certain provisions of the Tramways Act 1870 were also incorporated. My only difficulty with regard to this case is how there could be any doubt that this tramroad was entitled to the exemption given by section 211, sub-section 1 (*b*), of the Public Health Act 1875 on the ground of being a railway within the meaning of that section.

Lord Macnaghten, who delivered the judgment of this House, deals with it very plainly and very briefly. He treats it as a case of *res ipsa loquitur*. "Would anybody" he says "seeing this road or way, or the photographs of it, which are in evidence, call it anything but a railway?" He then points out that the Parliamentary powers under which it was constructed support its claim to the status of a railway, as they undoubtedly did. The only assistance that in my opinion this decision gives to your Lordships in the present case is that it is impossible to read Lord Macnaghten's opinion without realising that that eminent judge did not think that what is popularly known as a tramway was a railway, otherwise he would not have appealed to the photographs of the line or asked the question what it would ordinarily be called, nor would he have troubled himself as to the form of the statutes under which it had been constructed.

The case of *Wakefield and District Light Railway Company* v. *Wakefield Corporation* raised directly the difficulties caused by the use of the Light Railways Act 1896 for the purpose of constructing mere tramways. The railway in that case was structurally and functionally a mere tramway, but the Court of Appeal and this House held (as they were compelled to do) that the line so constructed had the legal status of a railway, and must be treated as such. Its right to enjoy the exemption given to railways by section 211, sub-section 1 (*b*), turned therefore on the answer to be given to the question whether the "land" which it occupied was occupied solely as a railway constructed under Act of Parliament for public conveyance. This House held that it was so, holding that the words above cited referred only to the user by the railway company, which, of course, was solely for the purpose of their railway. The same result might have been arrived at in another way. The "land" occupied by the tramway is only that portion of the soil which is occupied by its rails, &c., though no doubt it has the right of support from the subjacent land. I doubt whether any other person but the railway can be held legally to occupy the land taken up by the rails, &c., and therefore I do not think it would be legally incorrect to say that the "land" occupied by them was in fact exclusively occupied for that purpose—a construction which would avoid difficulties that might arise in other cases from reading into the proviso a meaning which would give to all occupiers of land the privilege of the exemption—provided only that so far as the land was occupied by a railway it was occupied by a railway company solely for the purposes of the railway. But however we arrive at it the conclusion is the same—namely, that seeing that the light railway is a railway, and that it has no occupation of the public streets or the subjacent land save for the purpose of the railway, it is entitled to the exemption. This decision, however, cannot affect the present case, where the subject of taxation is not a railway but a tramway constructed under Acts which are specifically Tramway Acts, and subject to the privileges and disabilities given to tramways by the public legislation relating to them.

There remains only one head of argument —standing entirely by itself—which must be noticed, and which at first appeared to possess great weight. The Tramways Act 1870 applies to Scotland. Now the cases quoted on behalf of the respondents show that tramways in Scotland are valued by a functionary known as the Railway and Canal Assessor—a fact which at first sight would appear to show that in Scotland tramways possess the legal status of railways, and are treated as such. If this were the case it would give weight to the contention that they ought to be so treated in England, and to enjoy the exemption as to rating granted to railways.

But when the matter is looked into more closely it assumes a very different appearance. The rateability of tramways in Scot-

land was established by a decision which rested not upon their being railways, but (as in England) upon their being in occupation of land. It is true that in consequence of that decision tramways came to be valued by the Railway and Canal Assessor, but this did not imply that they were recognised as having the legal status of railways, because the functions of the Railway and Canal Assessor are not confined to valuing railways and canals. He can be called upon to value water companies, gas companies, and any other concerns which traverse more local units than one, and seeing that he has such special experience he is evidently the most suitable person to value such a subject as the continuous route of a tramway. But the matter in Scotland was put into a position still more widely different from that in which it stands in England by the Burgh Police Act 1892, applicable only to Scotland, which by section 347 expressly provides that railways and tramways *eo nomine* shall be entitled to the three-fourths reduction. This does not apply to counties (where except for assessments under the Public Health (Scotland) Act 1867 both railways and tramways are rated at their full value), nor does it apply to parishes where there is a power of classification of property subject to the rate which is not governed by any such rule, and inasmuch as the Act does not apply to England it is immaterial to the decision of the present case.

For all these reasons I am of opinion that in public legislation the word "railway" does not include tramway unless it is expressly made so to do by the terms of the Act. To hold otherwise would be to put tramways under the exclusive jurisdiction of the Railway and Canal Commissioners—a thing which has never been suggested during the forty years of the existence of that Court, and is obviously contrary to the intention of the Legislature in creating it. The word "tramway" has had both popularly and legally a distinct meaning for at least forty years, and although the action of the Light Railway Commissioners may have produced some confusion, and has certainly led to the exemption being obtained in cases in which it was not merited, this cannot affect a case like the present, where the subject of taxation is neither legally nor popularly a "railway." I am of opinion, therefore, that the appeal should be allowed, that the judgment of the Divisional Court should be restored, and that the respondents should pay to the appellants their costs here and in the Court below.

Their Lordships allowed the appeal.

Counsel for the Appellants—Macmorran, K.C. — Ryde, K.C. — Cartwright Sharp. Agent—Francis Shelton, Solicitor.

Counsel for the Respondents — Danckwerts, K.C. — C. C. Hutchinson, K.C. — G. Hutchinson. Agents — Ashurst, Morris, Crisp, & Company, Solicitors.

PRIVY COUNCIL.

Friday, July 25, 1913.

(Before the Right Hons. the Lord Chancellor (Haldane), Lords Shaw, Moulton, and Parker.)

ATTORNEY-GENERAL OF THE COMMONWEALTH OF AUSTRALIA *v.* ADELAIDE STEAMSHIP COMPANY, LIMITED, AND OTHERS.

(On Appeal from the High Court of Australia.)

Contract — Pacta illicita — Restraint of Trade—Australian Industries Preservation Act 1906.

To constitute an offence under the Australian Industries Preservation Act 1906, secs. 4, 7, 9, 15A, it is not sufficient to prove intent to restrain trade. It is necessary to prove intent to injure the public.

Review of the law regarding monopolies and contracts in restraint of trade.

The decision in this case was based on the application of an Australian statute to certain agreements, but their Lordships' considered judgment, which was delivered by Lord Parker, contains the following observations upon the common law:—

Lord Parker— . . . At common law every member of the community is entitled to carry on any trade or business he chooses, and in such manner as he thinks most desirable in his own interests, and inasmuch as every right connotes an obligation, no one can lawfully interfere with another in the free exercise of his trade or business unless there exists some just cause or excuse for such interference. Just cause or excuse for interference with another's trade or business may sometimes be found in the fact that the acts complained of as an interference have all been done in the *bona fide* exercise of the doer's own trade or business and with a single view to his own interests —*Mogul Steamship Company* v. *M'Gregor* (1892 A.C. 25). But it may also be found in the existence of some additional or substantive right conferred by letters-patent from the Crown or by contract between individuals. In the case of letters-patent from the Crown this additional or substantive right is generally described as a monopoly. In the latter case the contract on which the additional or substantive right is founded is generally described as a contract in restraint of trade. Monopolies and contracts in restraint of trade have this in common, that they both, if enforced, involve a derogation from the common law right in virtue of which any member of the community may exercise any trade or business he pleases, and in such manner as he thinks best in his own interests.

The right of the Crown to grant monopolies is now regulated by the Statute of Monopolies, but it was always strictly