COMMON CARRIERS.

The necessity for some legislative enactment on this subject, as connected with the too common practice, to which common carriers, particularly railway companies, are addicted, of exempting themselves from liability by imposing special and unreasonable conditions, has lately been again discussed in the court of Queen's Bench.

Whilst admitting that some of the principal reasons, in which originated the strict rule of law as to the liability of common carriers, have passed away with the change of customs and means of transit and traffic that have taken place of late years, it cannot, on the other hand, be denied that it is going to the other extreme to allow public companies to bind the travelling and trading community by all sorts of unreasonable and unfair conditions—conditions not only unreasonable in themselves, but, generally speaking, practically unknown to any but the managers or servants of the company imposing them.

These conditions are, generally, kept in the background; they are often printed in small type in some inconspicuous place in a way-bill, bill of lading or receipt, or whatever the document may happen to be called. Even if the forwarder *is* aware of them, he is not generally in a position to help himself, and must submit to them or else give up business altogether, as there is probably only the one means of transit. In fact, he is, under such circumstances, the victim of a monopoly.

Our attention has been drawn to this subject by the late cases of *Hamilton* v. *The Grand Trunk Railway Co.* 23 U. C. Q. B. 600, and *Bates* v. *The Great Western Railway Co.* 24 U. C. Q. B. 544 (also published in another place in this *Journal*.) In the former case the company received certain plate glass to be carried for the plaintiff, who signed a paper, partly written and partly printed, requesting them to receive it upon the conditions endorsed, which were that the company would not be responsible for damage done to any glass, &c., and the defendants gave a receipt for the glass with the same conditions upon it. The evidence shewed that the damage sued for arose from the gross negligence and improper conduct of the defendants' servants. The court yielded to the authority of decided cases, and held that such a delivery and acceptance formed a special contract, which was valid at common law and exempted the defendants from liability. But the Chief Justice, in giving judgment, intimated that, if it had not been for the weight of authority, he would have decided that such special contracts are a violation of the principles of the common law, which imposed and enforced duties on common carriers for the protection of the public; but though he could not shake off the impression that they are contrary to the public policy so frequently enunciated and so much lauded in the older cases, he was obliged to hold that they are binding.

In the latter case, the declaration stated that the defendants, being common carriers by their railway, received from the plaintiff certain cattle to be carried from Ingersoll to Toronto; and the breach of duty alleged was, that they negligently and improperly detained the cattle at Ingersoll, and kept them in an open and exposed place, owing to which two of them died on the journey, and that, by the unreasonable delay in the carriage and delivery of the others, the plaintiff lost a market, &c.

To this the defendants pleaded a special contract—that the plaintiff undertook all risk of loss, injury or damage in loading, unloading, conveyance and otherwise, arising from the negligence, default or misconduct, criminal or otherwise, on the part of defendants; and that they did not undertake to forward the animals by any particular train, neither were they responsible for the delivery of the animals within any certain time, or for any particular market.

On demurrer, it was held that the plea was good; that the parties could lawfully enter into such a contract; that having done so, their rights and liabilities must be ascertained by the terms of it, and not by the common law.

In both these cases the court alluded to, and deplored the present state of the law, and suggested the propriety of legislative redress as the only means of putting the public upon a fair footing with companies who are *not*, in reality, owing to the present system of special conditions, "common carriers," in the sense that a lawyer would use the words. The defect in the law, which we are now complaining of, was also experienced in England; and Baron Parke, in *Carr* v. *The Lancashire and Yorkshire Railway Co.*, 7 Ex. 708, suggested the same remedy, when he said that it was not a matter for the interference of the courts,