the carrier to the passenger was equivalent to a warranty of the reasonable sufficiency of the vehicle he supplied.

Cause was shown in the sittings after Trinity Term, before my brothers Mellor, Lush, and myself, when the Court took time to consider.

This is a question of very great nicety and importance, but after some consideration and doubt I have come to the conclusion that on the balance of English authority, and I think upon the whole, on principle and the analogy to other cases, there is a duty on the carrier to this extent, that he is bound at his peri. to supply a vehicle in fact reasonably sufficient for the purpose, and is responsible for the consequences of his failure to do so, though occsioned by a latent defect, and therefore that the evidence was wrong and that there should be a new trial.

I have come to this conclusion with much doubt and hesitation; and as my two brothers are of a different opinion, I need not say that I am very far from being confident that I am not wrong; but still I think it best to state the reasons why I differ from them.

I quite agree that the carrier of passengers is not like the carrier of goods, an insurer who undertakes to carry safely at all events, unless prevented by excepted perils; the carrier has not the control of the human beings whom he carries to the same extent as he has the control of goods, and therefore it would be unjust to impose on him the responsibility for their safe conveyance. In order, therefore, to render the carrier of passengers liable for an accident, it is necessary to allege and prove that the accident arose from some neglect of duty on the carrier's part. But if the obligation on the part of the carrier to provide a vehicle reasonably fit for the journey is absolute, a failure on his part to fulfil that obligation is quite enough to make him liable for all the consequences. And I own I see nothing to diminish the obligation to provide a reasonably safe vehicle in the fact that it is to be provided for the safety of life and limb, and not merely of property. The carrier supplies and selects the carriage for the purpose of carrying the passenger, who is obliged to trust entirely to the carrier, the passenger having no means of examining the carriage and no voice in the selection of it. Now it has been decided that one who contracts to supply articles for a particular purpose, does implicitly warrant that the articles he supplies are fit for that purpose: *Brown* v. *Edgington*, 2 M. & G 279. The principle of that case, as I understand it, is that expressed by Maule, J., who says that the defendant having accepted an order for a rope for a particular purpose, which rope he was to select and procure, did undertake to furnish one for that purpose, and was therefore liable as on a breach of his contract, if he furnished one unfit for the purpose, though that unfitness arose from a latent defect, and this principle would seem to apply to the carrier of passengers who supplies a vehicle. On the same principle I think it is that a ship-owner warrants to the person who ships goods that his vessel is seaworthy. Lord Tenterden, in Abbot on Shipping (5th Ed. p. 218, 6th Ed. by Shee, p. 295), states the law thus:—"The first duty is to provide a vessel tight and staunch, and furnished with all tackle and apparel necessary for the intended voyage. For if the merchant suffer loss or damage by reason of any insufficiency of these particulars at the outset of the voyage, he will be entitled to a recompense. An insufficiency in the furniture of the ship cannot easily be known to the master or owners; but in the hold of the vessel there may be latent defects unknown to both. The French ordinance directs that if the merchant can prove that the vessel at the time of sailing was incapable of performing the voyage, the master shall lose his freight, and pay the merchant his damage and interest. Valin, in his commentaries on this article, cites an observation of Weytsen, "That the punishment in this case ought not to be thought too severe, because the master by the nature of this contract of affreightment is necessarily held to warrant that the ship is good, and perfectly in a condition to perform the voyage in question under the penalty of all expenses, damages, and interest." And he himself adds "That this is so, although before its departure the ship may have been visited according to the practice in France, and reported sufficient because on this visit the exterior parts only of the vessel are surveyed, so that secret faults cannot be discovered, for which, by consequence, the owner or master remains always responsible, and this the more justly, because he cannot be ignorant of the bad state of the ship; but even if he be ignorant he must still answer, being necessarily bound to furnish a ship good and capable of the voyage." Lord Tenterden then notices the opinion of Pothier, that in such a case the owner shall not be answerable for damages occasioned by a defect which they did not nor could know, though he agreed that they shall lose their freight; and Lord Tenterden observes in a note that this opinion of Pothier is not quite consistent with his own principles laid down in the Traits de Louage. However this may be in the old French law, or the civil law, it is, I think, clear that according to English law, either there is a breach of warranty, in which case the owner is responsible for all the consequences, or there is not, in which case there is no ground for depriving him of his freight. And I think that there is ample authority (in addition to what I have cited from Abbott on Shipping) for saying that by English law such a warranty is implied where the carriage is by water.

In *Lyons* v. *Mells*, 5 East. 428, Lord Ellenborough, in delivering the considered judgment of the Court, says:—"In every contract for the carriage of goods between a person holding himself forth as the owner of a lighter or vessel, ready to carry goods for hire, and the person putting goods on board, or employing his vessel or lighter for that purpose, it is a term of the contract on the part of the carrier or lighterman, and implied by law, that his vessel is tight and fit for the purpose or employment for which he offers and holds it forth to the public; it is the very foundation and immediate substratum of the contract that it is so. The law presumes a promise to that effect of the carrier without any actual proof; and every reason of sound policy and public convenience requires that it should be so. The declaration here states such a promise to have been made by the defendant, and it