made from the salaries of civil servants in order to establish at least *pro tanto* a superannuation fund. This section of the 1834 Act, however, was abolished by 20 and 21 Vict. cap. 57.

In the cases which I have mentioned—where there is no contribution or only a partial contribution by the servant—it appears to me to be fairly clear that not only the provisions but the principle of the Workmen's Compensation Act is this, that the arbitrator cannot be blind to the receipt of superannuation and gratuity, and that such things do fall within the scope of the words "payment, allowance, or benefit" contained in the Act. Otherwise very remarkable consequences might ensue. Employers without having gone through the process of contracting out may yet have had and have continued generous schemes by which injured workmen shall receive allowances in case of incapacity; such allowances or pensions may be on the scale of a very considerable proportion of their former wages. The employers having duly put these pensioners on their lists of incapacitated workmen, the latter, so the argument runs, would be entitled to bring their action under the Workmen's Act and receive an award thereunder without the arbitrator having any regard to what the same workman was already entitled to and receiving from the same employer in respect of the same incapacity. This does not appear to me to be in accord with the policy or provisions of the statute.

There is nothing in the case to suggest what appears to have been a controlling factor in the judgment of the learned Judges of the Court of Appeal, namely, that the superannuation allowance and gratuity were, if not exactly, yet in the nature of a payment to the civil servant of what had been contributed by him. Nor do I think it safe to approach such cases upon the principle of a conjecture as to what is the true nature of a pension itself, or whether it might not be denominated deferred pay.

Appeal allowed.

Counsel for the Appellants — O'Connor (Sol.-Gen. for Ireland) — Branson — J. M. Fitzgerald. Agent — Treasury Solicitor in Ireland.

Counsel for the Respondent — G. A. Swayne. Agents — Herbert Z. Deane, Solicitor, London — James R. Cresswell, Solicitor, Dublin.

HOUSE OF LORDS.

Friday, July 21, 1916.

(Before the Lord Chancellor (Buckmaster), Earl Loreburn, Viscount Haldane, Lords Shaw and Sumner.)

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

ATTORNEY-GENERAL (on relation of Pickfords Limited) *v.* GREAT NORTHERN RAILWAY COMPANY.

Railway — Highway — Bridge — Traffic by Heavy Vehicles—Obligation of the Railway Company to Maintain Bridge—Railways Clauses Consolidation Act 1845 (8 *Vict. cap.* 20), *sec.* 46—*Locomotive Act* 1861 (24 *and* 25 *Vict. cap.* 70), *and Locomotives on Highways Act* 1896 (59 *and* 60 *Vict. cap.* 36) —*Motor Car Act* 1903 (3 *Edw. VII, cap.* 36), *sec.* 12.

Where a bridge has been constructed under the Railways Clauses Consolidation Act 1845 to carry a high road over a railway, and was originally constructed of adequate strength to carry the normal traffic of the time, is it sufficient for the railway company to maintain it of such strength, or must it provide a bridge strong enough to carry modern traffic?

Held (*dis.* Viscount Haldane) that they are only liable to keep it in repair as originally constructed.

Appeal by the Attorney-General as relator from a decision of the Court of Appeal, 113 L.T.R. 835, which reversed a judgment of Warrington, J., reported 137 L.T.J. 112.

Warrington, J., held, upon the principle of the decision of the Court of Appeal in *Attorney-General* v. *Sharpness New Docks and Gloucester and Birmingham Navigation Company*, 1914, 3 K.B. 1, that the Railway Company were bound to maintain a bridge which carried a road across their railway in such a condition of safety as would be sufficient for the passage of the traffic which might be expected to use the highway of which it formed part. In the interval between Warrington, J.'s, judgment and the judgment of the Court of Appeal in this case the *Sharpness* case had been considered by the House of Lords, 1915 A.C. 654, 52 S.L.R. 918, and the decision of the Court of Appeal reversed.

The Court of Appeal (Swinfen Eady, Phillimore, and Bankes, L.JJ.) held that the case was governed by the *Sharpness* case, and entered judgment for the Railway Company.

The appeal was argued twice, the House on the first occasion consisting of Viscount Haldane and Lords Sumner, Parmoor, and Wrenbury.

Lord Chancellor (Buckmaster)—The question raised in this case is of unusual importance. On the one side it involves an undoubted limitation of the rights of user of public roads carried by a bridge over the

lines of a railway company, and on the other it may throw upon railway companies the obligations of reconstructing such bridges from time to time to meet the growing demands of heavy modern traffic.

The circumstances under which this case has arisen must exist in many instances, and they are likely to increase. The respondent company, by their statute passed in 1867, acquired the undertaking of another railway company known as the Edgware, Highgate, and London Railway Company, and thereby became subject to all the obligations imposed by the special Acts and the public statutes incorporated therewith which had formerly been borne by the original undertakers. The Edgware Company had been incorporated by a private Act passed in 1862, by sec. 1 of which it was provided that the Railways Clauses Consolidation Act of 1845 should be incorporated with and form part of the Special Act, while by sec. 19 the company was authorised to make and maintain the railway in accordance with the deposit plans and sections.

The plans which were deposited showed a bridge, which is the bridge in question in these proceedings, by means of which a public highway known as Crouch End Hill, in the county of Middlesex, through which the railway was to run, was to be carried over the railway. The railway was completed before its acquisition by the respondent company and the bridge was built for the purpose of carrying the road. There is no dispute that at this time and for many years afterwards the bridge was in all respects adequate for the purpose of carrying the proper and ordinary traffic that passed over the road. At some later date, however, though the date is nowhere expressly specified, two water-pipes of 12 in. diameter, which were carried across the bridge when it was constructed, were removed, a water-pipe of 20 in. diameter substituted, and three additional water-pipes, two of 15 in. and one of 12 in., were added.

The Railway Company admitted liability to strengthen the structure of the bridge so as to provide the same margin of strength over that required to bear the new water-pipes as the margin that existed formerly over that needed for the old, and it would not have been necessary to refer to this matter at all were it not for the fact that the proceedings out of which this appeal has arisen appear in the first instance to have been based upon the allegation that the bridge had been so weakened by the added strain of the heavier pipes as to deprive the road that was carried over it of the support which it formerly enjoyed; but even if this were the original ground of complaint, the true dispute that has arisen, and upon which decision is required, is entirely independent of the question of these pipes, and arises in this way.

The appellants have placed upon the road heavy motor engines which the bridge is unfitted to bear. They allege, and for the purpose of this case it may be assumed, that the passage of such vehicles would not be regarded as extraordinary traffic upon other portions of the road, and they say that the obligation cast upon the Railway Company is from time to time to strengthen and if necessary to rebuild the bridge so as to carry all the traffic, whatever it may be, which can lawfully pass over the rest of the road. This is the real question involved in the appeal.

Now there was no specification as to the strength and character of the bridge contained in the Special Act under which the railway was constructed. The obligation under which the Railway Company rests is that imposed by sec. 46 of the Railways Clauses Consolidation Act of 1845, which, as I have stated, was incorporated in the Special Act authorising the construction of the railway. This section is in these terms —"If the line of the railway cross any turnpike road or public highway then (except where otherwise provided by the Special Act) either such road shall be carried over the railway or the railway shall be carried over such road by means of a bridge of the height and width and with the ascent or descent by this or the Special Act in that behalf provided, and such bridge with the immediate approaches and all other necessary works connected therewith shall be executed and at all times thereafter maintained at the expense of the company: Provided always that with the consent of two or more justices of petty sessions, as after mentioned, it shall be lawful for the company to carry the railway across any highway, other than a public carriage road, on the level."

The statute contains no definition whatever, nor indeed would it be required, of the height of a bridge that carries the road. It is only the height of a bridge that crosses a road to which reference is made in the subsequent section of the Act. So far as a bridge carrying a road is concerned, the only material provisions are those contained in sections 50 and 51, and these specified only the width, the fences, and the ascent to the bridge. In this case it is admitted that the bridge was originally adequate, and I think the provisions that secure its adequacy are more effective than the appellants in argument were prepared to admit.

It is urged by the appellants that these provisions create no standard of strength, and that this can only be formed by making the bridge satisfy the essential condition that it must carry the road and the traffic that the road from time to time must bear.

By section 4 of the Railway Regulation Act 1842 provision is made that no railway shall be opened until after notice to the Lords of the Committee of Her Majesty's Privy Council appointed for trade and foreign plantations, which is now the Board of Trade, and by section 6, if on inspection there is reason to think that by any incompleteness of the works the opening of the railway would be attended with danger, the opening of the railway may be postponed until it appears that such opening can safely take place. The works undoubtedly include the bridges which carry the roads, and regulations made under this statute require the deposit of the plans showing the structure

of those bridges in order that their strength may be ascertained. These considerations only show the means by which the adequacy of the bridge is first established. They do not touch the question as to whether the liability under section 46 is to maintain the bridge which has been so passed, or to maintain any bridge that may hereafter be required. This question, which is one of undoubted difficulty, would have been attended with far greater uncertainty had it not been for the decision of this House in the case of *Sharpness New Docks and Gloucester and Birmingham Navigation Company* v. *Attorney-General*, [1915] A.C. 654, 52 S.L.R. 918. In that case a canal company were proposing to take their canal through a highway, and the Act which authorised the construction of the works provided that this highway should be carried by a bridge of such dimensions and in such manner as the Commissioners should approve, and obligations were cast upon the canal company to maintain such bridge. The case decided two important and relevant matters. First, that where a private Act casts upon a corporation the burden of maintaining a particular bridge which carried a highway across their works, the question of what would be the common law liability of the person who had intercepted a highway under similar circumstances was irrelevant for the purpose of construing the statute. If the statute imposed the duty of maintaining a defined structure, that liability was the true limit of the obligations of the company. Secondly, that an obligation expressed in general terms "from time to time to maintain and support" such a bridge did not involve the rebuilding of the structure and was only consistent with maintaining the structure that had once been erected. If, therefore, section 46 in this case imposes upon the Railway Company the obligation only of repairing a particular bridge—namely, the bridge which was properly erected to carry the road when the railway was made—then all outside considerations as to what the obligations might have been apart from the statute become irrelevant, and no greater duty than that of maintaining such a bridge is cast on them by the statute. In my opinion this is all that the statute does. The road is to be carried by the bridge, and it is such a bridge, with the immediate approaches and all other necessary works, which has to be executed and thereafter maintained at the company's expense.

I cannot think that these words mean that such bridge is to be a changing and varying structure, altered from time to time to meet the growth of traffic wholly unforeseen and unexpected when the railway was made. There are no words in the section that imply that the structure, when once properly made to bear the road, has ever to be rebuilt in a new and strengthened form, and the only way in which the appellants urge that this meaning can be introduced into the language of the Act is by saying that the road itself is a varying and inconstant quantity, and that the bridge must carry the road whatever the road may be. This, I think, puts upon the word "road" a meaning that, in this connection, it is not authorised to bear. The bridge is only bound to carry the road through which it passes, and that is the road determined at the moment when the railway is built, for it does not follow at all that the road within the meaning of the section is the same thing as the use of the road, which may change from time to time. I think further confirmation of this view is to be found in the section which relates to the widening of a bridge in case the original construction is of inadequate width.

It is a remarkable thing that the Act expressly provides the way in which the road is to be altered so as to be made wider if the increased demands of traffic require it, while no corresponding provision whatever is to be found as to its being made stronger in case the traffic becomes more burdensome. In this view of the case it is not necessary to consider whether Swinfen Eady, L.J., was correct in thinking that under section 66 there was power to refer any doubt as to the strength of the original structure to the Board of Trade. It is urged by the appellants that such reference could only be made where there was an attempted deviation from the compliance of the terms of the statute, and the learned Lord Justice undoubtedly assumes that the power extends to all questions arising on construction, whether the provisions of the Act are departed from or no. I am far from saying that his view in this matter is incorrect, but this it is unnecessary to decide. It is, however, useful to notice that when the certificate is given, the certificate, if it related to a bridge, would be a certificate that the bridge was constructed in conformity with the provisions of the Act. It is the bridge constructed in conformity with the provisions of the Act which the railway company are bound to maintain, and they are, in my opinion, subject to no further or added liability. I have avoided expressing any opinion upon the question as to how far traffic of an unusually heavy character placed for the first time upon a road constitutes a lawful user of the highway. It may well be that such traffic is of such a nature that its presence may constitute a nuisance, and that the use of the highway thereby may be unlawful; and if this be so no repeated succession of unlawful acts could ever make the user right. But apart from this there may be unusually heavy traffic, which, originally extraordinary traffic, upon a particular road becomes ordinary, owing to the changed circumstances of the district through which the road runs; and I have throughout assumed that it is this latter form of traffic which the appellant desires to place on the road, and which the bridge is unfit to bear.

In my opinion the judgment of the Court of appeal was right and this appeal should be dismissed with costs.

EARL LOREBURN — The point in this appeal is quite short and has already been stated. In my opinion the Court of Appeal were right. What the Railway Company was required long ago to build consisted of

a specific structure to be built so as to comply with given conditions. It was built in compliance with those conditions to the satisfaction of those concerned, so far as we know, and has stood ever since. That was the thing which the railway company had to maintain with the road on the top of it.

If the language of the Act imposed upon this company either the duty of originally building a bridge of size, strength, and quality sufficient to meet all possible requirements of the future, or the duty of from time to time reconstructing the bridge so as to keep pace with successive advances in the carriage of heavy traffic along roads, then of course it would be binding upon me. I find no such language, but merely a direction to build a bridge and maintain it together with the road upon it. Whether or not the strength or the details are specified in the Act seems to me of no importance, provided that the thing built complies with what the Act requires. If the Act merely directs a bridge to be built, then it would be a bridge reasonably suitable according to the standard at the time for the purpose designated. The railway company is not called upon to do more. I agree with Lord Sumner's opinion as to what the Act does require. If traffic heavier than the prescribed bridge will bear is placed upon the road the fault is not with the bridge or those who have to maintain it or the road over it, but with people to whom Parliament has secured a way with a certain measure of strength and who think fit to place upon it weights in excess of that measure.

The case of *Sharpness New Docks, &c., Company* v. *Attorney-General*, [1915] A.C. 654, 52 S.L.R. 918, as I understand the decision, is in accordance with this view. I thoroughly agree with that decision. Even if I did not agree with it I should be obliged to follow it. But if some of the language used in the debate on that case bears the construction sought to be placed upon it in the argument at the Bar, then I should respectfully differ and should say that it was not necessary for the decision. To my mind there is not any legal presumption in regard to the construction of an Act of Parliament such as was pressed upon us. There have been, it is true, expressions of opinion by very high authorities. But the Act speaks for itself, and the law does not, I think, attach to its construction any rule beyond the ordinary canons of construction. I do not follow the view that any special presumption can be invoked for the purpose of interpreting an Act which authorises the interruption of a highway. When the Act imposes a duty of repairing the newly-made road you would naturally, though not necessarily, expect the new authority to be invested with the same obligations as its predecessor, but the burden may be made heavier or lighter. I see no presumption of law either way. In the present case, and I think in most if not all cases, the Act itself says what is to be done. Here it says, to be sure, that the road is to be maintained—the road across the bridge. I cannot read that as meaning that the Railway Company may be called on to pull down the bridge or alter its character in order to suit the road's new burdens, if there are such burdens.

For these reasons I am of opinion that this appeal fails.

I express no opinion in regard to the duty of road authorities to make provision for special kinds or degrees of traffic. The question does not arise here because the duty of the Railway Company as to the support of the road by the bridge depends on statute. It is a difficult question and will require full argument.

VISCOUNT HALDANE—I regret that I am unable to concur in the conclusion to which I gather that the majority of your Lordships have come in this case. The question is whether the Court of Appeal were right in holding that the obligation of the respondents was limited to the maintenance of the bridge which carries the public highway from Hornsey Road to Crouch End over their railway merely in the same condition as to strength in relation to traffic as it was at the date of its completion some forty-eight years ago, and that the obligation did not extend to maintaining the bridge, by improving and strengthening it where necessary for the purpose, in such a fashion as to enable it to bear the ordinary traffic of the district coming along that public highway, and which might reasonably be expected to pass over it according to the standard of the present day. The highway with which the controversy is concerned was severed by the Edgware, Highgate, and London Railway Company, in the exercise of statutory powers conferred on it by a Special Act of 1862, which incorporated the Railways Clauses Consolidation Act of 1845. Pursuant to obligations imposed by section 46 and other sections of the latter and general Act, the bridge in question was constructed. Under a later statute the respondents have succeeded to the obligations of the original company.

Questions resembling in point of principle that before us have come before the courts in a series of cases, of which the following are examples—*Rex* v. *Inhabitants of Kent*, 13 East, 220; *Rex* v. *Inhabitants of Lindsey*, 14 East, 317; *Rex* v. *Kerrison*, 3 M. & S. 526; *Rex* v. *Inhabitants of Ely*, 15 Q.B. 827; *Hertfordshire County Council* v. *Great Eastern Railway Company*, 1909, 2 K.B. 403; and *Macclesfield Corporation* v. *Great Central Railway Company*, 1911, 2 K.B. 528. I think that a principle has been developed by the decisions of the courts in these cases, and that it is one which commends itself on general grounds as well as by reason of the weight of a series of authorities. The principle is that where persons acting under statutory powers conferred on them for their own convenience, interrupt a highway, they will, unless the statute provides otherwise, be presumed to be under an obligation to construct such works as will restore to the public the use of the highway, and to maintain the works at their own expense in a condition adequate to the public need. When, under such cir-

cumstances, the public road which has been interrupted is restored by being carried on a bridge, the bridge and the road, which thus forms part of it, must be kept up to such a standard as will admit of the public enjoying the facilities for ordinary traffic over the road that they would have had if the interruption had not taken place, and if the substituted works had not been executed. This principle can of course be excluded if the Legislature thinks fit to do so in unambiguous words. As Lord Dunedin observed in the recent case of *Sharpness New Docks and Gloucester and Birmingham Canal Company* v. *Attorney-General*, 1915, A.C. 654; 52 S.L.R. 918, if the statute which authorises the works goes on to define what are to be the rights and obligations following from the execution of the statutory act, it is in the language of the Legislature, and there alone, that rights and remedies are to be looked for.

It is said that in the present appeal we are bound by the decision in the *Sharpness* case. I took a leading part in advising the House as to the decision which was then given, and I am not likely to be wanting in loyalty to the view taken by this House on that occasion. But what was that view? Certainly not that we were laying down any novel principle, or making a precedent which would be decisive in the construction of a statute differing substantially from that which we were then construing. All the House did was to interpret the particular language of a private Act in order to ascertain whether the Act itself contained such an exhaustive definition of rights and duties as would, in accordance with Lord Dunedin's canon, exclude the general principle to which I referred at the outset as imposing an obligation if the statute did not exclude it. With all deference to those who think otherwise, I am quite unable to read the judgment of this House in the *Sharpness* case as having done more than interpret a particular set of words. And in interpreting other words in another statute such a judgment can render no more assistance than that which is derived by a court which has to construe a will of personal estate from decisions on other and differently worded wills. In the *Sharpness* case the private Act appointed commissioners who were to determine what should be done, and provided that the company were not to "make the said canal . . . across any common highway . . . until they shall . . . have made and perfected such bridges . . . across such highway . . . and of such dimensions and in such manner as the commissioners . . . shall adjudge proper; and all such . . . bridges . . . to be made shall from time to time be supported, maintained, and kept in sufficient repair by the said company." These words were interpreted as giving the commissioners a complete discretion as to strength, materials, and any other particulars, and as enabling them to look ahead and take account of future developments of traffic. The bridges which were to be made, and from time to time maintained and supported as the commissioners should determine, were constructed in a fashion approved by them in 1812, and, as so constructed, were maintained at the standard which the commissioners had in 1812 determined as that which was to regulate their construction once for all. The House of Lords held that the words used prescribed unambiguously the extent of an obligation which by its terms excluded a standard higher than that which the commissioners had prescribed. It was for the latter to consider and finally prescribe the standard. When they had certified what was to be made and perfected, with a view to the future it might be as well as to the past, they had defined the extent of the duty of the company and became *functi officio*.

The words of section 46 of the Railways Clauses Act 1845 are very different. To begin with, there are no commissioners introduced whose decision is to prescribe the obligation. The road is simply directed in general terms by the statute to be carried over the railway by means of a bridge. The only standards prescribed as standards by which the obligation to construct the bridge is in terms regulated are standards relating exclusively to height and width and to ascent and descent. As to strength and material, which were equally within the unlimited power of prescription of the statutory commissioners in the *Sharpness* case, not one word is said in section 46. If obligations of the railway company as to these were intended to be excluded from the operation of the general principle which the decided cases have, as I believe, established, one would expect to find an intention to that effect expressed in the section, more particularly as it has provided for the particular cases of height and width. But all that is said in section 46 is that "such bridge"—that is, the bridge by which the road is directed in general terms to be carried over the railway—"with the immediate approaches and all other necessary works connected therewith, shall be executed and at all times thereafter maintained at the expense of the company." If this be really all that is said in the statute it would seem to me plain that the duty to maintain the road which the bridge includes extends to the necessities of the ordinary traffic which the public are from time to time entitled to bring along the road. This conclusion is, in my opinion, the only one which is consistent with the general principle established by the authorities to which I have previously referred, and also with another principle which was not seriously questioned in the argument for the respondents, that the body which is charged with the duty of maintaining a highway has to maintain it in a condition which will enable it to carry the ordinary traffic on that highway in whatever form that ordinary traffic may develop.

If this be so, the duty of the respondents is to do what is necessary to strengthen the bridge so that it may be adequate to the requirements of the ordinary traffic of to-day on the road. It is suggested that other sections in the Railway Regulation Act of 1842 and in the Railways Clauses Act show that there is no such duty on the company.

I have examined the sections referred to and I do not think they bear out this contention. Turning first to section 6 of the Railway Regulation Act 1842, this section only enables a Government department to postpone the opening of the railway in case the Government Inspector shall report that such opening would be attended with danger to the public "by reason of the incompleteness of the works." Surely that must mean incompleteness at the time of their original construction. Section 49 of the Railways Clauses Act relates only to the case of bridges which carry the railway over roads, and makes provision in that event for the regulation of the width and height of arches. Section 50 deals with bridges to be erected for carrying roads over railways, but it prescribes nothing, excepting as to fences and to width and ascent, to which section 46 had already referred. Section 51 enacts that where the width of the road is itself less than the width prescribed for the bridge by section 50, the width of the latter may be diminished correspondingly, but must be increased correspondingly up to the prescribed maximum if the width of the road is thereafter increased. Section 65 enables the justices, on the application of the surveyor of roads, or of any two householders of the parish or district, to compel the company to maintain or keep in repair any bridge which is found to be out of repair. Section 66 provides that in case any difference shall arise between the company and any authority empowered to enforce the construction of the roads, bridges, or works as to the construction, alteration, or restoration of the same, the Board of Trade may decide on the proper manner of such construction, alteration, or restoration, and authorise any arrangement or mode of construction which shall appear to them to be in substantial compliance with the provisions of the Railways Clauses Act or the Special Act, provided that they are satisfied that existing private rights or interests will not be injuriously affected thereby.

I am unable to see that any of these sections which I have just referred to affect the construction of section 46 on the only point which is material in this appeal. As to section 46 itself, I think that, for the reasons I have stated, it is an enactment of radically different structure from that which was interpreted by this House in the *Sharpness* case. It appears to me that, unlike the latter enactment, its language does not exclude the operation of the general principles to which I have adverted, and that accordingly the judgment of the Court of Appeal was wrong.

LORD SHAW—I concur. In my opinion the obligations of the respondents are to be measured by the language of the statutes under which the railway was constructed and the bridges made.

By the Edgware, Highgate, and London Railway Act 1862 it was provided that the Railways Clauses Consolidation Act 1845 should be incorporated with and form part thereof. The bridge which is in question in this case was constructed between the years 1862 and 1867 in accordance with the various railway statutes and the requirements thereunder of the Board of Trade. So far as the Consolidation Act of 1845 is concerned the obligation was in the terms already quoted—the road was to be "carried over" the railway "by means of a bridge of the height and width and with the ascent or descent by this or the Special Act in that behalf provided," and such bridge and the works connected therewith "shall be executed and at all times thereafter maintained at the expense of the company."

There are two views of this section, and at the present very critical development of road traffic in England the question at issue between the parties is of great importance. Road traffic has so developed, and in particular in certain districts local requirements have so changed, in recent years that great alterations have heen necessitated in order to give the accommodation and the strength which these developments require. In the present case it is conceded that heavy road motor traffic is legitimately placed upon the roads, but would subject the existing bridge to a strain which it is unable from its structure to bear. It is accordingly demanded that the road, thus necessarily altered, strengthened, and, it may be, enlarged throughout the district, should be linked up by the bridge so as to be "carried" to the full effect of enabling the purpose of through-going traffic to be achieved. The other view is that such alterations, strengthenings, and enlargement, however expedient, do not fall within the scope of the obligation of maintenance, which, and which alone, falls upon the Railway Company.

The Court of Appeal has decided that the respondents "are liable to maintain the bridge in question in the same condition as to strength in relation to traffic as it was at the date of its completion, but that the defendants are not under any liability to improve and strengthen the bridge to make it sufficient to bear the ordinary traffic of the district which may be reasonably expected to pass over it according to the standard of the present day."

This is a strong, clear, and wide pronouncement, and it was argued that the result of it will be to render the heaviest through-going traffic impossible, and that in that way the network of road accommodation throughout the country must be broken by the bridge described, and by all others in similar case.

In *Hertfordshire County Council* v. *Great Eastern Railway Company*, 1909, 2 K.B. 403, Lord Moulton, then L.J., said—"In my opinion the law, as settled by the cases of *Rex* v. *Inhabitants of Kent*, 13 East 220, *Rex* v. *Inhabitants of Lindsey*, 14 East 317, *Rex* v. *Kerrison*, 3 M. & S. 526, and *Rex* v. *Inhabitants of Isle of Ely*, 15 Q.B. 827, practically amounts to this — that where persons, acting under statutory authority, for their own purposes interrupt a highway by some work which renders it impossible for the public to use it, an obligation is *prima facie* imposed upon them to construct such works as may be necessary to restore to the public the use of the highway

so interrupted, and that the obligation so imposed is of a continuing nature, involving not only the construction of such works but also their maintenance."

Were this important matter left to be settled upon a general principle, it appears to me to be not improbable that the one thus enunciated by Lord Moulton might be found a safe guide in the solution of the practical difficulty which has emerged. But in view of the judgment of this House in the *Sharpness* case I do not feel myself able to hold that the proposition so expressed can now be maintained to be law. As was said in that case by the noble and learned Viscount who has preceded me, where statutory provisions are made, it is they which form the rule of liability if the statute "contains a set of provisions which appear on their face to be exhaustive. . . ." Referring to section 61 of the Act then under consideration he observed that it "does not appear to me to admit of any resort to the assumption based on the analogy of the common law." In the judgment of Lord Dunedin the cases founded on by Lord Moulton are examined, and there my noble friend said that he was unable to agree with the dictum, "which, in my opinion, is too broadly expressed, as it would import a common law obligation running side by side with the expressed statutory obligations." Lord Atkinson said — "It is one thing to rely upon a common law principle where a statute is silent; it is quite another thing to invoke a common law principle in order to impose obligations different from or in addition to the obligations which are defined by the statute." This is also the view of Lord Parmoor.

It is thus vital to see what was the extent of the statutory obligation in the present case. The appellants argued that the Railway Company's obligation was that "such road shall be carried over the railway," and that this involved that as the road traffic developed and the road required additional dimensions and strength, so with the bridge, which otherwise would not be carrying the road. The consequence of such an argument might result in much public convenience, but of course it would involve an enormous addition to railway obligations. The reply to this argument, which was insisted on with much ability by Mr Osborn, was that the statutory obligation was not left in the general terms of merely carrying over such road but that the means were prescribed by which this obligation was to be performed, namely, "by means of a bridge of the height and width and with the ascent or descent provided" by statute, and that it was such bridge and no other which was to be executed and maintained for the future.

It is accordingly necessary to pause to consider exactly what was required by the various statutory enactments with which the Railway Company constructing the line had to comply. Under the Railway Regulation Act 1842 certain documents had to be deposited with the Board of Trade before the railway was opened, and it is admitted that the respondents' statement is correct that "among the documents so required to be deposited were drawings in detail of all bridges or viaducts either over or under the railway, accompanied by sufficient information to enable the strength of each bridge to be ascertained by calculation." These requirements were complied with, and in terms of the statute the detailed drawings were deposited with the Board of Trade. Nor is it denied that from these and from the dimensions contained therein the carrying power of the bridge could be estimated. The railway was inspected, was approved by the Board of Trade's officer, and was opened, the bridge in question being also approved.

So far, according as the working out of the Acts are concerned, the resultant situation was the same in my humble opinion as if this particular bridge, with its specific dimensions and its consequential strength, had been the subject of express statutory stipulation for erection and maintenance.

In regard to maintenance it should be further observed that there is nowhere in the statute any obligation, so far as can be discovered, with regard to the increase of the strength of the bridge according to future traffic requirements. I feel bound to assume that when the Board of Trade inspection took place the officials of the department would to some extent see that a margin was allowed for the reasonable anticipations of development of the road traffic—that, in short, the proximate future would be provided for—and I respectfully agree with the judgment of Lord Parmoor in the *Sharpness* case on this point.

In the Consolidation Act of 1845 there is, however, one section in which a reference is in fact made to operations upon bridges "after the construction of the railway." I refer to section 51. It provides that "if at any time after the construction of the railway the average available width of any such road shall be increased, then the company shall be bound at their own expense to increase the width of the bridge to such extent as required." This, it will be observed, is as to width only. But even there a limit is put to the obligations of the Railway Company by these words—"Not exceeding the width of such road as so widened, or the maximum width herein or in the Special Act prescribed." This in one view is indicative of the desire of Parliament to make it quite clear that even with regard to the future on the point of width the limits of railway obligation should be clearly defined. To take the instance which I put in the course of the argument, if a narrow carriage road (with a railway bridge over it) was increased to 40 feet in width, it seems reasonably clear from the other clauses of the Act of Parliament that the maximum width to which the Railway Company would be obliged to go in accommodating the bridge to the road would be a width of only 25 feet. The idea, in short, of the exact equation of accommodation between road and bridge or of any obligation of the Railway Company upon such a footing is thus negatived; and with regard to the strength of the bridge there is no provision whatsoever, limited or

unlimited, for future increase or alteration thereof. I cannot in these circumstances hold that such a provision should be read into the statute, which as already explained I hold to be the measure of the respondent's obligations.

I am accordingly of opinion that the judgment of the learned Lords of the Court of Appeal is correct. I may add, however, that the fact that the judgment of this House is to that effect makes the situation with regard to the accommodation of the road traffic of the country and the possible serious interruption thereof one for the attention of the Legislature. The adjustment of the responsibilities of all parties in regard to those alterations and developments which the needs of the country demand is a legislative task, but does not fall within the sphere of judicial remedy.

LORD SUMNER—The construction of 8 and 9 Vict. cap. 20, sec. 46, is the real question in this appeal. Though the case has been twice elaborately argued, I think the meaning of the section remains tolerably clear.

As applied to this railway the section required that in 1867 the undertakers should carry the public highway in question, known as Crouch End Hill, over their railway "by means of a bridge of the height and width and with the ascent or descent by this or the Special Act in that behalf provided," and that "such bridge, with the immediate approaches and all other necessary works connected therewith," should be "executed" by the undertakers. All this they did.

Furthermore, by 5 and 6 Vict. cap. 55, sec. 6, the public department concerned was empowered and bound to inspect the bridge and works connected with it along with the rest of the undertaking. If the officers appointed should report that in their opinion the opening of the railway would be attended with danger to the public using the same by reason of the incompleteness of the works or permanent way, then the department had the power and duty of preventing the railway from being opened for traffic until it should appear "that such opening may take place without danger to the public." In my opinion, incompleteness here covers not merely the case of a bridge designed to be strong enough, but not yet fully executed or completed, but also a bridge which, though fully executed according to the design, is incomplete because neither the design nor the execution has provided strength sufficient to bear the load — see *per* Jessel, M.R., in *Attorney-General* v. *Great Western Railway*, 4 Ch. D. 735, at p. 739. Further, the "public" in question was clearly not confined to the members of the public who were to use the railway undertaking by passing under the bridge in trains, but included those who were to use it by passing above the trains by means of the bridge, and the danger was not confined to their persons, but extended to their goods, their vehicles, their draught animals, and so forth. On the face of this section the statutory duty which it imposes could not be performed unless the officials engaged had a full and proper opportunity of knowing the mode of construction of the bridge and of judging thereby its safety for the statutory object. Mr Vernon, for the respondents, very pertinently showed, by reference to existing Board of Trade regulations employed in practice by the Department, that, as might be expected, requirements can be and are formulated which enable its officials to judge, among other things, the strength and durability of such a structure, and the drawings supplied by the parties to your Lordships with the record show that the plans actually deposited during the construction gave ample materials for criticising the strength of the bridge.

When the bridge was executed in or shortly before 1867 all these requirements were complied with—its height and width and ascent or descent were in accordance with the relevant sections of the Act, and the public officials concerned declared themselves satisfied. Accordingly I am unable to see how it can be said that the bridge was not "executed" in accordance with the section. No question has arisen until recently as to the strength or sufficiency of the bridge. It carried the public highway across the railway, and did so efficiently, not only when the railway was opened, but, as is admitted on all hands, for many years thereafter.

Changes have now taken place of a sort with which we are all familiar. The judgment of Warrington, J., describes the traffic, which the relators assert that the bridge ought to be able to carry, as "heavy motor traffic," by which I understand not that the traffic of motor cars is heavy because many motor cars pass along the road, but that the traffic crossing the bridge includes heavy motors, self-propelling vehicles of a weight and energy that cause a particular strain on the bridge. The appellant's case is that even if the bridge was duly "executed" in 1867 the respondents are now bound and compellable by law to maintain the bridge in such a fashion that it will safely carry such traffic; nay, more, that they are bound in case of need to reconstruct the bridge for the purpose, and so on, whenever hereafter further mechanical discoveries bring into use heavier and heavier vehicles, or such as in any other way load and strain the bridge beyond its capacity for the time being.

Such a contention cannot in my opinion be rested on the word "execute." There are no words which expand this into "re-execute to a higher standard in the future." Nor can I think that it comes under the obligation as to maintenance. The section requires the respondents (they are the successors to the original undertakers) to maintain such bridge as is required to be executed in the first instance—"such bridge . . . shall be executed . . . and at all times thereafter maintained at the expense of the company." "Maintain" does not naturally mean maintain and alter, nor does "maintain such bridge" — namely, the bridge previously executed—naturally mean maintain it not as it was executed, but as something indefinitely different, stronger, more durable,

and possibly of wholly dissimilar structure, material, or design. It is said that this meaning, which I venture to call unnatural, is imposed on the words used, both as to execution and maintenance, because "such bridge" is to be the means of carrying such road over the railway. So it is, but so far there is nothing to show that such road is anything more than the physical road known about 1866 apparently as "Crouch End Hill." The argument proceeds that in relation to that road the common law conferred on the public certain rights and imposed corresponding duties on the road authority, extending to a progressive improvement of the road as and when the growth of heavy motor traffic might require; that nothing in this section shows any intention on the part of the Legislature to lessen those rights or those duties, and that, as the bridge is but a new link in the line of the old highway, the contrary intention must be presumed. Hence the duties of the highway authority must, in respect of the part of the highway which the bridge carries, be deemed to have been transferred to the respondents as owners of the bridge.

To this contention I think the short answer must be that the section is concerned with a physical thing to be executed *in præsenti* and to be maintained *in futuro*, and it is engaged in telling the undertakers what they are to do then and there. Having done so, it clearly adds, "that which is hereby directed to be made shall at all times thereafter be maintained." Maintenance is in itself a word which is not indicative of but negatives change. What is maintained is a *status quo*. It does not point to a higher standard of attainment. Except that by implication it assures to the public the same measure of dedication as a free highway or accessibility as a turnpike road as had previously attached to the road formerly carried on solid earth and now carried by means of a bridge, I do not think the section has any concern with the duties of road authorities as such or of public bridge authorities as such. The section is an adoptive section. It assumes a special Act of Parliament, authorising a line of railway to be carried across the line of a highway, with which it is incorporated. The section is in terms applicable equally to turnpike roads as to public highways. It takes no account of subsequent events, such as the disturnpiking of the road. It applies to them as they are. Possibly it may be that in the result the public now loses some advantages in respect of Crouch End Hill which it would have enjoyed if the Railways Clauses Consolidation Act 1845 had never passed or the railway in question had never been made. This cannot be helped. The statute will have it so. If the Legislature in 1845 did not see ahead beyond the end of the century it at any rate exercised a degree of foresight that has not always been equalled in public affairs.

I think that the contention of the relators fails. I have arrived at this conclusion on the bare language of the section itself, but I conceive that it is also involved in your Lordships' recent decision in the *Sharpness* case. There, as here, the undertaking was laid out along a line intersecting sundry public highways. There, as here, the Legislature prescribed for the undertakers expressly what they were to do, and by implication what they need not do. This is what is called a code. There, as here, they were to carry the roads over the canal by means of bridges. There certain commissioners were to say affirmatively what those bridges were to be in dimension, strength, and design; here the Legislature fixes some of these particulars, and empowers a public department to fix the rest negatively by bringing the undertaking to a stand unless it is satisfied. This merely varies the mechanism. It does not affect the principle. In each case the Legislature prescribes a bridge for present erection and future maintenance. It says, "Do this and your duty is done." By what precise steps or from what sources the particulars of the works to be executed are prescribed cannot be material as soon as they are ascertained.

In the course of the argument a good deal was contended for as to the duties of road authorities in regard to new traffic over a bridge forming part of a highway, to which I should not be disposed to assent without further consideration, nor do I for my own part wish to be taken as expressing any opinion except on the construction of section 46 of the Railways Clauses Consolidation Act 1845. I agree that the appeal ought to be dismissed.

Appeal dismissed.

Counsel for the Appellant—Sir R. Finlay, K.C. — Charles, K.C. — Jowitt. Agents — Joynson-Hicks, Hunt, Moore, & Cardew, Solicitors.

Counsel for the Respondents—Sir J. Simon, K.C. — Tomlin, K.C. — Andrewes-Uthwatt. Agent—R. Hill Dawe, Solicitor.

PRIVY COUNCIL.

Thursday, June 22, 1916.

(Present—The Right Hons. the Lord Chancellor (Buckmaster), Earl Loreburn, Lord Shaw, and Sir Arthur Channell).

(On Appeal from the Court of Appeal of New Zealand.)

RIDD MILKING MACHINE COMPANY, LIMITED *v.* SIMPLEX MILKING MACHINE COMPANY, LIMITED.

Patent — Infringement — Protection of a Principle—Ambiguity of Specification.

Where it is desired to protect a principle such claim must be definitely stated in the specification, not merely implied.

Decision of the New Zealand Court of Appeal *affirmed.*

Their Lordships' considered judgment, in which the *facts* are given, was delivered by

Lord Shaw—This appeal is from a judgment of the Court of Appeal in New Zealand