driven to the car where it was to be unloaded, when suddenly it was discovered to be on fire. Although every effort was made to extinguish the flames and save the furniture, the furniture was practically destroyed. Indeed so rapid was the progress of the flames that the waggon was partly burned and the horses singed before they could be detached from the waggon. The parties did not ask to have the amount of the damage ascertained, but sought only to have the question of the defendant's liability, if any, for the loss determined. The defendant was unable to account for the fire. His son who drove with the waggon from Woodlawn Avenue to the station declares that neither he nor the driver had been smoking and could give no explanation which would account for the fire. The son stated that some furniture on this particular load had been packed with the packing material commonly used and known as "excelsior," which is a fine wood shaving, and highly combustible, but young Lester states he did not believe that the fire could have arisen from spontaneous combustion. All that appeared from the evidence was that while the waggon was on the weigh scales, young Lester being in the weigh-house ascertaining the weight, he glanced out of the window and saw flames bursting out at the top of the load.

Shepley, K.C., for the plaintiff. The defendant is a common carrier, and, as such, liable for this particular loss since the destruction of the goods could not be attributed to either "the act of God or the King's enemies."

E. T. Malone, K.C., contra. The defendant is a private carrier and therefore liable only for a loss occasioned by his own negligence or that of his servants. The loss in question was not due to any such actionable negligence. The origin of the fire was so mysterious and inexplicable,—starting as it did apparently at the top of the load,—that it ought only to be treated as an inevitable accident. The mere occurrence of the loss, he being a private carrier, raises no presumption of negligence for which he can be held responsible, but even if it should be considered that the occurrence of the fire did raise any such presumption, then the evidence given for the defence entirely disproves negligence and displaces any onus cast upon him to further account for the loss.

McDOUGALL, Co. J.—A perusal of the latest text books and authorities indicates that the law on the subject of what constitutes a common carrier, or what circumstances will create the liability of a common carrier, is not defined with great clearness. Perhaps a fairly general definition may be thus expressed: Any person undertaking for hire to carry the goods of all persons indifferently is to be considered a common carrier. Bevan on Negligence, 2nd ed. p. 1021. Alderson, B., in *Ingate* v. *Christie*, 3 C. & K. 61, states the principle as follows: "The criterion is whether he carries for particular persons only or whether he carries for everyone. If a man