railway, signing a paper which declared "that he undertook all risk of loss, injury, or damage in conveyance and otherwise, whether arising from the negligence, default and misconduct, criminal or otherwise, on the part of the defendants or their servants." He was told by the station master that he would have to sign the conditions, which he did without taking time to read them. To an action for negligence in the carriage of the cattle, by which five of them were killed, the defendants pleaded these conditions, which the jury found the plaintiff had signed. It was held that he was bound by them, though he might not have read or understood the paper. It is clear that it could not have been so decided in England subsequently to the Railway and Canal Traffic Act, because there was no alternative rate and the condition was grossly unreasonable. And I think it will appear equally clearly that it could not have been so decided in England prior to the Carriers Act by reason of the authorities to which I shall refer below.

The decision is all the more remarkable when we look at the only two authorities cited in the judgment. The first of these was *Simons* v. *The G. W. R.*, 2 C. B. N. S. 620, decided in 1857. There the plaintiff had signed a contract, one of the conditions in which was that the company were not to be responsible for any loss or damage however caused. The plaintiff proved that his signature was obtained by the defendant's clerk, who told him the document was of no consequence but was a mere matter of form. The question left to the jury was whether or not the goods were delivered to and received by the defendants to be carried under a special contract, and the jury found for the plaintiff.

The judgment of the court was contained in the following words of Cockburn, C.J.:—"I see no ground for finding fault with the verdict in this case. To hold the plaintiff bound by a contract foisted upon him under such circumstances would be to permit the defendants to take advantage of their own fraud." It was, therefore, wholly unnecessary to consider the terms of the alleged special contract. The second case referred to is *Stewart* v. *London & N.-W. Ry.*, 10 L. T. N. S. 302, and 3 H. & C. 135, and all that I need say as regards this is that it has been since distinctly overruled, see *Cohen* v. *S.-E. Ry.*, L. R. 2 Ex. D. 253. A condition equally objectionable to that pleaded in *O'Rorke* v. *The G. W. Ry.*, was upheld in *Hood* v. *G. T. R.*, 20 C. P. 361, on the authority of the former case.

But the case on which this important point of carriers law mainly rests in our courts is *Hamilton* v. *The G. W. R.*, 23 U. C. R. 600, decided in 1864, and as it was both argued and decided entirely upon the authority of English cases, and as it has been followed in several subsequent judgments, it is well worth a careful examination. The head note is as follows:

"Defendants, a railway company, received certain plate glass to be carried for the plaintiff, who signed a paper partly written and partly printed, requesting them to receive it upon the conditions endorsed, which provided that they would not be responsible for damage done to any china, glass, etc., delivered to them for carriage; and defendants gave a receipt with the same conditions upon it. *Held*, that such delivery and acceptance formed a special contract which was valid at common law, and exempted defendants from injury to the goods, even though caused by gross negligence."

The authorities upon which this decision was based, according to the report, are the following:

(1) *Gibbon* v. *Paynton*, 4 Burr. 2299. decided in 1769. This was an action against the Birmingham stage coachman for £100 in money, sent from Birmingham to London and lost. It was hid in hay in