

A Review of Transport and the Law of Deodand

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The law of deodand and its influence on how the legal system dealt with railways has received episodic coverage in a number of publications, including in the *RCHS Journal* where there was a request for further information some 13 years ago.¹ This article considers how and why the law came to be applied to the early railways, the main cases, and why the law was reformed. The story reflects some interesting themes of how the public viewed large businesses in the days before the law of corporate manslaughter and the power of the railway companies to get the laws changed in the 1840s.

There are many definitions of what a deodand actually was. One legal textbook describes it as ‘that instrument which occasions the death of a man, and is forfeited to the king in order to be disposed of in pious uses by the king’s almoner.’ Originally, its use appears to have been to pay for masses to be said for the dead person’s soul. In occasioning the death, it was always understood that a thing had to be moving, but this gave rise to questions as to whether it had to be in direct contact or might include connected items. The same book opined that it was not only the moving part in direct contact ‘but all the things which move together with it, and help to make the wound more dangerous, are forfeited also.’² This issue was important, as it affected the value of the deodand award, as with the case of the Hull steamer *Victoria* whose boiler exploded in June 1838; an award of £1400 was made against the steam engine, but the owners appealed on the grounds that it was only the boiler that caused death. They lost this part of their case in November 1839, it being felt that ‘the boiler was part of the engine, and the two could not be disconnected.’³ However the inquisition was actually quashed on the grounds of poor wording; ‘instantly’ might mean any time from within five minutes to a day later.⁴ As will be seen, this understanding was applied inconsistently and a deodand on stationary engines at Wigan and Pontefract were quashed in 1844 on the grounds that they were not ‘movable chattels.’

The issue of the ‘moving’ object is apparent from a case on the Bristol & Gloucester Railway in November 1844; a fireman was killed when his head struck a bridge but, although it was the faulty design of the bridge that was blamed, the deodand of 1s

was levied on the engine since that had been moving.

There came to be some debate as to when a deodand could be levied. It was often said that it could only be raised where a coroner’s jury had found a verdict of accidental death, but this was disputed and led to several court cases. Most press reporters seem to have assumed that a criminal verdict and a deodand could not coincide, but when a woman was run over by a cab at Blackfriars in 1831 the jury brought a verdict of manslaughter with a £5 deodand on the wheel of the cab. When the Brentford coach crashed in 1833, the jury found manslaughter against its driver, levied a deodand of £20 and the proprietor was convicted of furious driving. However, after a death on the Thames in 1834 a coroner told the jury that they could opt for either manslaughter or a deodand, but not both.

Deodand was a medieval practice that enjoyed a revival in the early 19th century. One legal historian sees its revival as a deliberate ploy to gain compensation in an age when death by machine started to become more of a risk than death at the hands of another human — who could be prosecuted.⁵ As we shall see, this analysis is not altogether convincing as the most common object on which a deodand was levied was the horse. Cases of a deodand being levied on mill machinery were rare, though a deodand of one shilling was levied on a mill boiler that killed two at Farnley, Yorkshire, in 1830, and one shilling on a boiler tube after an explosion at Pen-y-Darran killed nine and wounded 33 in 1841.⁶ In fact the lack of deodands when people were killed in factories was specifically criticised by *The Times* in December 1840, which saw that deodands were awarded for middle class lives lost in railway accidents but not for the working class mangled in factory machinery — a point it illustrated with some gruesome examples. They might also have added that industrial accidents rarely resulted in large awards; for example, a woman who died after being caught in a mill engine at Bury in 1833 resulted only in the award of 6d on the shaft of the engine — clearly less than its value.⁷

However some juries did see the deodand as a mechanism to punish hardhearted industrialists, and this perhaps influenced the later juries on railway accidents. After two deaths at Low Side Colliery,

Oldham, in 1834, a higher deodand of £5 was levied and it was reported that:

The foreman said that there ought to be a penalty levied in this case, in order to make Mr Wrigley more attentive to the safety of his hands.⁸

Other juries were less generous. Seven died hideous deaths after a foundry boiler exploded at Newton le Willows in September 1838, but a total deodand of 5s was the only compensation.⁹

At the same time the value of compensation could be increased by not restricting the deodand to the wheel that ran someone over but the whole vehicle to which it was attached. This came to have great implications for railway companies, as the buffer which struck a man might be attached to a whole train of carriages, but the interpretation of the rule was inconsistent to say the least — partly because juries tended to be flexible in determining the extent of fault. Some considered that an owner could hand over ‘the matter’ itself, rather than pay the deodand levied.¹⁰

However the award could also be restricted by the value of what had caused the death. When a blacksmith’s shop on the Bristol & Gloucester Railway at Wickwar blew up in 1841 it killed four men, but the coroner commented ‘unfortunately there was nothing left to levy a deodand on.’¹¹ In 1842 a case involving the Great Western was successfully appealed on the grounds the deodand award exceeded the value of the item causing death.

The deodand was paid to the Lord of the Manor or the monarch. It was not automatic that it was paid to the deceased’s family and, when the *John Bull* steamer on the Thames caused a death in 1835, the jury had to recommend payment to the family. In some cases, such as the Brentwood railway accident of April 1840, the Lord of the Manor publicly declared his intention of using the money to benefit the widows, and this seems to have encouraged higher awards. At Harrow in November 1840 the agent of the Earl of Northwich appeared as representing his master, who was Lord of the Manor; the coroner told him that if he wanted the deodand, he would have to apply to the Court of the Exchequer.

The ruling in the case of *Baker v Bolton* (1808) severely reduced the chances of a family gaining compensation for the death of a loved one. The situation attracted the attention of coroners in an age when the coroner’s court involved a jury of local people meeting in public. Dr Thomas Wakley, the renowned Middlesex coroner who also campaigned

against infanticide, became a notable advocate of the use of deodand to win compensation. Under the influence of such men, it has been said that the average value of an award rose to over £500 in the 1840s.¹² This is not borne out by the evidence, and many awards in the mid-1840s were paltry, such as the Eastern Counties derailment at Littlebury in August 1845 which killed a guard; the deodand was 1s on the locomotive and on each carriage.

Deodands could be applied to almost anything, including animals — rams, bulls, a tiger, an elephant¹³ and an antelope were all subject to deodands in the 1820s and 1830s. In 1825 a nominal 1s was levied on an elephant which caused a death at Exeter Exchange in London and in 1841 a one shilling deodand was levied on a large cheese which fell off a man’s head and killed a four year old child in Haymarket, London.

Road transport

Whatever the arguments about the use of deodand to compensate people caught up in the machinery of the Industrial Revolution, it was in fact road transport that most often had to pay up — and the horse was the most common object on which deodand was levied.

Typical cases included the boy of 11 run over by the Kentish Town coach in 1824, with a deodand of £5. When two children were run over by a coach in Limehouse in 1823, £5 was awarded on the coach and £2 on the horses although there was clearly no fault by the driver.¹⁴ Generally, though not always, the size of the deodand tended to reflect the jury’s view of the owner’s culpability, though this was limited by the value of the ‘object’. In Cambridge in December 1830, a jury fixed a deodand on a hired horse as high as they could — two guineas — as they considered the livery owner should not have hired out such a dangerous creature.¹⁵ In January 1831 one shilling was raised on a horse that killed a man in City Road, London, but when Lady Caroline Barham was killed by a cab driven by a 15-year-old the jury went for manslaughter and also a £50 deodand in 1832. Two contrasting cases over the winter of 1838-9 included a 1s award when a hay wagon killed a child who ran into the road at Hanwell, but awarded £20 after a drunken ‘hit and run’ case in Great Marylebone Street, London.

Stage coaches were frequent casualties, and so were their passengers — with deodands frequently applied. In 1827 the Manchester mail coach overturned at Glen near Leicester after the reins broke

and one man was killed; the jury levied a £1 deodand on each horse. Later the same year the *Celerity* caused an accident with the *Defiance* on a hill near Amesbury; the jury found a verdict of manslaughter against its coachman, but also applied a deodand of 49s. However when the Holyhead Mail killed a man at Welford, Northants, in December 1827 only 1s was levied on each horse and the death of two on a coach at Harlow in 1832 was deemed worthy of a mere 6d each.

In October 1828 the *Dart* overturned at Wotton under Edge whilst trying to avoid a wagon left in the road; £10 was levied on the *Dart* but not on the wagon. Such cases began to cause disquiet and this was further stimulated by a £10 levy on the *Standard* coach of Liverpool in April 1830; a letter to *The Times* complained that innocent owners were being fined for genuine accidents.¹⁶ However a much heftier £30 was charged on the *Aurora* after it crashed descending a hill at Severn Stoke near Worcester; it was overloaded and, running late, the driver decided not to put on the drag.¹⁷

A deodand was even awarded in the case of a steam carriage which crashed at Sloane Street, London, on 21 November 1840, killing its engineer Thomas Wadeson who was working for Sir George Cayley. This was the carriage that had worked successfully between Gloucester and Cheltenham 18 months earlier, but it damaged its steering gear when swerving to avoid a child on the run to Hounslow. Wadeson was killed when it crashed into a shop and the jury awarded a £10 deodand, disapproving of 'the use of such carriages on common roads.'¹⁸ When the *Red Rover* coach crashed whilst descending a hill between Ludlow and Bewdley in September 1843, £30 was levied on the coach and the jury complained they could not charge this to the makers of the axle which caused the accident by breaking.

Water transport

The most common incident where a deodand was levied in water transport was where one vessel upset another, with the Thames by far the most common scene of such events. In 1831 the Richmond steamers *Diamond* and *Endeavour* were racing and so caused a boat to be upset and a young woman to drown; a deodand of £30 was raised on each steamer. £60 was levied on the *City of Aberdeen* after an accident in the Thames in 1835. Jurisdiction over the Thames gave rise to some disputes about where the money went to — after the *John Bull* case in 1836, the Court

of Common Council had to resolve whether the money went to the Lord Mayor or the King. In August 1839 coroner C J Carttar heard a case where a boat had been struck by the Gravesend steamer *Falcon* at Woolwich; Carttar told his jury that 'it was his duty ... to tell them that the deodand very rarely fell upon the party who was really to blame' and they took the hint by finding only £5 upon the *Falcon*.¹⁹

The Thames was not the only river to have frequent steamboat services and there were accidents elsewhere, such as on the Tyne in September 1839 when a boiler exploded and scalded to death a stoker on the North Shields to Newcastle steamer. Only 5s was awarded on this occasion. In 1840 the Boston to Lincoln steam packet, *X.L.*, suffered a boiler explosion while men were working on it overnight, killing two; a deodand of £25 'on each body' was levied on the packet itself.

Deodands were occasionally levied following canal incidents. In September 1824 a party went by boat from Tring to Wendover on the Grand Junction Canal, but on the return leg the boat was upset and two women drowned. Having first checked who owned them, the coroner's court levied a deodand of 5s on the boat, 5s on the horse and 1s on the towing rope. This showed an interesting interpretation of the rule that anything connected to the object moving to the death was part of the award. Another canal incident occurred on the Royal Canal in Ireland on 25 November 1845; on this occasion a boat overturned near Clonville Bridge and six people died. As well as awarding a deodand of £100 against the boat *Longford*, the inquest jury also found a charge of manslaughter against a 'free passenger' who had taken the helm.

There were many incidents in rivers. Seven died in a single incident near Acomb, York, in August 1830 and a deodand of £21 was levied on their boat. In December 1833 a party of 11 singers from Stillingfleet near York drowned on the Ouse near Kelfield with a deodand of a mere 1s on their boat.

On occasions the story was repeated that deodands did not apply in salt water, or if someone fell from a ship in salt water,²⁰ but many cases affected shipping at sea. For example, in August 1833 a 'coble' took out passengers to the London-Edinburgh steamer at Scarborough but one passenger was drowned when it lurched; the deodand was £20. A deodand of £100 was awarded on the wreck of the *Forfarshire* after its boilers failed and it drifted onto the Longstone Rocks on 7 September 1838.

Railways

The death of William Huskisson was the first famous railway accident, and might legitimately have given rise to a deodand. That it did not was interesting enough to be worthy of comment in the press:

The Jury returned a verdict of Accidental Death but affixed no deodand to the engine, from which it may be fairly inferred that they acquitted the engineers and the machinery of all blame.²¹

The first known railway deodand was apparently on the Canterbury & Whitstable Railway in 1833 when a girl was run over and killed by a sand wagon; a deodand of 1s was levied on the wagon and 1s on the sand in it, rather less than the value of either, it may be supposed.²² A second case occurred on this railway in 1840, when £1 was awarded after a brakesman was killed by a goods train.

Several railway deodand cases involved lines under construction. In August 1835 a labourer was run over by a tramway wagon on the London & Birmingham Railway works at Kensal Green; 20s was levied on the wagon. A few days later a shaft on the Watford Tunnel works fell in at Russell Wood; gravel ran in from all sides as the boards that held it in place collapsed, and at least nine men at the foot of the shaft died.²³ This caused a legal problem, because the ground could presumably not be held to have 'moved to the death', so a deodand of £5 was levied on the bricks and timber — although these were valued at £200. In August 1837 a boy of 11 was run over by a horse-drawn wagon on the Great Western at Hanwell; £10 was levied for this, the jury incensed that the wagon had no brake.

In February 1836 a woman was crossing the Stockton & Darlington Railway at Alliance Street, Darlington, with her two children when one strayed. Seeing a train approaching, Mrs Lister held one child in her arms and tried to grab hold of the other but all three were run over and killed. A deodand was levied of 1s on each wagon of the train.

A famous case on the Newcastle & Carlisle Railway, December 1836, followed from the deaths of three people. They were killed in an accident at the Earl of Carlisle's coal staithes near Wetheral when the points on the main-line were incorrectly set for the staithes branch and *Samson* and its train ran into the coal wagons there. The staithes collapsed under the engine (but fortunately not the carriages) and two of the deaths were underneath it. A deodand of £15 was levied on the engine and carriages.

Railway companies had the resources to challenge

deodands and soon began to fight back in the face of what they saw as excessive awards. In June 1838 the Grand Junction Railway appealed against a deodand of £150 each on two engines that caused the death of John Hock, awarded on the grounds the company had allowed their improper use; their counsel, Cresswell, argued that it was contradictory to penalise the company when neither the company nor the employees had been found to be at fault, and the rule was granted. Walford records the courts would 'sometimes quash an inquisition on motion for defects' but yet 'the general inclination...is to leave the party contesting it to his remedy by traversing or demurring;' in the GJR case, the court 'refused to quash the inquisition in motion.'²⁴ A few months later the owners of the Hull steamer *Victoria* also successfully challenged an award of £1500 after nine were killed in a boiler explosion off Shadwell on 14 June 1838,²⁵ but the main arguments were technical over wording.

The *Victoria* case was plainly an example of a jury seeking to punish. The jury commented that the steamer's passenger accommodation was 'fitted up with greater splendour and taste' than anything they had seen, but 'they never saw a vessel in the river fitted up with so little regard to the comfort of the engineers and stokers.' They levied £1500 on the boiler and engine, though they considered the boat as a whole to have been worth £14,000.

In November 1838 an elderly man was run over on the Great Western at Hanwell whilst taking supper to his son, who worked on the railway. He was hit by *Lion*, which was running 'off timetable.' Some of the jury wanted £100 deodand, but none was given after the Coroner emphasized that the death was 'purely accidental' — not in itself a reason to avoid a deodand. The same month the boiler of *Patentee* exploded whilst hauling a Liverpool to Manchester luggage train up the Whiston Incline; driver and fireman were killed, but the deodand of 20s was much less than the value of the locomotive as the jury listened to stories that its driver often attached weights to the safety valve and generally abused the margins of safety in order to get a faster ascent. On this occasion the luggage train had 43 wagons, with two engines at the front and two at the rear. *Patentee* was at the front, and after the explosion flew 400 yards along the track.²⁶

A May 1839 case involving the Grand Junction Railway was one of the first railway cases to suggest that deodand rulings could be challenged on technical details with some chance of success. In

this accident an engineer, Thomas Hogg, was thrown off the tender of *Mermaid*²⁷ at Perry Barr after a collision with another train. After a deodand was awarded, there was an appeal on the grounds that the Warwickshire coroner could not hear a case that occurred in Staffordshire and because the jury had also ruled negligence against the GJR or its employees. At court, the GJR counsel dropped the first argument but the court refused to interfere 'as the statement of value was not in itself an award of forfeiture.'²⁸ It was clear that a jury could decide on a sum even though it might not be awarded should a criminal conviction for such as manslaughter later be returned. Lord Denman said that the company could test the case again if a claim was ever actually made.

The early awards against the railways were not proportionate to the value of the object moving to the death, in contrast to some of the awards against steamship companies. There was a significant change with the Stockton & Darlington case of 1839, when £1400 was awarded. In this case a new locomotive, the *Raby Castle*, was travelling at a reported 50mph when it collided on a level crossing near the Rokeby Hotel, Guisborough Lane, with the middle horse of a three horse and one coach conveyance. The carter, Thomas Gregg,²⁹ died and left a widow and six children. The jury made its award on the value of the locomotive but also found manslaughter against its driver, Matthew Appleton.

This created a sensation. 'Such a deodand is, we apprehend, unprecedented in the annals of this country, and a heavy infliction upon a public company for the conduct of one servant....we are left at a loss to conceive how it can be justified....' wrote *The Times*. The S&DR agreed, and launched an appeal, arguing that a deodand could not be awarded if the death was not accidental as the driver was accused of manslaughter, and also that the award exceeded the value of the locomotive. The appeal was granted in November 1839, when Appleton was in York gaol.

The accident at Howden, near Selby, in August 1840 was caused by a poorly secured iron casting on a truck and led to three immediate deaths and two later. One man had refused to get into the carriage behind the casting as it looked insecure. A deodand of £500 was awarded against the engine and carriages, which were the joint property of the Leeds & Selby and Hull & Selby Railways.³⁰ A similar sum was levied on an engine of the Eastern Counties Railway when four were killed at Brentwood in April

1840; although the line was only single track at this time, it was claimed there had been more than a dozen fatal accidents between Romford and Brentwood³¹ and it was rumoured the ECR would refuse to pay.

There was increasing pressure from *The Times* at this time to use the law of deodand to punish railway companies for their failure to protect passengers, much as there was a later clamour for an offence of corporate manslaughter. After £300 was awarded for the accidental death of a woman at 'Vauxhall terminus' in October 1840, the newspaper complained of the railway company's 'most flagrant, most scandalous, and most complicated neglect' and considered the sum 'paltry.'³² The *Thunderer* wished to see accidents caused by 'neglect or mismanagement at headquarters' punished with a deodand; it thought that if railway employees caused accidents, the management shared the responsibility.

In such an atmosphere, awards began to rise. £500 had become almost the minimum on a steam locomotive, but following another accident at Taylor's Junction near Selby in November 1840 the jury 'became very violent with each other' in arguing for an award between £10 and £1080.³³ The inquest lasted until midnight and in the end £500 was levied on the locomotive *Zetland*.³⁴ This award seems to have been quashed later on the basis that the jury had been discharged, and then were re-assembled to decide on the award.³⁵

The Times was pleased with the result of an inquest at Harrow in December 1840 into an accident which caused two deaths on the London & Birmingham Railway on 12 November 1840. This was blamed on a driver, Simpson, who had been retained by the company despite an earlier incident. Wakley, the Middlesex Coroner, was pleased when the jury found a deodand of £2000 against the locomotive and tenders (nos. 15 and 82) and also found that Simpson had murdered the other man as well as committing *felo de se*. Justice Williams then ruled against this, saying that cases could not be deodand and criminal. Wakley was also Coroner when another Middlesex jury brought in a deodand of £1000 on London & Birmingham locomotive no.91 after a collision at Camden in August 1845. Again he blamed the L&BR for poor management of its staff.

As the use of deodands came to an end, *The Times* commented on how juries had used this old law as a mechanism to regulate the businesses of a new age. It noted that juries:

...have within the last few years, since locomotives and trains have frightened them for their propriety,

again resorted to the imposition of heavy deodands even upon small occasions, in order to render their conductors more circumspect....³⁶

The end of deodands

As has been seen, a series of cases in which it was ruled that deodands could not be awarded when a criminal charge was being brought undermined the strength of deodands to deliver compensation to victims. The Grand Junction case was one of the first, but this was followed by an appeal by the owners of the *Manchester* whose captain ran down the bark *Tyrian* in the dark off Gravesend in February 1840, causing six deaths. The deodand of £800 on each death³⁷ against the ship was overturned on the grounds that its captain had been charged with manslaughter by the same Essex jury. Lord Denman stated in May 1841 that a jury had no power to impose a deodand when there had been a verdict of murder, though this was believed to be the first occasion of this combination.³⁸ This in turn contributed grounds to an appeal by the ECR after the Brentwood accident of 1840. In the meantime, the grand jury at Chelmsford 'ignored the bill' against Joseph Polwart,³⁹ the *Manchester's* captain and the deodand was eventually quashed.⁴⁰

However in January 1841 the Attorney General took the view that it was acceptable for an inquest to find a verdict of manslaughter and to bring a deodand, as they had done with the *Tyrian*. In his view, 'where fault was imputed to a party that was of all others the case when a deodand ought to be enforced.'⁴¹ However this view was dismissed by other legal authorities who concluded 'deodands being legal only in cases of death by misadventure.'⁴²

The deodand situation was also undermined by inconsistency in awards. In the Harrow case, the jury found for £2000 when the value of the engine and tender had been given by Bury, the locomotive engineer, at £1380. Yet when three men were killed in a tunnel on the London & Brighton Railway in January 1841, a deodand of only 1s was awarded against the locomotive's chimney which had caught the headings and brought the roof down. When four were killed in an accident at Haywards Heath later the same year, the instability of a four wheel engine was widely blamed — yet only a 1s deodand was awarded. After Wakley's jury awarded a £1000 deodand on the Camden accident in 1845, a correspondent to *The Times* complained of the irrational system which awarded £1,000, £150 and 1s respectively for more or less the same events — and argued strongly for an

Accident Relief Bill.

After the Brentwood accident on the Eastern Counties Railway in 1840 which killed four, the locomotive was conservatively valued at £125 in the first inquest and then similar sums claimed for the other three deaths. This was erroneous since the object could only be forfeited once.⁴³

One of the most famous deodand cases followed the accident at Sonning Cutting on 24 December 1841, when nine died following an earth slip. The Berkshire jury brought in a verdict of £1000 deodand against the engine, tender and carriages of the first eight who died and then a further £100 was raised after an inquest in Reading on a victim who died at the infirmary. *The Times* considered this 'a most proper' verdict. The jury thought the accident could have been prevented by 'efficient management, police or watch in the cutting.' The railway trade press was critical, the *Railway Magazine* complaining that 'a deodand is the most absurd of all things' and such verdicts were usually overturned anyway.

Therefore by January 1842 even *The Times* was starting to agree with the opponents of deodand. It realized the courts were turning against the process although it still stood up for the Sonning award on the grounds that to quash it would be cruel to the victims' families. By the end of January the Great Western had launched an appeal, arguing that the cause of death was unclear and one case had been heard by the wrong coroner. Indeed *R v GWR* found that the Reading borough coroner had no power to hold an inquest when the accident occurred outside the borough, even though one of the victims died inside it.⁴⁴ Unsurprisingly, when Gladstone began the discussions for his Regulation of Railways Bill, Colonel Sibthorp MP proposed a reform of deodand at the same time.

Another concern was that railway companies especially would get away without compensating the victims because it was easy to bring a legal challenge. Other grounds for appeal included the time of death being too vague, also the place not accurately stated, and the death wounds not proven to have been caused by the engine, although the victim was its driver. A common basis for appeal was incorrect citing of the company name — so a deodand on the Hull steamer *Pegasus* was overturned in 1843 because it was incorrectly stated to have been from the Hull & Leith Steam Shipping Company instead of Steam Packet Company.

An example of the farcical position was demonstrated by the aftermath of several deaths at

South Shields on the Brandling Junction Railway in October 1844. The jury awarded only £800 on the locomotive *Leopard*, much less than the value of the engine, because by that stage the company had merged into the Newcastle & Darlington Railway which it did not consider so fully responsible; the company was not at all grateful, overturning the decision on the basis that directors' names were given wrongly and it was not clearly shown how the deceased died.⁴⁵ Almost the opposite occurred after an accident at Beeston, Nottingham, in November 1845; the jury here awarded £1000 against the engine, tender and carriages of the Midland Railway whose management it blamed for making economies after it had taken over from the Midland Counties. It is probable that the £500 awarded after the locomotive *Irk* suffered a boiler explosion at Miles Platting on the Manchester & Leeds on 28 January 1845, killing three, also undervalued the engine.

Wakley would have retorted that most accidents were due to poor management at some point, and would have dismissed the coroner after a case at Defford on the 'Birmingham & Bristol Railway' on 30 August 1845 — who said he could 'not inflict any deodand upon the company for an accident which was entirely beyond their control.'⁴⁶ Locomotive no.75 hit a truck that had been left on the line. They still awarded £1500 against the engine following a collision in which two had died, but the company appealed successfully on the grounds — amongst others — that the name of the company was wrong.⁴⁷

But juries did not always use deodand to provide compensation. In December 1845 two men were killed on the Norfolk Railway and General Pasley condemned the Robert Stephenson locomotive; three of the jury wanted a deodand of £500 but failed to convince the others. Whereas deodands were often appealed against by those who were expected to pay out, cases of the victims' families appealing against a miserly award have not been identified.

Confusingly, juries also made awards — albeit small — even when the railway company plainly was not at fault. In February 1845 an award of 1s was made against a locomotive of the LSWR after a policeman committed suicide near Winchester and in November 1845 an award of 1s was made after a trespasser was run over between Birmingham and Bristol. People who were run over through their own fault received little, such as the woman who was run over at Rugby in 1844 trying to get into a moving carriage despite being warned — there was a 1s award. Two people run over crossing the line at

Balcombe in 1846 resulted in 1s on the engine — the jury clearly feeling that fault lay with the pedestrians.

Some of the final awards were made against water transport. In April 1846 two died at Hungerford Pier, which was less of a pier and more of 'a collection of worn out barges ... called by courtesy a pier.'⁴⁸ A deodand of £50 was levied on 'a pair of crazy barges and a tumble down platform.' More seriously still, 13 died after the *Rambler* steamboat was in collision with the *Sea Nymph* on the Mersey in June 1846, with £500 awarded on the latter by a Cheshire jury and £200 by a Liverpool jury. An appeal against this at the Bail Court in November 1846 heard that 'old books' said a ship in salt water could not be subject to deodand and indeed the Crown proceeded against both coroners on this basis.

Lord Campbell's Fatal Accidents Bill⁴⁹ was introduced in February 1846 in parallel with a bill to abolish deodands presented by Lord Lyttleton, thus trying to give the impression that the railway companies were not getting the whole victory. 'Clearly the first was intended to ensure the enactment of the second', one historian wrote.⁵⁰

Reaction to the Bill was mixed. Wakley, who was MP for Finsbury, called it 'an extremely crude measure.' He gave an account of the London & Birmingham accident where the jury had awarded £2000 because the man who caused the accident had been kept on by the company despite earlier failings. Wakley said he had taken the best legal advice, yet still the award had been overturned by the Court of Queen's Bench who treated it as 'almost worse than waste paper.'⁵¹ This would appear to refer to the case of *Regina v LBR* of 2 June 1841, overturning the Harrow verdict. Sir George Grey pointed out the bizarre circumstance that compensation could be claimed for someone who was injured, but not if the person died.

At the third reading (of the second Bill) in August 1846, Lord Somerset raised the question of the Queen's opinions as she earned over £800 a year from deodand awards but the government reported she had signalled her acceptance of abolition. It was considered there was a risk that the Lords would so amend legislation that people might get no compensation at all. The Attorney General thought that though a jury 'would occasionally run riot, they were right in the main, and the courts could always remedy a verdict of excessive damages.'⁵² The abolition of deodands received Royal Assent on 18 August 1846 and came into effect from 1 September that year.

During the debate, Wakley worried that the compensation legislation would be ineffective. The Fatal Accidents Act ‘provided quite inadequate compensation in most cases and meant that, after the abolition of the deodands, the relatives of victims of railway accidents were left with few rights ...’⁵³

However thoughts of the deodand were not quite dead. In 1868 Mr Greene MP called for its revival to punish colliery owners and in 1877 there were calls to bring it back to combat the carnage on the Metropolis’ roads — 217 were killed in 1876, including 12 by trams and 17 by omnibuses. In 1937 Lord Newton also suggested a revival of deodand to control road accidents.

Notes and references

1. For example, B Freeborn, ‘Deodand and the Railways’ in *Journal of the Railway & Canal Historical Society*, March 1998, p.544; Richard Pike, *Railway Adventures and Anecdotes*, 2010, p.72
2. Bacon, Gwilliam, Dodd and Bouvier, *An Abridgement of the Law*, volume 3, 1901, p.102
3. *The Times*, 15 November 1839
4. *The Times*, 19 November 1839
5. John Hostetter, *History of Criminal Justice in England and Wales*, pp.205-6
6. *The Times*, 4 October 1841.
7. *Manchester Guardian*, 30 November 1833.
8. *Manchester Guardian*, 8 March 1834
9. *The Observer*, 23 September 1838
10. *The Times*, 22 April 1841
11. *The Times*, 1 January 1842
12. Hostetter
13. An elephant killed its keeper at Liverpool in 1843, the deodand being £5.
14. *The Observer*, 19 May 1823
15. *The Times*, 6 December 1830
16. *The Times*, 12 April 1830
17. *The Observer*, 20 September 1830
18. *The Times*, 25 November 1840
19. *The Times*, 20 August 1839
20. *The Times*, 25 February 1845
21. *The Times*, 18 September 1830
22. Letter from the early railway historian, R B Fellowes, to *The Times*, 30 October 1929
23. *The Times*, 19 August 1835. A few months later *The Times*, 12 November 1835, reported ten dead
24. F Walford, *The Law of the Railways*, London, 1850, p.366
25. *Annual Register*, vol. 80, 1839, p.125
26. *The Observer*, 18 November 1838
27. *Mermaid* is the name usually given, but *Merlin* in Adolphus & Ellis, *Report of Cases argued and determined in the Court of King’s Bench*, p.130. This names the other engine as *Basilisk*
28. *Railway Times*, 1 June 1839
29. Reported as Thomas Gray in some reports
30. *The Times*, 15 August 1840. Freeborn quotes the *York Courant* and an award of £50
31. *The Times*, 31 August 1840
32. *The Times*, 24 October 1840
33. They were dismissed by the coroner and bound over to appear at the assizes
34. *The Observer*, 22 November 1840
35. Walford, p.365
36. *The Times*, 26 February 1845
37. *Manchester Guardian*, 29 March 1840
38. *The Times*, 25 May 1841
39. Various spellings of this name were given, including Polwarth and Poulwart
40. F Walford, *A Summary of the Law of Railways*, London, 1856, p.365
41. *The Times*, 28 January 1841
42. *Harrison’s Analytical Digest of all the Reported Cases*, S B Harrison, London, 1846, p.2166
43. Harrison, pp.2166-7
44. Harrison, p.2166
45. Walford, pp.364-5
46. *The Times*, 19 September 1845
47. There was a Bristol & Gloucester, and a Gloucester & Birmingham, but not a Bristol & Birmingham
48. *The Times*, 17 April 1846
49. As was often the case with legislation, names became confused. This was also known as the Accident Compensation Bill
50. Hostetter, p.207
51. *The Times*, 23 July 1846
52. *The Times*, 12 August 1846
53. Hostetter, p.207