it relates to loading and unloading, this condition is perfectly reasonable. At any rate, it is made so by the subsequent clause with respect to drovers: *Pardington* v. *The South Wales Railway Company* (*supra*).

KELLY, C.B.—I am of opinion that our judgment must be for the plaintiff. Several points have been raised, and I shall first consider that relating to the conditions. The condition is as follows. [His Lordship read the conditions.] Now, it is admitted that the first clause of the condition taken by itself is unreasonable in part, so far as it relates to risks of carriages and defects of vehicles. But it is said first that it is severable, and is good as to the remainder. I shall not undertake to say whether such a condition is partible or not. It is said, secondly, that the subsequent clause with respect to drovers cures any defect in the first and makes it binding. Now, the authorities no doubt show that a condition, which would otherwise be bad, may become good if a reasonable alternative be offered to the public. But to have this effect it must be left to the choice of the party to accept or decline that alternative. And here it is not so. Therefore, if the oppurtunity of sending a drover could have removed the effect of the condition, it has not that result here, for no choice was offered.

But even suppose there were no such rule as this, this condition is admitted to be bad as to the greater part of it. In part it may be good, namely as to loading and unloading. If the company leave the loading and unloading to the owner, and the owner chooses to undertake it, I do not see why a stipulation exempting the company from risks of loading and unloading may not be good. But Mr. Field must go the length of saying that this applies also to defects of the station; and the owner's undertaking the unloading cannot affect the company's liability to provide a safe and proper place for the purpose. Therefore upon no view can the conditions protect against risks from defect of stations.

Then as to the other points. It is said that the delivery was complete. Suppose it to be so, that still leaves the obligation to provide a safe exit. And whether the plaintiff's servant contributed to the loss or not, the only substantial question was whether the defendants had discharged their duty of giving a safe means of transit and exit. As to this there was evidence on both sides; the jury have found for the plaintiff, and there is no reason to disturb their verdict. The case of *Roberts* v. *The Great Western Railway Company* which has been cited, has no bearing upon this. The pleader there alleged an absolute duty to fence the station yard and it was held that no such duty existed. Upon all points the defendants have failed.

MARTIN, B.—I am of the same opinion. It will be convenient, in the first place, to consider the case without reference to the conditions. [His Lordship stated the facts.] Now, I think it is a fallacy to call what took place a delivery at all. Cattle are not like goods which can be put into the hand. In this case they were merely turned loose upon the defendants' own premises. Then, at common law, what would be the consequence of a man being sent in charge? I think it would be very like the case which has arisen of a nurse and child. If any injury occurred through the negligence of the drover, the company would not be liable; if by the negligence of their own servant, they would.

Then, look at the condition. It is clearly unreasonable as it stands. But assuming it to be divisable, and to be rendered reasonable in part by the stipulation as to drovers, still it can only be rendered reasonable so far as it relates to accidents arising through default of the drovers; and therefore it leaves the common law liability exactly as it was before. Either at common law or under the condition thus construed, if a man is sent in charge, whether his fare be paid or not, the company are not liable for injury arising from negligence in his department, but for other injuries they are.

CHANNELL, B.—I am of the same opinion. The defendants' counsel would have done much, if they could have shown that there had been such a delivery as to put an end to their liability at common law, for they would then have displaced my brother Martin's view. But I do not think there was any such delivery as to determine their liability and exclude all question of safe delivery, and delivery in a safe place. I think, therefore, the verdict was right.

Then, as to the conditions. The question arises on a traverse of the bailment; and if the conditions be reasonable, the declaration is not proved. It is admitted that the first condition is bad as it stands; but it is said that it is rendered reasonable in either of two ways. First, it is said that we may strike out a part of it—that which relates to risks of carriage, and look only at the remainder, and that the remainder is then good. If it were necessary to decide, I should strongly think that such a condition is not severable. If it applied to several subject-matters, it might be otherwise, but not as to one subject-matter. But even if risks of carriage could be struck out, the condition would still remain unreasonable. But it is further said that the third condition cures the first. Now it cannot be better for the company than if it had come first, and been prefaced by "inasmuch as." Then reading it so, the whole remains clearly unreasonable if risks of carriage are included. Otherwise, loss from a collision, through the defendants' negligence, would be protected. And if risks of carriage be struck out, the defect is not cured, for there still remain defects of stations and places of unloading, against which the presence of drovers can afford no protection. And this is the actual cause of loss in the present case. On all points, therefore, I think the rule must be discharged.

PIGOTT, B., concurred.

Rule discharged.

—*Weekly Reporter.*

CORRESPONDENCE.

TO THE EDITORS OF THE LOCAL COURTS' GAZETTE.

Actions for use and occupation.

GENTLEMEN,—Can an action for use and occupation be brought in the Division Courts?

This may appear a strange legal question to put, but it is nevertheless one that may very properly be asked. Recently two cases were brought and tried at the Richmond-hill Divi-