

COMMON CARRIERS IN ONTARIO.

contract; if it did, it must be shown upon the record; it only arises in defence of the carrier; and here it is rebutted by proof of positive negligence. I lament that the doctrine of notice was ever introduced into Westminster Hall."

(e) *Forward v. Pittard* was decided in 1785, and it was there held that a carrier who undertakes for hire to carry goods is bound to deliver them at all events, except damaged or destroyed by the act of God or the king's enemies.

(f) *Sleat v. Fagg*, 5 B. & Ald. 342, decided in 1822.

The head-note of this case is as follows:

"A parcel containing country bankers' notes, of the value of £1,300, and addressed to their clerk, in order to conceal the nature of its contents, was delivered to the carrier, without any notice of its value, to be carried by a mail coach, and was accepted by him to be so carried. The parcel was sent by a different coach, and was lost. The carriers had previously given notice that they would not be answerable for any parcel above £5 in value, if lost or damaged, unless an insurance were paid. No insurance having been paid in this case,

"Held, notwithstanding that the carrier was responsible for the loss."

Holroyd, J., said (p. 349):—

"The question is whether the carrier is protected from the loss in question by the terms of his notice. I think that in cases of misfeasance a carrier is not thereby exempted from loss. This is clearly a case of misfeasance.

(g) *Riley v. Horne*, 5 Bing. 217, decided as it was in 1828, must have been one of the latest cases occurring before the passing of the Carriers Act, and the publication of Mr. Justice Story's work on Bailments. It is all the more interesting, as it was the result of long deliberation, and it contains a *résumé* of the law on the point under discussion.

The defendants were the owners of a coach running from London to Kettering and back daily. They had advertised the usual notice at the London office; but the question was whether the notice ap-

plied to a parcel sent from Kettering to London.

In delivering the judgment of the court, Best, C.J., at p. 224, said:

"We have established these points.—that a carrier is an insurer of the goods which he carries; that he is obliged for a reasonable reward to carry any goods to the place to which he professes to carry goods that are offered him, if his carriage will hold them, and he is informed of their quality and value; that he is not obliged to make a package, the owner of which will not inform him what are its contents, and of what value they are; that if he does not ask for this information, or if, when he asks and is not answered, he takes the goods, he is answerable for their amount, whatever that may be; that he may limit his responsibility as an insurer by notice; but that a notice will not protect him against the consequences of a loss by gross negligence."

Let us now see how this question has been dealt with in the United States, where the law was similar to our own in 1830, and where, except in a few States, no changes have been made by statute.

The latest work upon the subject, so far as I am aware, is Wood's *Railway Law*, 1885, and the following quotation, amply verified by authorities, seems to entirely support the view I have taken. In section 425 the author says:—

"In addition to the exemption from liability referred to in the last section" (*i.e.*, from losses arising from the act of God, public enemies, the fault of the party, or the inherent qualities of the property itself) "a carrier may, by express contract, limit his liability, provided the limitation is just and reasonable. But the limitation must be imposed by express contract, and as a rule cannot be imposed by a mere general notice—at least unless actual knowledge of the terms of such notice is brought home to the shipper at the time he enters into the contract, the burden of establishing which is upon the carrier. But in most of the States, while the carrier may by special contract limit his liabilities as an insurer—as, for the loss of the goods by fire and other casualties which are not