of vigilance which was required by his engagement to carry the plaintiff safely," and Parke, B., is reported to have said it was a question of fact for the jury, and Alderson, Bt, limits the extent of any implied warranty against defects to those "which could be seen at the time of construction;" he adds, "and if the defendant were not responsible the coach proprietor might buy ill-constructed or unsafe vehicles, and his passengers be without remedy.

There are several modern cases not referred to in the argument, but which show that the judges who tried them considered the action against carriers of passengers for hire to be founded in negligence. In *Stokes* v. *The Eastern Counties Railway Company*, 2 F. & F. 732, Chief Justice Cockburn thus expressed himself, "You are entitled to expect at the hands of a railway company, all that skill, care, and prudence can do to protect the public against danger and accidents, but you must carry that principle into application as reasonable men. If you are of opinion that the flaw or crack had become unsafe prior to the accident, that upon careful examination, not with the aid of highly scientific authorities and scientific instruments, but on an ordinary, reasonable, proper, and careful examination, such as all feel ought to be made before the engines are used on which the safety of a whole train may depend, this flaw might have been discovered, and that either the examination did not take place, or if it did, and the flaw was discovered, but the man with careless disregard of his own safety and the safety of others whose lives and limbs might be involved, treated all this with supine and reckless indifference, then, undoubtedly, there is negligence established for which the company are, and ought to be, responsible." That case is important because the verdict was for the defendant, if the doctrine now contended for by the petitioner be the correct exposition of the law, the verdict in that case, if questioned, must have been set aside.

Again, in *Ford* v. *South-Western Railway Co.*, 2 F. & F. 732, Chief Justice Erle, on summing up the case to the jury, said—"The action is founded on negligence. The railway company is bound to take reasonable care, care, to use the best precautions in known practical use for securing the safety and convenience of their passengers; also in *Pym* v. *Great Northern Railway Company*, *ibid* 621, per Cockburn, C. J., to same effect. In this state of the authorities in our own Courts and in Ireland we are much assisted in arriving at a conclusion by several cases decided in the Courts of the United States, cited in a note to the 7th ed. of Story on Bailments, 565. In *Ingalls* v. *Bills*, 9 Metc. R. 15, the late Mr. Justice Hubbard, in a very able judgment, in which the English and American authorities are reviewed, states it to be the conclusion of the Court "that carriers of passengers for hire are bound to use the utmost care and diligence in the providing of safe, sufficient, and suitable coaches, harnesses, horses, and coachmen, in order to prevent those injuries which human care and foresight can guard against, and if an accident happens from a defect in the coach, which might have been discovered and remedied upon the most careful and thorough examination of it, such accident must be ascribed to negligence, for which the owner is liable, in case of injury to a passenger, happening by reason of such accident. On the other hand, where the accident arises from a hidden and internal defect, which a thorough and careful examination would not disclose, and which could not be guarded against by the exercise of a sound judgment and the most vigilent foresight, then the proprietor is not liable for the injury; but the misfortune must be borne by the sufferer as one of that class of injuries for which the law gives no redress in the form of pecuniary recompense."

This extract from the judgment of Mr. Justice Hubbard, in my opinion, truly expresses the rule of law applicable to the present case, and is in strict conformity with my brother Lush's direction to the jury, and were it not for the opinion of my brother Blackburn to the contrary, I should have considered that it was supported by the weight of English authority. As the majority of the Court are in favour of the defendant, and think my brother Lush's direction right, the rule obtained by the plaintiff will be discharged.

BLACKBURN, J.—This was an action brought by a passenger on the defendants railway to recover damages for an injury he had received owing to the breaking down of the carriage in which he was travelling.

On the trial before my brother Lush it appeared that the carriage was one belonging to the London and North-Western Railway Company, which had been for some time in use by them, and had come into the possession of the defendants in the ordinary course of traffic, and was according to the ordinary arrangements between the different railway companies used by the defendants till they could return it.

Evidence was given that when the carriage was put into the train by the defendants it was to all outward appearance reasonably sufficient for the journey; the tire of the wheel being of proper thickness and apparently of sufficient strength, but that in fact there had been an air-bubble in the welding which rendered the tire much weaker than it appeared, so that in fact it was not reasonably fit for the journey, and that the breaking of this tire occasioned the accident. Evidence was given that this defect was one which could not be detected by inspection, nor by any of the usual tests, as it would ring to the hammer as if perfectly welded, and that there was no neglect on the part of the defendants or their servants, who took every reasonable precaution in examining the carriage.

My brother Lush left the case to the jury, telling them that if the accident was occasioned by any neglect on the part of the defendants they should find for the plaintiff; but that if it was occasioned by a latent defect in the wheel, such that no care or skill on the part of the defendants could detect it, the verdict should be for the defendants, and it is not disputed that if the direction was right their verdict was justified by the evidence. A rule *nisi* was obtained for a new trial on the ground of misdirection, as it was contended that the defendants, as carriers of passengers, were bound at their peril to supply a carriage that really was reasonably fit for the journey, and that it was not enough that they made every reasonable effort to secure that it was so; in other words, that the obligation of