I have the honour to report, for the information of the Minister of Transport, in accordance with the Order of 2nd June, 1939, the result of my Inquiry into the circumstances of the accident which occurred at about 12.10 p.m. on 1st June, at Cross Drove Occupation level crossing, on the north side of, and adjacent to, Hilgay Station, on the Ely-King’s Lynn line of the London and North Eastern Railway.

The 11.2 a.m. up express passenger train, Hunstanton to Ely, was approaching the station under clear signals, at a speed of 60-65 m.p.h., when it collided with a lorry loaded with straw which was passing over the crossing; the lorry was wrecked and thrown foul of the down line, but one of the front wheels apparently became caught up under the engine, with the result that its bogie was immediately derailed. One bogie wheel thus struck the V of the obtuse crossing of the diamond 57 yards ahead of the level crossing, and complete derailment of the engine and train followed, resulting in collision between, and wreckage of, the leading coaches and certain wagons which were standing in the neighbouring siding.

I regret to state that three passengers were killed, and a fourth died next day in hospital, while five were seriously injured; there were seven additional cases of minor injury and shock, and the driver, fireman and guard of the train similarly suffered. The lorry driver’s hand and arm were cut and his side and back were bruised; he had recovered sufficiently to give evidence at my Inquiry on the 8th June. The first ambulance from Downham was on the scene by 12.30 p.m.

The train was drawn by engine No. 8783, type 4-4-0, weighing in working order 94 tons, with a 6-wheeled tender. It was fitted with the Westinghouse brake, operating blocks on the coupled and tender wheels, and working in conjunction with the vacuum brake on all wheels of the train, which comprised five 8-wheeled bogie coaches, weighing 150½ tons. The total weight of the train was, therefore, 244½ tons, and the brake power was about 60 per cent. Its overall length was 322 ft., and the stock was electrically lighted throughout.

A drawing of the lorry concerned is attached; it was a 2-ton Ford, No. EB 9633. It was stated to be in good running order and was loaded with straw, the body having been specially built by the owner for this purpose.

The front of the engine came to rest 243 yards beyond the point of collision, and it was separated from the coaches by about 16 yards, the engine screw coupling having broken. The position which the train assumed is shown on the attached plan; also the wagons in the siding. About 70 yards of main line, including the diamond crossing, were damaged, and thence the track was torn up for 130 yards; in addition, 75 yards of the up siding were similarly affected, and two connections were pushed out of alignment. A few lengths of point rodding were also damaged.

The engine was one of two used to draw the Royal train when working on this line, and Driver D. S. L. Barber is one of the three drivers regularly employed on such occasions. It was derailed to the left of the track, and, after colliding with the wagons, it came to rest leaning over towards the siding at an angle of about 45°. The bogie centre pin was broken and there was considerable damage on the left-hand side, including the buffer beam and the leading buffer.

The leading coach, a Third, came to rest leaning against the wagons; the corridor side was ripped out and the compartments were extensively damaged, while the body ends were partly demolished. The second vehicle, a Brake Third (in which the guard was riding at the rear end) was tilted at an angle, and the roof and the three compartments were destroyed as the result of collision with the wagons. The passengers who were killed were riding in this coach, and their bodies were found near the trailing bogie, which was turned nearly at right angles; a front wheel and the axle of the lorry had been caught up with, and carried forward by, this bogie.
The third vehicle, a Composite, remained upright, but half the roof and the corridor side at the leading end were similarly destroyed, as the result of contact with the wagons. The fourth coach, a Composite, had the side windows smashed on both sides, while the compartment side was broken and scored for the full length above the waistrail. The fifth vehicle, a Brake Third, was little damaged except for the cornice, stepboards, etc.

All the coaches were of vestibule type, and, with the aid of this and the Buck-eye coupling, their alignment and upright position were maintained. The damage and casualties mainly resulted from the collision with the wagons in the siding; it was fortunate that no more than 40 people were travelling in the train. Eight covered and six open wagons were damaged, seven of them having been thrown over, their sides and ends being badly smashed in; one or two others were also derailed, but remained upright.

The down line was temporarily blocked for half an hour until the lorry was cleared; the up line could not be re-opened for traffic until 7.0 a.m. next morning.

The weather was fine and visibility was good.

The cause of the accident was gross carelessness on the part of the lorry driver, who drove on to the crossing without looking along the line in the direction of the train.

The line in question was constructed under the Lynn and Ely Railway Act of 1845, and in the book of reference the crossing is scheduled as follows:—

Parish of Hilgay.
No. 38 (it is now No. 27).
Description—Drove.
Owners—Joseph Boyce and Thomas Goodchild.
Occupiers—in hand.

There is no mention of the crossing under Section 22 of the Act, which authorises certain public roadways to be crossed on the level, and there appears to be no doubt, therefore, that the crossing is of Occupation type, the road or Drove in question, as also Pleasant House, having been in existence before the railway was built.

With regard to the present status of the road, I was informed by the Clerk of the Norfolk County Council as follows:—

"I find that according to our records the road crossed by the level crossing, where I understand the recent accident took place, is a County Road known as Cross Drove. This road was handed over as a repairable public highway by the Downham Rural District Council on 1st April, 1930, if then being a road which up to the 31st March, 1930, was repairable as a public highway by the Downham Rural District Council; you will remember that the Local Government Act, 1929, provided for the transfer to the County Council of the Highways then maintained by the Rural District Councils. It is true that the County Council owns a considerable area of small holdings adjacent to Cross Drove and to its extension, Sedge Drove, but as the road is a County Road where crossed by the Railway, I do not think this fact is material, and indeed the crossing is used by a very great many people, who have no connection whatever with the County Council's small holdings."

A plan is attached which shows the positions and extent of these holdings which cover 273 acres and are distributed among 33 tenants; the holdings are land extensively cultivated with beet, vegetables, etc., and the Council has built no houses thereon. I understand that the Council's first purchase was Ship Lode Farm in 1911; this was followed by Pleasant House Farm in 1915, and by additional land on Ruane's Farm in 1920. I was also informed that, when the last two purchases were made, Cross Drove and Sedge Drove were not included in the conveyance and there were no rights reserved on them; at that time, the roads were generally regarded as public roads. Moreover, in addition to Pleasant House, the crossing in question serves Rice's Farm of 75 acres, Sedge Drove Farm of 200 acres, and Four Score Farm of 200 acres, which are also
extensively cultivated, and their positions are shown on the plan. There appear to be no agreements between the Company and the Council or other landowners with regard to the user of the crossing.

Cross Drove is metalled in water-bound stone with grave on top, varying from 11 to 13 feet in width, and is thus maintained by the County Council from Long Drove to the corner west of Pleasant House; thence Sedge Drove is unmetalled, the surface being also maintained by the County Council by ploughing and rolling annually. The Council's boundary is demarcated by a pillar located between Sedge Drove and Four Score Farms. From the former Farm, there is also an unmetalled track, as shown, running eastwards to Kisby's Farm, by which shorter access is obtainable to Long Drove than via the level crossing in question; but to use this track four gates have to be opened and closed, and a toll of a halfpenny is levied.

The lorry in question approached the crossing from the west side, and the acute angle between the road and the up line is 38°. The gates, 109 feet apart, are set well back from the railway, and there is ample distance for vehicles to stand inside them clear of the tracks. They are single hung, 12 feet wide, opening outwards, and are fastened in the closed position by a spring catch of common type. The west gate is 40 feet on the skew from the nearest rail of the down track, and 58 feet from the up track. The crossing itself is sleeper paved, in good condition, and on the skew measures 32 feet long and 25 feet wide. The road between the gates and the sleepers is metalled.

The gates are not self-closing, and no hooks are provided to hold them in the open position; but, for this purpose, a loop of string had been tied on to each for attachment to a nail in the stop post. When experiments were made shortly after the accident, the north-easterly wind was sufficient to blow each gate from the open to the closed position. As shown on the plan, there is a wicket gate for pedestrians on either side, with a notice which is adjacent to each and is inscribed, "Caution. Beware of the Trains." There is also the usual penalty notice on both of the main gates reading:—

"Any person who omits to shut and fasten this gate is liable to a penalty not exceeding 40 shillings."

The trees in the orchard along the west side of the line restrict a northerly view of up trains when road users are approaching and opening the west gate. From a point about seven yards outside the gate, namely, the approximate position in which the driver of the lorry came to a stand when his mate got down to open the gate, the view of the up line is 111 yards. From this position he could also just have seen the arm of the up home signal (which is located 17 yards north of the crossing); but nearer to the gate, and while opening it, the view of the arm of this signal is end-on, and a road user may be unable to tell whether the signal is clear for a train or at danger.

When opening the gate, the view of approaching up trains is limited to 271 yards, and from a point just inside the gate it is 377 yards. On reaching a point, however, only four yards inside the gate, and 15 yards from the nearest rail of the up line, the view of the railway towards Downham can extend to the full distance available, namely about 14 miles. In fact, except for the restriction described above, visibility conditions for road users at this level crossing are excellent in clear weather in both directions, the line being in low bank, and the road approaches rising to the crossing at gradients of 1 in 134 and 1 in 17.

The attached plan shows the position of Hilgay Station signal box, which also controls Long Drove Public Road crossing; the box is 400 yards south of Hilgay Occupation crossing, which can be seen therefrom. The box is switched out of the block circuit for a great part of the day, during which time the down starter remains normally off and is replaced to danger and worked only when the box is switched in. The other down signals and all the up signals are worked in conjunction with Long Drove level crossing gates.

The gradient of the up line falls at 1 in 134 for 3 fur., and at 1 in 900 for 4 fur. approaching the up distant signal; thence the line is level, and the normal speed of up expresses is 60-65 m.p.h. through the station (2 or 3 a day). I understand that this also applies in the down direction for corresponding non-stopping trains.
Report and Evidence.

1. Particulars of traffic were taken at the crossing on Saturday, 3rd June, and Monday, 5th June, as follows:

On 3rd June, the gates were opened and closed 79 times in 18 hours (maximum 8 times in 1 hour) for 12 motor vehicles, 1 motor cycle, 86 cycles, 6 horse-drawn vehicles, 8 pedestrians and 2 sheep. During this time 24 trains passed.

On 5th June the gates were opened and closed 77 times in 18 hours (maximum 11 times in 1 hour) for 13 motor vehicles, 86 cycles, 4 horse-drawn vehicles, 16 pedestrians, and 6 sheep. During this time 26 trains passed.

The evidence of Porter Signalman C. D. Woods, who has acted in this capacity at Hilgay for 21 years, was that the road user of the crossing was heavier from September to January, during the beet and potato traffic. He estimated that at a maximum there was a movement over the crossing every 5 minutes, the traffic lasting from 7 a.m. to 4 p.m., and consisting mainly of horse-drawn vehicles, having regard to the necessity for working over the unmetalled droves in the winter.

Woods has an allotment on the up side of the line near the crossing, and his experience was that it was not the practice of road users to leave the gates open; he said that, about a week previous to the accident, string had been used by a lorry driver to secure each gate in its open position, because the north-east wind would otherwise have blown the gates across the road before the driver could return to his lorry and drive forward. Wood’s evidence was, however, that the driver closed the gates after passing over the crossing.

On the other hand, Patrolman Wilson and Ganger A. Mackinder, who, frequently passed the crossing in the course of their duties, said that they found the gates left open at least once a fortnight, string being used for the purpose. Wilson’s estimate of traffic also confirmed that of Signalman Woods, as follows:—“Very often every 5 or 10 minutes. Every 5 minutes in winter from August to April for beet traffic etc.”

In this connection, Woods said that in his experience the road traffic had increased, both vehicular and pedestrian, owing to the beet crops, since Pleasant House Farm was purchased and turned into small holdings; but he pointed out that the road had always served the other farms to which reference has been made.

2. The express left Downham at 11.59 a.m., and was due to stop at Littleport at 12.11 p.m., viz. 12 minutes in which to cover the distance of 10 m. 4 ch., an average speed, start to stop, of 50 m.p.h., which would necessitate a maximum of 60-65 m.p.h.

The accident appears to have been witnessed, but at some distance. Clerk D. J. Biggs, aged 17, was returning from the signal box to Hilgay Station office when he noticed the lorry in the distance (370 yards) approaching the crossing. He said that he saw it “either stop for a second or slow down on approaching the gate”; he did not see a man open the gate, or shut it after the lorry. In fact, he saw no one with the lorry, and he could not tell whether the gate was shut or open, nor whether the lorry actually stopped. In his opinion, however, the lorry was moving when the collision took place; he also heard the whistle prior to the accident, and it continued to blow after the engine came to a stand.

Messrs. Etheridge and Fincham were working in the field on the west side of the line opposite the cattle-pen, and they also witnessed the accident. They had remarked on the length of the load of straw on the lorry, but the overhang was not unusual; the next moment they heard the express whistle. The lorry was travelling at walking pace and they did not observe whether the gate was open; but Etheridge (who had worked in the field for 4 years) said that “when a shop van goes over and comes back again, sometimes they leave them (the gates) open”.

3. There were three men on the footplate. Driver D. S. L. Barber, from his position on the right-hand side, observed the lorry as it came into view and well before it reached the line; he estimated that he opened the whistle when 200 or 300 yards away from the crossing. He was satisfied that he saw the lorry as quickly as possible, having regard to the restriction of view caused by the trees.
in the orchard. There seems to be no doubt that it was moving at about 5 m.p.h. Barber said he knew the line very well, and he was running to time. He had never experienced anything in the nature of lorries trying to beat the train across level crossings. He was able to close the regulator, but time was so short that he could not say definitely whether he applied the brake before the collision; the handle, however, was subsequently found nearly fully applied, though it may have been jerked to this position by the derailment.

Fireman R. A. Miller, from the left-hand side of the footplate, had no warning; he heard the whistle and the next moment was enveloped in straw and hit on the head. He said that Driver Barber closed the regulator before the collision, but he could not speak with regard to the brake.

Driver F. W. Bendall was standing behind Barber learning the road; he had been promoted to driver in May. His account was that after sounding the whistle and closing the regulator, Barber certainly applied the brake; Bendall appears to have seen the lorry through the cab spectacle after Barber did, and when it had practically reached the down line.

Guard H. R. Jolly had a fortunate escape, as his van (second coach, in which the passengers were killed) was very badly damaged. According to his account, after looking out (on the left-hand side) and observing the distant signal, he was about to eat some food when he heard the whistle and felt an emergency brake application. He appears to have looked out again and then realised that the collision was about to take place, or had already done so, when he threw himself on the floor of the van for safety.

4. Reuben Height was in charge of the lorry, of which he was in part ownership with his mother and elder brother, the firm being known as M. A. Height and Sons, Forage Merchants. His age is 26, and he lives at Barroway Drove, Nordelph, seven or eight miles from the crossing. He had been in the firm for seven years, and they owned this one lorry.

Height had been driving the lorry since its purchase in 1932. He stated that it was a model A.A.F. 2-ton Ford truck with a long wheelbase and a rack over the cab, the low-sided timber body having been built specially by his brother. The cab was supplied with the chassis and was of open type and of ordinary design, with a half door and glass windows moving up and down on each side. He had no difficulty in obtaining a side view. He said that the vehicle was in good order; he did not know its total or annual mileages. Four or five different engines had been supplied, the last one having been fitted by him some two months previous to the accident. He did not consider it particularly noisy, though his mate referred to it.

Height stated that he knew Cross Drove Occupation crossing, and had been over it about a dozen times in the last three years, the previous occasion in April last. He was delivering orders for straw on the morning in question; it appears that after leaving Nordelph (see attached map) he travelled via Lot’s Bridge, Lakesend, Welney, along the bank of the New Bedford River, and via the cart track to Four Score Farm where a load of straw was picked up; he returned the same way through Welney and delivered the load at Outwell at about 10.30 a.m.

After that, he returned to the farm and loaded straw again for delivery in Barroway Drove via Downham; he then proceeded on the journey in question along the unmetalled track via Sedge Drove Farm to Cross Drove and the level crossing, his intention being to reach Long Drove, the road to Hilgay. It would have been longer to have gone back via the New Bedford River to Long Drove and Hilgay Station level crossing, and he would have had to pay a toll had he proceeded by the other alternative route down the road via Kisby’s Farm. It would also have been 4½ miles longer to reach Barroway Drove via Lakesend, Lot’s Bridge, and Nordelph than via Denver and Downham.

Height said that the straw did not impede his vision, and the load did not make the car unwieldy or difficult to steer. He was accompanied by a youth, aged 18, named A. Pearce, who was assisting in loading, etc.; they were going home to lunch and had drunk cold tea during the morning. On arrival at the crossing they found both gates shut. Height knew the direction of movement on each track; also the position and indications of the up home signal, but he “did not pay particular attention to it”. He realised that there was no gatekeeper and that he was solely responsible for operating the gates; his
account was that he drew up and Pearce got down to open the gates. He applied the hand brake and changed down to bottom gear, by which time Pearce had opened the west gate. He proceeded forward at once at 4 to 5 m.p.h., looked to the right (towards the station), and that is all he could remember. He could not say whether he looked to the left, and extracts from his evidence are as follows:—

"Why did you not look in both directions before you reached the line?—I could not say.

Did the presence of your mate and the fact that he opened the gate tend to give you a false sense of security?—I did not expect to see a train on the line after my mate opened the gate.

Did you think that you had a clear road across the crossing?—Yes, seeing that he had seen the line was clear.

How long have you been driving now with a mate?—About seven years.

If the mate opens the gate, do you always assume that the crossing is free for you?—I always take reasonable precautions.

Do you not always operate the far gate first before you enter on the crossing?—No.

Is that not a rule at Occupation crossings?—At this particular crossing you cannot do so; you have to hold the gates to keep them open."

Height said he was not driving to beat the train across. His engine was not particularly noisy, but he thought that it might have prevented him hearing the train, and he did not hear the whistle. The left window of the cab was shut, the right was open. His intention was to cross the line and wait clear of the up track until Pearce opened the other gate. With regard to his view in the Downham direction, the following are further extracts from his evidence:—

"Had you looked up towards the left you could have seen up the line?—Yes, but not very far.

Why not far?—Because the line is at an acute angle.

But that does not prevent you looking up the line?—I could look up the line, but I could not see very far.

Does the window occupy the whole side of the cab?—Yes.

How did you know you could not see up the line very far?—I have been over that crossing before.

Do you know how far you can in fact see up the line?—No.

You agree that had you looked to the left you could have seen the train?—Quite possibly if I had looked left the train would not have been there.

You only had to look left to see up the line?—I can only see in front, not behind, as the crossing is at an angle.

If that is so, why did you not get down, stop, look and listen? Why did you not go on to the line?—My mate had done all that.

You were assuming that as your mate had opened the gate it was all right to go over?—Yes.

If you had been by yourself what would you have done?—I should have walked on to the line.

You have never been by yourself on any of these trips and you have never crossed over a level crossing by yourself?—Not that I can remember."

5. Pearce had been working for Height for about five weeks. He said that on arrival at the crossing he looked down the line and opened the gate. He saw no signal and did not know that one existed; nor did he know in which direction trains ran on each line. He did not shout or wave Height forward. He heard the train whistling as he was closing the gate, and the accident happened immediately. He accounted for not hearing the whistling earlier by the wind and the noise of the lorry which "was getting old." His experience, however, in this respect had been very brief. He estimated that his view from the gate in the direction of Downham (which he knew) was about 200 yards "as there are a lot of trees on this side"; he did not look to the right towards the station. With regard to his responsibility for ascertaining that the line was clear, he said that "I was employed to unload and load, not to look after the lorry. That is the lorry driver's job."
Conclusion.

6. It is clear that the accident was brought about by this unfortunate lack of proper understanding between the two men, and that Height proceeded on to the line after ignoring the most elementary precautions. While there may have been some excuse for Pearce, in view of his lack of experience, there can be none for Height who lives in the neighbourhood, knows the crossing and its conditions, and has been driving for seven years.

It appears that the presence of Pearce induced a false sense of security in Height's mind, the inference, however, being that he must have been sufficiently stupid and careless to take the risk of traversing this crossing without making sure of the conditions, either by seeing for himself or ascertaining that Pearce had done so. The suggestions that the acute angle of the crossing and the obstruction to view by the orchard prevented Height from realising the proximity of the train, are, in my opinion, merely excuses for slovenly driving, the circumstances at this crossing being such that anyone exercising ordinary care should have no difficulty.

Owing to the position of the signal in relation to the angle of the road, it seems doubtful whether Height could reasonably have been expected to pay attention to it, and, if signals are really to be relied upon, it might be argued that the normally clear aspect of the down starter would be misleading in this respect. On the other hand, the gates of Long Drove level crossing (distant no more than 400 yards) were open for rail traffic, while the up starter at the station was clear, and both might have been expected to warn him, as he admitted that he looked in this direction. The fact remains that there is a wide interval between the gate and the down line in which there was ample space for Height to stop clear of the railway, or at any rate to bend forward and turn his head over his shoulder, in order to obtain an unrestricted view of 4½ miles towards Downham.

The accident was, therefore, solely attributable to Height's failure to exercise reasonable precaution in the operation of his lorry over this level crossing, and no measure of responsibility of any kind can be attached to Driver Barber, who, though evidently on the alert, was taken by surprise; in the few seconds in which the latter had to act, he clearly adopted the proper course of sounding the whistle in an attempt to stop the lorry, and, from the evidence, there appears to be little doubt that, though he could not remember it himself, he was able to apply the brake as well as close the regulator before the collision occurred. He is a man with an excellent record, and has satisfactorily worked Royal trains on 29 occasions.

Remarks and Recommendations.

7. The last serious accidents of this nature occurred in October and November, 1934, at Barkfield Lane (Formby) and Wharf Road (Wormley) Occupation crossings, and the considerations bearing upon the risks involved, compared with the risks at the 4500 Public Road crossings throughout the country, were dealt with by Colonel A. C. Trench in his Reports dated 12th November, 1934, and 21st January, 1935, respectively. I agree generally with his observations and recommendations, and draw particular attention to item (f) in the Wormley Report, which is relevant in the present case and reads as follows:

"I also suggest, though I am afraid it is too late to be of value in many cases, that Local and Road Authorities should not adopt as public roads any occupation roads which approach a railway level crossing, until they have come to an agreement with the Railway Company as to the future status of the crossing, and the precautions which are necessary to permit of public user in safety."

As a result of a recommendation made in this Report, the Companies collected data regarding the total number of Accommodation and Occupation vehicular crossings (accommodation works) roughly classified in respect of types of user; they were also asked to consider what practical measures are necessary for securing additional safety in future, and the means by which they should be brought into effect, in the interests of safety, and with fairness to all concerned.
The Companies expressed their views in October, 1937, when they submitted the results of their investigation; and the following is a summary of the six categories of vehicular user (as described by the Companies):—

(A) Crossings giving communication from Field to Field .... 18,615
(B) Crossings giving access between Farm or Private Estate and Public Road .... .... .... .... .... 2,809
(C) Crossings giving access to land which now accommodates a factory, brickfield, etc., and which, owing to development, have now considerable user of heavy vehicles, but are still limited to the occupier, his agents, visitors, customers, and those having business with him .... .... .... .... 437
(D) Crossings giving access to land on which there are Sports Grounds, Camping Grounds, Race Tracks, etc., and other land used for recreational purposes and where a considerable user occurs intermittently or seasonally .... .... .... .... 85
(E) Crossings which in the course of years have acquired a public user and which have become in substance, though not legally, public crossings .... .... .... .... 224
(F) Other crossings not covered by the above .... .... .... .... 486

Total .... .... .... .... 22,656

In appropriate cases under Categories (A) and (B) an improved form of Warning Notice (already in existence at many crossings), and in special cases a telephone to the nearest signal box, should meet requirements; but with regard to the remaining more heavily used crossings in Categories (C) to (F), 1,232 in number, physical and perhaps legal conditions vary so much that individual consideration of appropriate measures for securing additional safety would be necessary in each case. The Hilgay crossing is classified by the L. & N.E.R. Company under (E) as one of the 45 on that Company's system which cross two running lines, and, as already stated, no agreement apparently exists between the Company and the County Council as to any restriction in user.

8. In view of the large number of level crossings concerned, it is desirable, in the first place, briefly to refer to what is meant by the expressions Accommodation and Occupation, although, as will be noted, the circumstances at such crossings may be subject to wide variations, not only in the type of connection afforded, the degree of user, and the presence or absence of alternative means of access, but in the rights attaching to them. As regards the general question of safety, however, no specific responsibility is placed upon Railway Companies by legislation for safeguarding the movement across the railway of road vehicles and pedestrians at any of these intersections, and no powers exist to enforce the provision of additional safeguards for the travelling public. On the other hand, the Companies naturally do not remain indifferent to the risks involved to their passengers and staff, and the circumstances which exist at any particular crossing may make it necessary to take more than ordinary precautions for the safety of persons entitled to use it.

Accommodation works, such as level crossings, had to be provided under Section 68 of the Railways Clauses Act, 1845, "for the purpose of making good any interruptions caused by the Railway to the use of the lands through which the Railway shall be made"; this Section also provides that a Company shall at all times thereafter maintain such works, and they are known as Accommodation crossings. It must, however, be borne in mind that, when the line was built, owners and occupiers of land which was severed were at liberty to make such arrangements with the Company concerned as they thought fit, and in many cases the compensation paid for severance was expressed to be in satisfaction of all accommodation works. In some cases also a Company might have expressly covenanted to construct and maintain certain specified works, and again, in others, the scope of the user of the works might have been enlarged or restricted by agreement. When considering, therefore, the obligations of a Company at any particular crossing, reference is necessary to the Act authorising the construction of the line, to the Conveyance of the land to the Company, and to any other relevant documents.
Again, a private occupation road or track used for farm or other purposes may have been severed by the construction of the Railway, and, in order to make good the severance, an Occupation crossing, namely, an accommodation work to carry the occupation road, was constructed and has since been maintained. Thus it may be said that this is the offspring of the ordinary Accommodation crossing, and the equipment is generally similar, viz., gates made to open away from the railway with the necessary wickets or stiles. But there is the distinction that, in the case of the Accommodation crossing, the only persons, generally speaking, who are entitled to use it are the owner of the severed lands and his tenants and licensees, whereas other persons, whose lands do not necessarily adjoin the railway, may have acquired rights to use the Occupation road and therefore the level crossing for such road. In some cases also, an occupation road or track carries a public bridleway or public footpath, or both, and then the Company has certain statutory and other obligations to the public, in addition to their obligations to the landowner and his tenants and licensees.

9. Suppression of Crossings.—Although the Act of 1845 provides for an application to local Justices in the event of a Company not constructing sufficient accommodation works within five years of the opening of a railway, no provision is made for similar procedure to enable a Company to close the crossing should they consider it desirable to do so; they are therefore helpless when dealing with a stubborn occupier who insists upon the crossing being maintained, and there are no general statutory provisions with regard to the suppression of Accommodation or Occupation crossings, even when alternative access has become available. In fact, even if user decreases to nil, such crossings cannot be closed (except with statutory powers and/or under certain conditions mentioned below) without the prior consent of the owners and occupiers concerned, which consent, it is understood, usually costs money in compensation.

The position is that the right of the owner and occupier to use an accommodation work is an easement, and as such may be released or abandoned. A release is usually effected by written agreement and made in consideration of a money payment, but to bring about abandonment of the easement it must be shown that the owner no longer intends to exercise it. It has been held, however, that where the ownership of lands on either side of a railway becomes severed, and the right to use an Accommodation crossing is neither conveyed nor reserved, this is sufficient evidence of an abandonment to justify a Company in removing the crossing; once this has happened, the easement has gone for ever. When considering, therefore, whether a crossing may be removed on severance of ownership, an investigation of title is necessary, and, in view of the distinction between Accommodation and Occupation crossings, it follows that, in the case of the latter, although there may have been severance of ownership without a grant or reservations, it is still necessary to ascertain what other rights exist.

10. The Burden of User.—This is an important question affecting both types of crossing, and the burden of the easement may not be substantially increased by altering or enlarging the character of the user. It has been held that a crossing originally provided to connect agricultural lands was not to be used, for instance, for the purpose of drawing stone across the line by a traction engine, or as a means of access by large numbers of people to the land which had been let to a club. It was thus shown that the user might become dangerous and such as to place an increased strain upon the Company in managing their traffic so as to avoid accidents. On the other hand, there are cases where, voluntarily or by legislation, a Company has given the land owner the right to use an Accommodation crossing for all purposes, and the successor in title has erected houses on the land, thus entirely changing the character of user of the crossing.

In other cases, Companies may be confronted with claims to public rights of some sort alleged to have been impliedly dedicated over an Accommodation or Occupation crossing, by reason of user extending over a considerable number of years, and confusion in consequence arises between that which is user by the public and that which is an increase in the burden of user by the owners and occupiers of adjoining lands. While, therefore, it has been upheld in the Courts that an occupier cannot increase the burden of user, it will be realised that in dealing with many places, insistence on such rights is likely to involve cumbersome procedure, and is merely a partial solution of the difficulty.
11. The Appendix gives information regarding the incidence of casualty and derailment at Accommodation and Occupation crossings, as reported by the Railway Companies, during the last 15 years. Though the figures do not justify an alarmist view of the risks involved, and the incidence of casualty on the average shows little variation, the fact remains that collisions with obstructions continue to increase, and those with serious consequences, which involve derailment and give rise to public criticism, recur at intervals every few years. Such accidents occurred at Shepreth in 1928 and at Wormley in 1934, and those responsible for causing them, as in the present case, were persons other than the trained and disciplined staff of the Railway Companies.

That is the main difference, as regards causation of accident, between the Occupation type crossing and the Public Road type, the user of the former being the controller of the gates and primarily responsible for safety, while the user of the latter has every justification for relying on the Railway staff to ensure him a safe passage when the gates, which they control, are open for the road. Further, as pointed out in the Report on the accident at Wormley, the disparity in risk at the Occupation type crossing is not likely to grow less under present conditions; the increasing number of motor vehicles and higher rail speeds are two of the factors tending to increase the risk of derailment of the locomotive, and it must not be forgotten that narrow escapes are not reported. A few derailments also result from collisions with animals which stray on to the line, probably through open gates at such crossings.

It cannot be denied, therefore, that the existence of this type of level crossing, particularly where there are two or more running lines carrying heavy traffic, is a potential source of serious accident. Although, in 1929, the "Flying Scotsman" at 60 m.p.h. struck and demolished a 4-ton unladen lorry at North Belton Farm without becoming derailed, the load of straw in a 2-ton lorry, struck at the same speed at Hilgay, 10 years later, by a train carrying 40 people, resulted in derailment and four passengers being killed. Had it been carrying 400 people, the death roll might well have been 40. The results of such an accident are in fact purely fortuitous; a heavy locomotive at high speed may throw most of an obstruction to one side, as in the case under consideration, but a small piece of metal may catch in the track, or in the motion of the locomotive, and cause derailment and disaster.

If action is to be taken to secure additional safety at Occupation type crossings, legislation may be necessary on a number of difficult issues, namely, to eliminate such crossings; to dedicate, equip, and control them for public use; to restrict the adoption as public roads of occupation roads leading to such crossings; to require the use of padlocks and keys for fastening the gates; to apply warning equipment to indicate the approach of trains; and to prevent an increase of user in the absence of safeguards. The late Sir Arthur Yorke probably had such matters in mind when he suggested in his Report that "some additions to the law are required," and as the result of the accident which occurred on 24th December, 1910, at Carr Lane Occupation Crossing, Bolsover, where increased, and public, user had occurred owing to local developments.

12. Elimination.—Under modern conditions, in the interests of safety, some means are needed to facilitate the closing of Occupation type crossings where reasonable alternative access is available. As there is power to acquire land for road widenings it would appear that the Minister should also have power to intervene where Companies find it impossible to reach agreement with Local Authorities and persons having the right to use such crossings. Cases are not infrequent where owners refuse to agree to moderate compensation for closure. Just as it is necessary to acquire property for purposes of road widening and the relief of traffic congestion, so the elimination of the avoidable private user of these crossings should be facilitated on the railway which daily carries heavy traffic at high speed.

13. Dedication.—At the more heavily used Occupation type crossings, existing unsafe conditions have resulted in most cases from the greatly increased road traffic, and the Companies hold that, in principle, they should not be expected to bear the cost of construction, staffing, and maintenance involved by converting such crossings to public type, apart from the fact that they have no statutory authority to carry out such schemes.
The Hilgay crossing is one which has been publicly used for some years, and apparently in the Autumn it is more heavily used than some Public Road crossings. The opinion was expressed in evidence that vehicles cross "every five minutes" in the beet season, and it would be well to consider the desirability of converting and equipping the crossing for public use, perhaps by remote control from the station box; but it must be realised that there are other Occupation type crossings where conditions are equally bad, and often worse, particularly in that they lack the excellent view available in this case. It is not within my province to make a recommendation as to the incidence of cost for such conversion.

According to the information submitted by the Companies, there are 661 crossings throughout the country in Categories (C) and (E), of which 28 cross dense traffic lines and 360 cross two or more running lines; this makes a total of 388 crossings, the conversion of which to Public Road type would appear to justify early consideration, except in the few cases where bridging in lieu of road diversion proves to be economically justified.

14. Padlocking of gates and the prevention of increased user.—Admittedly, no attempt has been made at Hilgay, during the last 25 years, to apply padlocks and to issue keys only to those legally entitled to use this Occupation crossing, and apparently the road, at any rate as Pleasant House, has been maintained as a metalled road by the Local Authority for a long time. It also appears that Pleasant House itself, and the road to it, existed before the railway was constructed, and the increased user of the crossing in recent years may be attributed more to the growing of beet and vegetables than to the County Council's policy of dividing their land into small holdings, which are plots of land intensively cultivated.

With regard to this question generally, the Companies endeavour to arrange for level crossing gates to be padlocked and for keys to be issued only to authorised users; but in the absence of statutory powers to enforce this policy, it is resisted by users in many cases, inasmuch as the padlocks are frequently broken or removed and gates are left unlocked or even open. Moreover, although Section 75 of the Railways Clauses Act of 1845 prescribes a penalty not exceeding 40 shillings for neglect to shut and fasten such a gate, it does not follow that such gates are to be fastened with lock and key, and it has been held (Macpherson v. Callender and Oban Railway Company, 1887) that, to justify applying locks, a case of necessity, or of such high expediency as to amount to necessity, must be made out.

It is true that this was many years ago, and the case had reference more to an Occupation type of crossing, but there was nothing to indicate that persons other than the farmer had the right to use the crossing, and it seems very important to-day that the Companies should have the general power under penalty to insist on the locking of gates, and thus to restrict unauthorised user, particularly of crossings of Accommodation type. There is obviously less difficulty in insisting on padlocks at crossings of this type, but where there are a number of people entitled to traverse the line and to use a crossing of Occupation type such a safeguard becomes impracticable and other measures must then be considered.

15. Warning equipment.—Besides elimination, conversion to public use, or diversion, such arrangements may take the form of a traffic-light signal, an illuminated notice, or a bell, controlled automatically by track circuit or from an adjacent signal box, to warn road users of the approach of trains. The difficulties of such equipment were dealt with in the Report on the Barkfield Lane accident, and any legislation on the subject should have the effect of relieving the authority responsible for providing this improvement from any added liability therefrom.

16. Recommendation.—Pending its conversion to Public Road type, the only suggestion which I have to make regarding Hilgay crossing itself is that, having regard to the skew of the road, the view from outside the gate on the west side (namely, the gate concerned in this accident) should be opened up towards Downham by the clearing of trees belonging to the County Council, along the side of their property which is adjacent to the Railway to the north of the crossing.
17. **Comparisons of practice.**—In the consideration of the general question of improving safety at unattended level crossings, I would finally draw attention to the comparative information which is afforded by the Monthly Bulletins of the International Railway Congress Association for April, July and August, 1932. In any review of the conditions in this country, however, the high traffic density should be borne in mind, as compared with other countries; on the other hand, the high proportion of unattended crossings is offset by the more liberal facilities (without resort to trespassing) which are afforded for passing over and under railways.

The route-mileage of the four Main Line Companies, and of the Cheshire Lines Committee, is roughly 19,275, and traffic density was 21,700 (1938) train-miles per route-mile; this figure varied from about 17,850 for the G.W.R. and 19,000 for the L. & N.E.R., to 23,250 for the L.M.S.R. and 32,850 for the S.R. Besides approximately 4,360 gated and attended, and 200 ungated and unattended, Public Road crossings, and 22,000 gated and unattended Accommodation and Occupation vehicular crossings, there are some 20,800 bridges and viaducts carrying railways over roads, and 19,600 carrying roads over railways.

In addition, therefore, to the location of level crossings (all types) at intervals of less than \( \frac{1}{2} \)-mile on the average throughout the country, intersections with roads (all Classes), over and under, also occur at such frequent intervals as \( \frac{1}{2} \)-mile.

I have the honour to be,

Sir,

Your obedient Servant,

A. H. L. MOUNT,

Lt.-Colonel.

The Secretary,

Ministry of Transport.

**Note.**—Reuben Height, the lorry driver, was tried at the Norfolk Assizes on the 11th October, 1939, on charges of Manslaughter and Dangerous Driving. He was found not guilty on both charges. He was further charged with his mate, A Pearce, on the 12th October, with doing bodily harm by wilful neglect, while in charge of the motor lorry, to one of the passengers injured in the accident, and, by neglect in control of the motor lorry across the railway lines, endangering the safety of the fireman of the engine which was derailed. No evidence was offered by the prosecution on the second day, and the Jury were directed by the Judge to bring in a verdict of Not Guilty. Both men were acquitted.
### APPENDIX

**Accidents at Accommodation and Occupation Crossings.**

<table>
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<tr>
<th>Year</th>
<th>Cases where material damage to road vehicles, or collision with animals has alone resulted.</th>
<th>Cases in which Casualties occurred.</th>
<th>Cases in which derailment occurred.</th>
<th>Analysis of Casualties.</th>
<th>Total Casualties.</th>
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* Includes Shepshed.
† Includes North Belton Farm.
‡ Worsley.
§ Ponton—collision with cattle.

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* Includes Shepshed.
† Includes North Belton Farm.
‡ Worsley.
§ Ponton—collision with cattle.
ACCIDENT AT HILGAY LEVEL CROSSING No. 27 ON 1st JUNE 1939

L. & N. E. RLY

HILGAY STATION

FARM

FOR?

Two TON LORRY NO.E.B.9633.