on the Law of Bailments, section 549 (published in 1832 after the Carriers Act, but in America, where that Act had no effect), states, as I think, accurately, what was the effect of the decisions up to that time. 'It was,' says he, 'formerly a question of much doubt how far common carriers on land could, by contract, limit their responsibility, upon the ground that, exercising a public employment, they are bound to carry for a reasonable compensation, and had no right to change their common law rights and duties. And it was said that, like innkeepers, they were bound to receive and accommodate all persons, as far as they may, and could not insist upon special and qualified terms. The right, however, of making such qualified acceptances by common carriers seems to have been asserted in early times. Lord Coke declared it in a note, *Southcote's Case* (4 Co. Rep. 84), and it was admitted in *Morse* v. *Slue* (1 Vent. 238). It is now recognized and settled beyond any reasonable doubt.' So far the passage is cited and adopted in the judgment of the Court of C. P. in *Austin* v. *Manchester, etc., Ry. Co.* (10 C. B. 473), a case decided in 1850, to which I shall hereafter have to call attention; and so far I think this, according to the decisions subsequent to 1832, still remained law in 1854, when the Railway and Canal Traffic Act was passed. But Mr. Justice Story proceeds to say, 'Still, however, it is to be understood that common carriers cannot by any special agreement exempt themselves from all responsibility, so as to evade altogether the salutary policy of the common law. They cannot, therefore, by a special notice, exempt themselves from all responsibility in case of gross negligence and fraud, or, by demanding an exorbitant price, compel the owners of the goods to yield to unjust and oppressive limitations of their rights. And the carrier will be equally liable in case of the fraud or misconduct of his servants as he would be in case of his own personal fraud or misconduct.' In my opinion the weight of authority was, in 1832, in favour of this view of the law, but the cases decided in our courts between 1832 and 1854 established that this was not law, and that a carrier might, by a special notice, make a contract limiting his responsibility even in the cases here mentioned of gross negligence, misconduct or fraud on the part of his servants; and, as it seems to me, the reason why the legislature intervened in the Railway and Canal Traffic Act, 1854, was because it thought that the companies took advantage of those decisions (in Story's language) 'to evade altogether the salutary policy of the common law.'"

Lord Wensleydale, in pronouncing his judgment, at p. 574, says:—

"Mr. Justice Blackburn, in his very able and clear opinion has fully stated and explained most of the various decisions which have taken place as to the liability of carriers. . . . Numerous subsequent cases between the years 1832 and 1854 established that a carrier might make a contract limiting his responsibility, even in cases of gross negligence or misconduct. At length, such having become frequent, it was suggested in the case of *Carr* v. *The Lancashire*, etc. (7 Ex. 707), that the legislature . . . might . . put a stop to this mode which the carriers had adopted to limit their liability. The legislature apparently answered that appeal by passing the Railway and Canal Traffic Act, 1854."

It is to be noted that the opinion given by Mr. Justice Blackburn was adopted by the House, and it displays a very careful search through all previous decisions upon the subject. The extract from Story is all the more valuable as being an accepted authority contemporaneous with the passing of the Carriers Act.

How far the opinions of these two eminent judges are supported by authority may be seen in the following cases. And, first I will refer to those which are mentioned in the Canadian decision.

In *Lyon* v. *Mells*, 5 East 428, decided in 1804, the notice relied upon by the defendant was "that he would not be answerable for any damage unless occasioned by want of ordinary care in the master or crew of the vessel, in which case he would pay £10 per cent. upon such damage, so as the whole did not exceed the value of the vessel and freight;" and it was held that a loss happening by the personal default of the