carrier himself was not within the scope of such notice. Judgment was accordingly given for the plaintiff. Lord Ellenborough, in delivering judgment, said:—

"It is impossible, without outraging common sense, so to construe the notice as to make the owners of vessels say, 'We will be answerable to the extent of 10 per cent. for any loss occasioned by the want of care of the master or crew; but we will not be answerable at all for any loss occasioned by our own misconduct, be it ever so gross and injurious.'"

Garnet v. *Willan*, 5 B. & Ald. 53, decided in 1821, was also referred to. There the defendants had given notice that they would not be responsible for any package containing specified articles, or which, with its contents, should exceed £5 in value, if lost or damaged, unless an insurance were paid; and it was held that notwithstanding this notice, the carriers were responsible for the parcel in question, in consequence of their having delivered it to be carried by another coach, of which one of the carriers only was proprietor.

Wyld v. *Pickford*, 8 M. & W. 443, decided in 1841, was also referred to. The following extract from the lengthy headnote will indicate how far it stops short of deciding, even under the Carriers Act, that a carrier can contract himself out of all liability:—

"A carrier is not bound to convey goods except on payment of the full price for the carriage according to their value; and if that be not paid it is competent to him to limit his liability by special contract. And, therefore, where a carrier receives valuable goods to carry, after notice to the bailor that he will not be responsible for loss or damage to them unless a higher than the ordinary rate of insurance be paid for the carriage, he receives them on the terms of such notice, which amounts to a special contract. But he is not exempted thereby from all responsibility; but is, notwithstanding the notice, bound to take ordinary care in the carriage of the goods, and is liable, not only for any act which amounts to a total abandonment of his character of a carrier, or for wilful negligence; but also for a conversion by a misdelivery arising from inadvertence or mistake, if such inadvertence or mistake might have been avoided by the exercise of ordinary care."

In delivering judgment Parke, B., said:—

"We agree that if the notice furnishes a defence, it must be either on the ground of fraud or of a limitation of liability by contract, which limitation it is competent for a carrier to make, because, being entitled by common law to insist on the full price of carriage being paid beforehand, he may, if such price be not paid, refuse to carry upon the terms imposed by the common law and insist upon his own; and if the proprietor of the goods still chooses that they should be carried, it must be on those terms; and probably the effect of such a contract would be only to exclude certain losses, leaving the carrier liable *as upon the custom of England* for the remainder."

Austin v. *Manchester*, 10 C. B. 454, was also referred to. This case was decided in 1850, at a time when the conditions imposed by carriers in England were becoming almost intolerable, and yet were held to be valid under the Carriers Act. But the following quotation from Mr. Justice Cresswell's judgment shows that even then the carriers did not claim immunity for wilful damage done by themselves or their servants. He says, at p. 475:—

"The question, therefore, still turns upon the contract, which, in express terms, exempts the company from responsibility for damages, however caused, to horses, etc. In the largest sense those words might exonerate the company from responsibility even for damage done wilfully—a sense in which it was not contended that they were used in this contract."

The next case referred to was *Morville* v. *G. N. Ry.*, 16 Jur. 528, decided in 1852. It was very similar to the last mentioned. The only other cases which appear to have been at all relied upon in the judgment of *Hamilton* v. *The G. T. R.* were *Carr* v. *Lancashire*, 7 Ex. 707, cited *supra*,