

COMMON CARRIERS—WRITS AGAINST GOODS AND LANDS.

To this the defendants pleaded a special contract—that the plaintiff undertook all risk of loss, injury or damage in loading, unloading, conveyance and otherwise, arising from the negligence, default or misconduct, criminal or otherwise, on the part of defendants; and that they did not undertake to forward the animals by any particular train, neither were they responsible for the delivery of the animals within any certain time, or for any particular market.

On demurrer, it was held that the plea was good; that the parties could lawfully enter into such a contract; that having done so, their rights and liabilities must be ascertained by the terms of it, and not by the common law.

In both these cases the court alluded to, and deplored the present state of the law, and suggested the propriety of legislative redress as the only means of putting the public upon a fair footing with companies who are *not*, in reality, owing to the present system of special conditions, "common carriers," in the sense that a lawyer would use the words. The defect in the law, which we are now complaining of, was also experienced in England; and Baron Parke, in *Carr v. The Lancashire and Yorkshire Railway Co.*, 7 Ex. 708, suggested the same remedy, when he said that it was not a matter for the interference of the courts, "but must be left to the legislature, who may, if they please, put a stop to this mode, which the carriers have adopted, of limiting their liability."

And now as to what statutory alteration should be made in the law. We are not at a loss for a guide in this, for we have the English statute, 17 & 18 Vic., cap. 31, sec. 7, which, with such modifications as the requirements of business in this country or the experience of mercantile men might suggest, would, we think, in a great measure remedy the evils complained of. The enactment is to the following effect:—

That every company (confined in England to railway and canal companies) shall be liable for all loss or injury to any animal or thing in the receiving, forwarding or delivery of them, occasioned by the neglect or default of such company, notwithstanding any notice or conditions made or given by such company contrary thereto; every such notice or condition being declared null and void. Provided that

such company may make any conditions in the premises, which shall be adjudged, by the court or judge before whom any question affecting the matter is tried, to be just and reasonable.

The section makes further provision, limiting the *amount* of the liability of the company in certain cases, unless the value is declared to them and an estimate made. Proof of the value is on the person claiming compensation, and no special contract shall be binding unless signed by the person delivering the goods for carriage.

The facts of the case of *Allday v. The Great Western Railway Co.*, 11 Jur. N.S. 12, referred to by the Chief Justice in *Bates v. The Great Western Railway Co.*, as exemplifying the benefit of the English act, were as follows: the plaintiff delivered cattle to the defendants to be carried to B station, and at the same time signed a ticket, containing certain conditions, whereby the company claimed immunity "from any consequence arising from over-carriage, detention or delay in, or in relation to the conveying of the said animals, however caused." The cattle were over-carried, and suffered in consequence. The court held that the deterioration of the cattle was an "injury" within the statute already referred to, and that the condition attempted to be imposed was an unreasonable one.

We may mention that the American Courts take a somewhat more liberal and equitable view of the law on this subject. Our readers will find in the *Repertory* a late American case bearing on it.

The courts have done their duty in pointing out the defects in the law. The mode of remedying the evil is hinted at in the cases in our own courts, and is now brought more prominently before the public. It remains, therefore, for the Legislature to pass such a measure as may be necessary to protect the business public, without, at the same time, imposing any unnecessary restriction on the working of what ought to be, and generally are, great public conveniences.

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The case of *The Ontario Bank v. Kerby et al.*, in the Common Pleas, the report of which will be found in another place, and *The Ontario Bank v. Muirhead*, 24 U. C. Q. B.