492 a). And again—"A carrier may also shew in his defence that the goods have perished by some internal defect, without any fault on his side; for his warranty does not extend to such cases. And if from the nature of the goods carried they are liable to peculiar risks, and the carrier takes all reasonable care, and uses all proper precautions, to prevent injuries, and if, notwithstanding, they are destroyed by such risks, he is excusable. Thus, if horses or other animals are transported by water, and in consequence of a storm they break down the partitions between them, and by kicking each other some of them are killed, the carrier will be excused, and it will be deemed a loss by peril of the sea." (Sect. 576). That there should be some limitation of this kind is only reasonable, for it would be monstrous to hold that because, in the natural course, and entirely apart from the carriage, wine fermented or fruit decayed during their transit, the carrier was liable. Besides, the very reason which is given for holding common carriers liable as insurers (viz. that the damage may have accrued from their fraudulent or improper mode of dealing with the article carried) fails in a case where the nature of the injuries renders it clear that they did not result from fraudulent or improper treatment by the carrier—the maxim, "Cessat ratio cessat lex," applying most fully. Though as we apprehend, even in this case the onus would lie on the carrier to shew that the injury did arise from the inherent nature of the article, and not from the carriage—an opinion which is countenanced by the case of *Hawkes* v. *Smith*, (Car. & M. 72), where the contention was as to the loss of weight in certain bones during carriage, and as to whether the loss accrued from natural causes or not. The case was tried before Lord Cranworth, and he seems to have assumed, that if the loss arose from natural causes, the carrier would not be liable, and decided that the onus of shewing that the loss did so arise was on the carrier.

An injury, however, may popularly be said to arise from an internal defect or peculiar risk in the article itself, either when it arises therefrom, utterly irrespective of the carriage, or when that defect or peculiarity is brought into play by the act of carriage; and further, the defect or peculiarity may or may not be known to the carrier. Now, for an injury arising from an internal defect in the article, utterly irrespective of the carriage, as we have already stated, we apprehend that a common carrier would not be liable; and this we maintain for the reasons we have given, and because we think that the fair deduction from the doctrines set forth in the commencement of the article, and from the reason of the thing, is, that a common carrier is an insurer only in cases where *extraneous* causes conduce to the injury. (See also *Hudson* v. *Bazendale*, 2 H. & Norm. 575). But where the internal defect or peculiar risk is excited or produced by the carriage, however careful that carriage may, be, or by what may arise to the article from external causes (not, of course, including in such category the natural effect of the atmosphere, &c., apart from the carriage) during its transit, we are inclined to think that the carrier is liable; at all events, Mr. Justice Story, we submit, has stated the full extent of the common carrier's non-liability, and that such carrier can only exempt himself by shewing that the injury must have accrued, however careful the carriage was. For if this were not so, a door would immediately be opened for an inquiry into whether the carrier was negligent or not—an inquiry into which, we submit, on the authorities we have cited, that a common carrier is precluded from entering. The carrier may protect himself by refusing to carry without special conditions, which in such case he is entitled to require, (1 Smith's L.C. 101 b)—a position which is illustrated by the following extract from the judgment of Parke, B., in the case of *Carr* v. *the Lancashire and Yorkshire Railway Company*, (21 L. J., Ex., 261):—"Before railways were in use the articles conveyed were of a different description from what they are now. Sheep and other live animals are now carried on railways; and horses, which were used to draw vehicles, are now themselves the objects of conveyance. Contracts, therefore, are now used with reference to the new state of things, *and it is very reasonable that carriers should be allowed to make agreements for the purpose of protecting themselves against the new risks* to which they are in modern times exposed. Horses are not conveyed by railways without much risk and danger, and the rapid motion, the noise of the engine, and various other matters, are apt to alarm them, and to cause them to injure themselves. *It is therefore very reasonable that carriers should protect themselves against loss by making special contracts.* The question here is, whether they have done so."

And with regard to the knowledge of the common carrier, we may cite a passage from the judgment of the same learned judge in the case of *Walker* v. *Jackson*, (10 M. & W. 169)—a case where the defendants were not charged as common carriers, which makes the obervations unfavourable to the carrier à fortiori applicable to the question we are discussing. "If anything," he says, "is delivered to a person to be carried, it is the duty of the person receiving it to ask such questions as may be necessary; and if he ask no such questions, and there be no fraud, to give the case a false complexion, on the delivery of the parcel, he is bound to carry the parcel as it is." But the carrier has no right to ask the person who brings a package, in all cases, what the contents are. *Crouch* v. *The London and Northwestern Railway Company*, 23 L. J., C. P., 73). And we may also refer to the important case of *Brass* v. *Maitland*, (6 El. & Bl. 471.; 3 Jur., N. S., part 1, p. 710; 26 L. J., Q. B., 49), where an action was brought by the owner of a general ship against a shipper for shipping dangerous goods, by which the other goods on board his ship were damaged, and where it was held, that though a carrier has no right to accept any communication respecting the nature of the goods, where he may easily discover it, yet the shipper ought to communicate their nature, where the shipowner has no means of knowledge of the dangerous nature of the goods, or of defective packing, which increases the danger. From which case, though certainly not in point, we may perhaps be allowed to infer, that, if the case ever came before the Courts, they would decide that the owner of goods should communicate internal defects or peculiar risks to the carrier, where he cannot easily discover them, or where the circumstances are not such as would prompt him to make inquiries which would lead to such discovery. Besides, if we are correct in thinking that a common carrier is liable for injuries to goods, when their peculiar properties or risks have been brought into play by the carriage, (although careful), and that he should make a special contract to protect himself, it would seem to follow, as a natural consequence, that he should have reasonable means of ascertaining the nature of the article.—*Jurist.*