

carriers was therefore *obiter*. Three of the judges did, however, treat the matter somewhat elaborately. Gould, J., put the liability squarely on the ground of negligence: "The reason of the action is, the particular trust reposed in the defendant, to which he has concurred by his assumption, and in the executing which he has miscarried by his neglect. When a man undertakes specially to do such a thing, it is not hard to charge him for his neglect, because he had the goods committed to his custody upon those terms." Powys, J. "agreed upon the neglect." Powell, J. emphasized the other view, that "the gist of these actions is the undertaking.....The bailee in this case shall answer accidents, as if the goods are stolen; but not such accidents and casualties as happen by the act of God, as fire, tempest, &c. So it is in 1 Jones, 179; Palm. 548. For the bailee is not bound upon any undertaking against the act of God." Holt, C.J. seized the occasion to give a long disquisition upon the law of bailments. In the course of it he said that common carriers are bound "to carry goods against all events but acts of God and of the enemies of the King. For though the force be never so great, as if an irresistible multitude of people should rob him, nevertheless he is chargeable." And the reason is, that otherwise they "might have an opportunity of undoing all persons that had any dealings with them, by combining with thieves," &c.

Was this the starting point of the modern law of carriers? It seems to be a departure from the previous law as I have stated it, but how far departing depends upon what was meant by act of God. Powell appears to include accidental fire, and cites a case where the death by disease of a horse bailed was held an excuse. Lord Holt does not explain the term; but his reasoning is directed entirely to loss by robbery. That "act of God" did not mean the same thing to him and to us is made probable by the language of Sir William Jones,¹ whose work on Bailments follows Lord Holt's suggestions closely. After stating Lord Holt's rule as to common carriers, he adds that the carrier "is regularly answerable for neglect, but not, regularly, for damage occasioned by the attacks of ruffians any more than for hostile violence or unavoidable misfortune," but that policy makes it "necessary to except from this rule the case of robbery." As to act of God, "it might be more proper, as well as more decent, to substitute in its place inevitable accident," since that would be a

¹ Bailments, pp. 103 *et seq.*