ing a sounder view of the decisions, and of higher authority than any we could ourselves prepare.

According to Mr. Justice Story, (Commentaries on the Law of Bailments, 5th Ed. sec. 549) "Common carriers cannot by any special agreement exempt themselves from all responsibility, so as to evade altogether the salutary policy of the Common Law. They cannot, therefore, by a special notice, exempt themselves from all responsibility in cases of gross negligence and fraud, or, by demanding an exorbitant price, compel the owners of the goods to yield to unjust and oppressive limitations of their rights. And the carrier will be equally liable in case of the fraud or misconduct of his servants, as he would be in case of his own personal fraud or misconduct." Judge Blackburn (10 H. L. Cas. 494) argued that the weight of authority was in 1832 in favor of this view of the law, but he added that the cases decided in the English Courts between 1832 (*i.e.* two years after the passage of the Carriers Act, but not depending upon it) and the year 1854, established that the doctrine so enounced by Story was not law, and "that a carrier might, by a special notice, make a contract limiting his liability even in the cases there mentioned, of gross negligence, misconduct or fraud on the part of his servants;" and the judge held that "the reason why the Legislature intervened in the Railway and Canal Traffic Act, 1854, was because it thought the companies took advantage of those decisions (in Story's language) to 'evade altogether the salutary policy of the Common Law.'"

It is to be observed, however, while recognizing such power, that the right of making special contracts or qualified acceptances by common carriers, seems to have been asserted in early times. Lord Coke declared it in *Southcote's Case*, 4 Co. Rep. 84 (Vol. 2 p. 487), where he says "that if goods are delivered to one to be delivered over, it is good policy to provide for himself in such special manner, for doubt of being charged by his general acceptance." See also the case of *Mors* v. *Slue*, 1 Ventr. 238. This, says Story, is now fully recognized and settled beyond any reasonable doubt; and he cites a whole array of cases. See also 1 Parsons on Contracts, 708–715.

In *Nicholson* v. *Willan*, 5 East 512, decided long before the passage of the Carriers Act, Lord Ellenborough said that there is no case to be met with in the books in which the right of a carrier to limit by special contract his own responsibility has ever been by express decision denied,—the Court "cannot do otherwise than sustain such right, however liable to abuse and productive of inconvenience it may be, leaving to the Legislature, if it shall think fit, to apply such remedy hereafter as the evil may require." It is remarkable that just fifty years elapsed after this wise suggestion in the courts before it was adopted in Parliament.

In *Carr* v. *Lancashire & Yorkshire Railroad Company*, 7 Ex. 707, decided in 1852, on which the 16th condition we have cited as to live stock is plainly founded, where the jury found as a fact that the plaintiff's horse had been injured through the gross carelessness of the defendants, they had guarded themselves by a notice in these words: "This ticket is issued subject to the owner's undertaking all risks of conveyance whatsoever, as the company will not be responsible for any injury or damage, (howsoever caused) occurring to live stock of any description travelling upon the Lancashire and Yorkshire Railway, or in their vehicles." The finding of the jury was not complained of, just as we approve of the finding of the jury here, yet the Court of Exchequer held that this was a special contract by which the plaintiff had taken upon himself all risk, just as in this case the defendants stipulated that the hogs were carried "only at the owner's risk"—the only difference being in the words "howsoever caused," or "no matter how caused" on which we will presently remark. "It is not for us," said Baron Parke, "to fritter away the true sense and meaning of these contracts. * * * If any inconvenience should arise from their being entered into, that is not a matter for our interference, but it must be left to the Legislature, who may, if they please, put a stop to this mode which the carriers have adopted of limiting their liability. We are bound to construe the words used according to their proper meaning; and according to the true intention of the parties as here expressed, I think the defendants are not liable."

This case was much relied on by the defendants' counsel, with that of *Wilton* v. *Atlantic Mail Steam Company*, 10 C. B. N. S. 453, where the same principles were applied to carriers by sea, and the company was relieved of liability for the negligence of the master, by virtue of a special contract which provided that they should not be accountable for luggage unless a bill of lading had been signed therefor.

The decisions in favour of railroad companies, culminating in the case from 7 Ex., brought down upon them,—to use the strong expression of one of the English judges,—the Railway and Canal Traffic Act of 1854, 17 & 18 Vic. chap. 31, by the 7th section of which, "Every such company shall be liable for the loss of, or for any injury done to live stock or goods, occasioned by the negligence of their servants, notwithstanding any notice, condition, or declaration made and given by such company, contrary thereto, or in any way limiting such liability —every such notice, condition, and declaration being hereby declared to be null and void." Then follow five provisos, the first of which declares that "Nothing herein contained shall be construed to prevent said companies from making such conditions in the premises, as shall be adjudged by the court or a judge, before whom any question relating thereto shall be tried, to be just and reasonable."

The fourth proviso declares that "No special contract between such company and any other person respecting the forwarding or delivery of live stock or goods shall be binding upon or affect any such party, unless the same be signed by him or by the person delivering such animals or goods respectively for carriage." This proviso and the practice under it, have doubtless suggested the form of the shipping papers or contracts used by the Grand Trunk Railway Company.

Subsequent to this Act of 1854, the cases have mainly turned on the justice and reasonableness of the conditions imposed by railroad companies, and the fact that this is to be settled by the