specific performance was sometimes decreed in doubtful cases, sooner than send the parties to a court of law—a difficulty which cannot arise under the present practice.

The Court will sometimes be in doubt, of the two modes of relief, which to give, particularly in cases of hardship, where the contracting party should be put to serious inconvenience or expense by the specific execution of his contract. The case to which we are about to refer arose thus. The defendant was lessee of premises under a covenant not to assign or underlet without the lessor's leave. In ignorance of the obligation he was under, he agreed to grant an underlease to the plaintiff. When the plaintiff came for his underlease, the defendant had arrived at the true meaning of his covenant, and had applied to the freeholder for leave to underlet. This the freeholder refused to give, except on terms which, though certainly not in appearance exorbitant, involved a payment, to making which the defendant preferred being defendant in a chancery suit. In the result, it appearing that the contract was not impossible to be performed, specific performance of it was decreed, with an alternative reference as to damages, in case the defendant should be unable to perform his part of it.

The meaning and object of the clause in Lord Cairns' Act, which gives the Court jurisdiction to direct the payment of damages either alternatively or in substitution for specific performance, is clearly laid down by Sir G. Turner, L.J.. in *Ferguson* v. *Wilson*, 15 W. R. 80, L. R 2 Ch. 77, to be that the Act extends only to cases where the plaintiff has or would have had before the passing of the Act an equitable right to have specific execution of his contract. It was never intended to enable parties to get damages where they have entered into a contract impossible to be performed by the other party—where there is a contract and nothing more, the parties must go to law, as heretofore. Where, as in the present case, there is a contract, and a subject of that contract which is *per se* capable of specific execution, and the Court will decree specific execution accordingly, where the subject of contract may or may not prove capable of execution, either from the incompetency of the party to perform it, or the hardship to which he would be exposed in the course of performance (provided that the extent of the hardship was not known to the contracting parties at the date of the contract), the Court will make an alternative decree for the payment of damages in the event of the defendant being unable to perform his part. But it must not be forgotten that according to *Ferguson* v. *Wilson*, where no relief by way of specific performance is possible, no claim for damages can be sustained.—*Solicitors' Journal.*

DURATION OF A CARRIER'S RESPONSIBILITY.

Shepherd v. *The Bristol and Exeter Railway Company*, 16 W. R. 982.

This case involved the important question —How long does a carrier's liability *as carrier* continue? A common carrier is, as such, under a peculiar liability differing from that of any other kind of bailee. He is said to be an insurer, and is liable for all injuries to the property committed to his care, unless the injury be caused by the act of God, or by the king's enemies. A carrier may at common law exempt himself from this liability, and may enter into a special contract for the carriage of goods upon any terms that may be agreed upon. In the absence of any special contract he is liable as an insurer. In *Shepherd* v. *The Bristol, &c., Railway Company* injury was done to some cattle carried by the defendants. The cattle had been carried safely, but were injured in a pen on the defendants' premises after the actual carriage was completed. The first question was one purely of fact, viz., whether the cattle had in fact been delivered to the plaintiff? The second question was whether, if the cattle had not been delivered, the defendants were liable for the injury *as carriers?* If the defendants were responsible as carriers for the cattle during the whole time they remained in their possession, the defendants were, under the circumstances, liable to compensate the plaintiff for the damages done, as the injury had not resulted from the act of God or of the king's enemies. If the defendants were not responsible as carriers, the plaintiff could not recover without proof of negligence, of which as a fact the defendants had not been guilty. The defendants liability, therefore, assuming that the cattle had not been delivered to the plaintiff, depended solely on the question whether they were liable as carriers.

The Court were divided in opinion on the second question, which is the only one we need notice here. Bramwell and Channell, BB., held that it was not material to consider whether or not the cattle had in fact been delivered to the plaintiff, because even if they had not been delivered the defendants were not liable as carriers, as nothing remained to be done in and about the carriage of the cattle at the time the injury occurred. Martin, B., dissented from this view, and held that the liability of the defendants as carriers continued until delivery, and that there had been no delivery. The opinion, therefore, of Martin, B., differs entirely from that of the other two learned judges. The question is of great importance to railway companies and to all who are in the habit of sending goods by railways. The common law liability of carriers often works very inconveniently, and it would probably be a great improvement if this liability were altogether removed, and the rights of the carrier and of the goods owner were left to be