APPENDICES.

APPENDIX A.

EXTRACT from the DECISION of Justice KEKEWICH, in the Leeds Tramway case.

[From the *Electrical Review* of the 10th February, 1893.]

"THE principle is thoroughly well settled here, and my duty is merely to consider whether it is applicable. It would be easy, of course, to point out differences between all the cases to which it has hitherto been applied and the present; and I have already said that injury arising from such a case as the discharge of electric current can scarcely have been contemplated by any Judge in previous cases. But, after reflecting much on the novelty of the case, on the arguments addressed to me, and on the peculiarity of an electric current as distinguished from every other power, I fail to see any reason why the principle should not be applied to it. I cannot see my way to holding that a man who has created, or, if that be inaccurate, called into special existence, an electric current for his own purposes, and who discharges it into the earth beyond his own control, is not as responsible for damage which that current does to his neighbour as he would have been if he had discharged a stream of water. The electric current may be more erratic than water, and it may be more difficult to control its direction and force; but when once it is established that the particular current is the creation of, or owes its special existence to, the defendant, and is discharged by him, I hold that, if it finds its way on to a neighbour's land, and there damages the neighbour, the latter has a cause for action. At any rate, I think that if a distinction is to be taken between this and other forces for this purpose, that distinction must be made by a higher tribunal, and not by a Judge of first instance. It was endeavoured to be argued, on behalf of the defendants, that the current injuring the plaintiffs was only part of the general body of electricity which may be now said to exist everywhere, and to be proceeding in every direction; but the effect of the defendants' operations is to collect a particular portion of this body, and to discharge it into the earth at a particular spot, and there can be no doubt but that the disturbance of the plaintiffs' telephonic system is caused by the particular quantity thus discharged. Assuming the action to be maintainable, on the principle of Fletcher *v.* Rylands, the defendants rely on two answers to the plaintiffs' claim. First, they say that the plaintiffs might, by an alteration of their system—that is, by the adoption of what is known as the metallic return—prevent the disturbance complained of; and, secondly, they say that they, the defendants, are acting under statutory powers, and that if, in the proper exercise of those powers, they injure the plaintiffs, they are free from blame. The first answer is, to my mind, without foundation. The man who complains of his land being thrown out of cultivation by the incursion of water escaping from his neighbour's reservoir must not be told that he has no right of action because, if he had interposed a wall, or otherwise taken care to protect himself, the water would not have reached his land. He is using his land in a natural way, is not bound to take extraordinary precautions, and is entitled to rely on his neighbour also using his land in a natural way, or, if he uses it otherwise, take extraordinary precautions to prevent damage to others therefrom. There is no doubt a body of evidence to show that a system different from that adopted by the plaintiffs has been adopted elsewhere with advantange, and may possibly prove to be the most convenient, though more expensive for them; but the evidence also proves that their present system has been largely adopted, and is received with favour by many competent to form an opinion. It also has the merits of economy. They are carrying on their own business lawfully, and in the mode which they deem best; and I cannot oblige them to change their system, because they might thereby possibly enable the defendants to conduct their business without the mischievous consequences now ensuing. True it is that the analogy introduced above fails to this extent: that the plaintiffs are using the law for an extraordinary purpose, but, admittedly, it is a lawful purpose; and, though under an obligation to obviate mischief from their own operations to their neighbours, they are under none, in my judgment, to protect themselves from the defendants or others. The outflow from one reservoir might easily destroy another; but, so far as I am aware, there is no principle or authority in English law for rejecting a claim for damage by the owner of the latter on the ground that his user, as well as that of his neighbour, is extraordinary. The second answer of the defendants to the plaintiffs' claim has required more examination. Having recently had occasion, in Allison *v.* City and South London Railway Company, and again in Rapier *v.* London Tramways Company, to consider such a plea as is here put forward, and to consider many authorities—and, in particular, the cases of Metropolitan Asylums District *v.* Hill (6 App. Ca. 193), and London, Brighton and South Coast Railway Company *v.* Truman (11 App. Ca. 45), and their application to different provisions and circumstances, I do not find it again necessary to state my view of the law, or of the lines by which I ought to be guided in applying it to a particular case. Therefore, I shall but briefly explain the reasons for my conclusion that the defendants' plea is good in law, and that they are not responsible to the plaintiffs for the mischief caused by their works. The defendants' authority is derived under a provisional order confirmed by Act of Parliament. Such provisional orders in connection with tramways, and many other undertakings of a public character, are now common, and, I think, must be treated as a 'well-known and recognised class of legislation,' equally as much as the Railway Acts, which were referred to in those terms by the Lord Chancellor in London, Brighton and South Coast Railway Company *v.* Truman (11 App. Ca. 53). The Railway Acts (again using the language of the Lord Chancellor in the same case) were assumed to establish the proposition that the railway might be made and used, whether a nuisance were created or not; and, in my judgment, a like proposition