the result of his negligence—yet he cannot restrict it so as to excuse himself from loss or damage resulting from the negligence of his servants or agents."

In support of the same principles reference may be made to the following cases, taken from Redfield's Leading American Railway Cases (1872), in volume 2 at pp. 47 and 247: *Judson* v. *The Western*, 6 Allen 486, and *Hooper* v. *Wells*, 5 Am. L. Reg. N.S. 16.

It may be said, however, that there was no reason why carriers in this country should not go on reducing their common law liability without the aid of a Carriers Act, and that *Hamilton* v. *G. T. R.* may be supported on this ground. The answer to this is twofold:

First, the learned judges did not so regard it; for their language shows that they did not suppose they were extending or sanctioning an extension of the powers of carriers in any way. On the contrary they arrived at their decision very unwillingly, and expressed regret that they found the law as they did.

Second, the legislature did not so regard it; for if such an encroachment upon the common law had been requisite to protect carriers, the sweeping provisions of the Railway Acts on this point would have been unjustifiable.

The object of the legislature in prohibiting railway companies from setting up notices, conditions or declarations in cases of negligence, may have been to alter the law as interpreted in *Hamilton* v. *The G. T. R.* and subsequent cases, or it may have been to declare the law, as opposed to those decisions. It must be confessed that the language used in the Railway Act does not read like a declaratory enactment. On the other hand, the language used in the Act Respecting Carriers by Water (37 Vict., cap. 25) strongly supports the declaratory hypothesis. The first section of this Act defines the liabilities and rights of carriers by water, and places them in very much the same position as that of carriers in England prior to the passing of the Carriers Act. It provides amongst other things that carriers by water "shall be liable for the loss of or damage to goods entrusted to them for conveyance be aforesaid, except that they shall not be liable to any extent whatever to make good any loss or damage *happening without their actual fault or privity, or the fault or neglect of their agents, servants, or employees*, (1) to any goods," etc., etc. (enumerating the exceptions).

If the fact that the Carriers Act has never had any application in Ontario, and therefore that decisions under it are inapplicable here, had not been almost entirely lost sight of, the following expression of opinion could scarcely have fallen from the late Chief Justice Moss in *Fitzgerald* v. *The G. T. R.*, 4 App., at p. 618:

"It thus appears to me that as the law applicable to this case is the same as governed the English Courts before the passing of the Railway and Canal Traffic Act, 1854, there is an overwhelming body of authority to show that the carrier may, by conditions aptly framed, protect himself against the consequences of negligence."

The decision in *Hamilton* v. *The G. T. R.* was directly followed in *Spettigue* v. *The G. W. R.*, 15 C. P. 315, and *Bates* v. *The G. W. R.*, 24 U. C. R. 544, where the necessity of legislative redress was remarked on by the judges. Then began the course of legislation which formed the subject of so much discussion in *Vogel* v. *The G. T. R.*, 10 App. 162 (recently affirmed by the Supreme Court). How strenuously, and for a time successfully, this legislation was resisted by the railways may be seen in *Scott* v. *The G. W. R.*, 23 C. P. 182, and *Allan* v. *The G. T. R.*, 33 U. C. R., 483.

If railway companies were our only