



# Railways Clauses Consolidation Act 1845

## 1845 CHAPTER 20

### *Recovery of Damages and Penalties*

And with respect to the Recovery of Damages not specially provided for, and of Penalties, and to the Determination of any other Matter referred to Justices, be it enacted as follows :

#### **CXL Provision for Damages not otherwise provided for.**

In all Cases where any Damages, Costs, or Expenses are by this or the Special Act, or any Act incorporated therewith, directed to be paid, and the Method of ascertaining the Amount or enforcing the Payment thereof is not provided for, such Amount, in case of Dispute, shall be ascertained and determined by Two Justices; and if the Amount so ascertained be not paid by the Company or other Party liable to pay the same within Seven Days after Demand, the Amount may be recovered by Distress of the Goods of the Company or other Party liable as aforesaid; and the Justices by whom the same shall have been ordered to be paid, or either of them, or any other Justice, on Application, shall issue their or his Warrant accordingly.

#### **CXLI Distress against the Treasurer.**

If sufficient Goods of the Company cannot be found whereon to levy any such Damages, Costs, and Expenses payable by the Company, the same may, if the Amount thereof do not exceed Twenty Pounds, be recovered by Distress of the Goods of the Treasurer of the Company; and the Justices aforesaid or either of them, on Application, shall issue their or his Warrant accordingly; but no such Distress shall issue against the Goods of such Treasurer unless Seven Days previous Notice in Writing, stating the Amount so due, and demanding Payment thereof, have been given to such Treasurer, or left at his Residence; and if such Treasurer pay any Money under such Distress as aforesaid he may retain the Amount so paid by him, and all Cost and Expenses occasioned thereby, out of any Money belonging to the Company coming into his Custody or Control, or he may sue the Company for the same.

**CXLII Method of proceeding before Justices in Questions of Damages, &c.**

Where in this or the Special Act any Question of Compensation, Expenses, Charges, or Damages, or other Matter, is referred to the Determination of any One Justice or more, it shall be lawful for any Justice, upon the Application of either Party, to summon the other Party to appear before One Justice, or before Two Justices, as the Case may require, at a Time and Place to be named in such Summons; and upon the Appearance of such Parties, or in the Absence of any of them, upon Proof of due Service of the Summons, it shall be lawful for such One Justice, or such Two Justices, as the Case may be, to hear and determine such Question, and for that Purpose to examine such Parties or any of them, and their Witnesses, on Oath; and the Cost of every such Inquiry shall be in the Discretion of such Justices, and they shall determine the Amount thereof.

**CXLIII Publication of Penalties.**

The Company shall publish the short Particulars of the several Offences for which any Penalty is imposed by this or the Special Act, or by any Byelaw of the Company affecting other Persons than the Shareholders, Officers, or Servants of the Company, and of the Amount of every such Penalty, and shall cause such Particulars to be painted on a Board, or printed upon Paper and pasted thereon, and shall cause such Board to be hung up or affixed on some conspicuous Part of the principal Place of Business of the Company, and where any such Penalties are of local Application shall cause such Boards to be affixed in some conspicuous Place in the immediate Neighbourhood to which such Penalties are applicable or have reference; and such Particulars shall be renewed as often as the same or any Part thereof is obliterated or destroyed; and no such Penalty shall be recoverable unless it shall have been published and kept published in the Manner herein-before required.

**CXLIV Penalty for defacing Boards used for such Publication.**

If any Person pull down or injure any Board put up or affixed as required by this or the Special Act for the Purpose of publishing any Byelaw or Penalty, or shall obliterate any of the Letters or Figures thereon, he shall forfeit for every such Offence a Sum not exceeding Five Pounds, and shall defray the Expenses attending the Restoration of such Board.

**CXLV Penalties to be summarily recovered before Two Justices.**

Every Penalty or Forfeiture imposed by this or the Special Act, or by any Byelaw made in pursuance thereof, the Recovery of which is not otherwise provided for, may be recovered by summary Proceeding before Two Justices; and on Complaint being made to any Justice he shall issue a Summons, requiring the Party complained against to appear before Two Justices at a Time and Place to be named in such Summons, and every such Summons shall be served on the Party offending either in Person or by leaving the same with some Inmate at his usual Place of Abode; and upon the Appearance of the Party complained against, or in his Absence, after Proof of the due Service of such Summons, it shall be lawful for any Two Justices to proceed to the hearing of the Complaint, and that although no Information in Writing or in Print shall have been exhibited before them; and upon Proof of the Offence, either by the Confession of the Party complained against, or upon the Oath of One credible Witness or more, it shall be lawful for such Justices to convict the Offender, and upon such

Conviction to adjudge the Offender to pay the Penalty or Forfeiture incurred, as well as such Costs attending the Conviction as such Justices shall think fit.

#### **CXLVI Penalties to be levied by Distress.**

If forthwith upon any such Adjudication as aforesaid the Amount of the Penalty or Forfeiture, and of such Costs as aforesaid, be not paid, the Amount of such Penalty and Costs shall be levied by Distress, and such Justices, or either of them, shall issue their or his Warrant of Distress accordingly.

#### **CXLVII Imprisonment in default of Distress.**

It shall be lawful for any such Justice to order any Offender so convicted as aforesaid to be detained and kept in safe Custody until Return can be conveniently made to the Warrant of Distress to be issued for levying such Penalty or Forfeiture and Costs, unless the Offender give sufficient Security, by way of Recognizance or otherwise, to the Satisfaction of the Justice, for his Appearance before him on the Day appointed for such Return, such Day not being more than Eight Days from the Time of taking such Security; but if before issuing such Warrant of Distress it shall appear to the Justice, by the Admission of the Offender or otherwise, that no sufficient Distress can be had within the Jurisdiction of such Justice whereon to levy such Penalty or Forfeiture and Costs, he may, if he thinks fit, refrain from issuing such Warrant of Distress; and in such Case, or if such Warrant shall have been issued, and upon the Return thereof such Insufficiency as aforesaid shall be made to appear to the Justice, then such Justice shall by Warrant cause such Offender to be committed to Gaol, there to remain without Bail for any Term not exceeding Three Months, unless such Penalty or Forfeiture and Costs be sooner paid and satisfied.

#### **CXLVIII Distress how to be levied.**

Where in this or the Special Act, or any Act incorporated therewith, any Sum of Money, whether in the Nature of Penalty or otherwise, is directed to be levied by Distress, such Sum of Money shall be levied by Distress and Sale of the Goods and Chattels of the Party liable to pay the same; and the Overplus arising from the Sale of such Goods and Chattels, after satisfying such Sum of Money, and the Expenses of the Distress and Sale, shall be returned, on Demand, to the Party whose Goods shall have been distrained.

#### **CXLIX Distress not unlawful for Want of Form.**

No Distress levied by virtue of this or the Special Act, or any Act incorporated therewith, shall be deemed unlawful, nor shall any Party making the same be deemed a Trespasser, on Account of any Defect or Want of Form in the Summons, Conviction, Warrant of Distress, or other Proceeding relating thereto, nor shall such Party be deemed a Trespasser *ab initio* on account of any Irregularity afterwards committed by him, but all Persons aggrieved by such Defect or Irregularity may recover full Satisfaction for the special Damage in an Action upon the Case.

#### **CL Application of Penalties.**

The Justices by whom any such Penalty or Forfeiture shall be imposed may, where the Application thereof is not otherwise provided for, award not more than One Half

thereof to the Informer, and shall award the Remainder to the Overseers of the Poor of the Parish in which the Offence shall have been committed, to be applied in aid of the Poor's Rate of such Parish, or if the Place wherein the Offence shall have been committed shall be extra-parochial, then such Justices shall direct such Remainder to be applied in aid of the Poor's Rate of such extra-parochial Place, or, if there shall not be any Poor's Rate therein, in aid of the Poor's Rate of any adjoining Parish or District.

**CLI Penalties to be sued for within Six Months.**

No Person shall be liable to the Payment of any Penalty or Forfeiture imposed by virtue of this or the Special Act, or any Act incorporated therewith, for any Offence made cognizable before a Justice, unless the Complaint respecting such Offence shall have been made before such Justice within Six Months next after the Commission of such Offence.

**CLII Damage to be made good in addition to Penalty.**

If, through any Act, Neglect, or Default on account whereof any Person shall have incurred any Penalty imposed by this or the Special Act, any Damage to the Property of the Company shall have been committed by such Person, he shall be liable to make good such Damage as well as to pay such Penalty; and the Amount of such Damages shall, in case of Dispute, be determined by the Justices by whom the Party incurring such Penalty shall have been convicted; and on Nonpayment of such Damages, on Demand, the same shall be levied by Distress, and such Justices, or One of them, shall issue their or his Warrant accordingly.

**CLIII Penalty on Witnesses making default.**

It shall be lawful for any Justice to summon any Person to appear before him as a Witness in any Matter in which such Justice shall have Jurisdiction under the Provisions of this or the Special Act at a Time and Place mentioned in such Summons, and to administer to him an Oath to testify the Truth in such Matter; and if any Person so summoned shall, without reasonable Excuse, refuse or neglect to appear at the Time and Place appointed for that Purpose, having been paid or tendered a reasonable Sum for his Expenses, or if any Person appearing shall refuse to be examined upon Oath or to give Evidence before such Justice, every such Person shall forfeit a Sum not exceeding Five Pounds for every such Offence.

**CLIV Transient Offenders.**

It shall be lawful for any Officer or Agent of the Company, and all Persons called by him to his Assistance, to seize and detain any Person who shall have committed any Offence against the Provisions of this or the Special Act, and whose Name and Residence shall be unknown to such Officer or Agent, and convey him, with all convenient Despatch, before some Justice, without any Warrant or other Authority than this or the Special Act; and such Justice shall proceed with all convenient Despatch to the hearing and determining of the Complaint against such Offender.

**CLV Form of Conviction.**

The Justices before whom any Person shall be convicted of any Offence against this or the Special Act, or any Act incorporated therewith, may cause the Conviction to be drawn up according to the Form in the Schedule to this Act annexed.

**CLVI Proceedings not to be quashed for Want of Form, &c.**

No Proceeding in pursuance of this or the Special Act, or any Act incorporated therewith, shall be quashed or vacated for Want of Form, nor shall the same be removed by Certiorari or otherwise into any of the Superior Courts.

**CLVII Parties allowed to appeal to Quarter Sessions on giving Security.**

If any Party shall feel aggrieved by any Determination or Adjudication of any Justice with respect to any Penalty or Forfeiture under the Provisions of this or the Special Act, or any Act incorporated therewith, such Party may appeal to the General Quarter Sessions for the County or Place in which the Cause of Appeal shall have arisen; but no such Appeal shall be entertained unless it be made within Four Months next after the making of such Determination or Adjudication, nor unless Ten Days Notice in Writing of such Appeal, stating the Nature and Grounds thereof, be given to the Party against whom the Appeal shall be brought, nor unless the Appellant forthwith after such Notice enter into Recognizances, with Two sufficient Sureties, before a Justice, conditioned duly to prosecute such Appeal, and to abide the Order of the Court thereon.

**CLVIII Court to make such Order as they think reasonable.**

At the Quarter Sessions for which such Notice shall be given the Court shall proceed to hear and determine the Appeal in a Summary Way, or they may, if they think fit, adjourn it to the following Sessions; and upon the hearing of such Appeal the Court may, if they think fit, mitigate any Penalty or Forfeiture, or they may confirm or quash the Adjudication, and order any Money paid by the Appellant or levied by Distress upon his Goods to be returned to him, and may also order such further Satisfaction to be made to the Party injured as they may judge reasonable; and they may make such Order concerning the Costs, both of the Adjudication and of the Appeal, as they may think reasonable.

**CLIX Receiver of Metropolitan Police District to receive Penalties incurred within his District.**

Provided always, and be it enacted, That not withstanding anything herein or in the Special Act, or any Act incorporated therewith, contained, every Penalty or Forfeiture imposed by this or the Special Act, or any Act incorporated therewith, or by any Byelaw in pursuance thereof, in respect of any Offence which shall take place within the Metropolitan Police District, shall be recovered, enforced, accounted for, and, except where the Application thereof is otherwise specially provided for, shall be paid to the Receiver of the Metropolitan Police District, and shall be applied in the same Manner as Penalties or Forfeitures, other than Fines upon drunken Persons, or upon Constables for Misconduct, or for Assaults upon Police Constables, are directed to be recovered, enforced, accounted for, paid, and applied by an Act passed in the Third Year of the Reign of Her present Majesty, intituled *An Act for regulating the Police Courts in the Metropolis* ; and every Order or Conviction of any of the Police

Magistrates in respect of any such Forfeiture or Penalty shall be subject to the like Appeal, and upon the same Terms, as is provided in respect of any Order or Conviction of any of the said Police Magistrates by the said last-mentioned Act; and every Magistrate by whom any Order or Conviction shall have been made shall have the same Power of binding over the Witnesses who shall have been examined, and such Witnesses shall be entitled to the same Allowance of Expenses, as he or they would have had or been entitled to in case the Order, Conviction, and Appeal had been made in pursuance of the Provisions of the said last-mentioned Act.

**CLX Persons giving false Evidence liable to Penalties of Perjury.**

And be it enacted, That every Person who, upon any Examination upon Oath, under the Provisions of this or the Special Act, or any Act incorporated therewith, shall wilfully and corruptly give false Evidence, shall be liable to the Penalties of wilful and corrupt Perjury.

**CLXI Money paid into the Bank of Ireland to be exempt from Ushers Poundage.**

And be it declared and enacted, That all Sums of Money which have been or shall be paid into the Bank of *Ireland* in the Name and with the Privity of the Accountant General of the Court of Chancery of *Ireland*, under the Provisions of an Act passed in the Second Year of the Reign of Her present Majesty, intituled *An Act to provide for the Custody of certain Monies paid in pursuance of the Standing Orders of either House of Parliament, by Subscribers to Works or Undertakings to be effected under the Authority of Parliament*, shall and may be paid out and applied under any Order of the said Court of Chancery exempt from Ushers Poundage.