forced to be content with an *elegit* on his lands.[1] A few years later a smith was sued for "nailing" the plaintiff's horse; the defendant objected that it was not alleged *vi et armis* or *malitiose*, but the objection was overruled, and it was held that the mere fact of nailing the horse showed a cause of action.[2] An action was brought against a sheriff for non-return of a writ into court; he answered that he gave the writ to his coroner, who was robbed by one named in the exigent. He was held liable notwithstanding, Knivet, J. saying, "What you allege was your own default, since the duty to guard was yours."[3]

In 1410, in an action against an innkeeper, Hankford, J. used similar language: "If he suffers one to lodge with him he answers for his goods; and he is bound to have deputies and servants under him, for well keeping the inn during his absence."[4] A noteworthy remark was Judge Paston's a few years later: "You do not allege that he is a common marshal to cure such a horse; and if not, though he killed your horse by his medicines, still you shall not have an action against him without a promise."[5] Soon after was decided the great case of the Marshal of the King's Bench.[6] This was debt on a statute against the Marshal for an escape. The prisoner had been liberated by a mob; the defendant was held liable. The reason was somewhat differently stated by two of the judges. Danby, J. said that the defendant was liable because he had his remedy over. Prisot, C.J. put the recovery on the ground of negligent guard. This case was frequently cited in actions against carriers; but not, I think, in actions against ordinary bailees before Southcote's Case.

The earliest statement of the liability of a common carrier occurs, I think, in the Doctor and Student (1518), where it is said that, "if a common carrier go by the ways that be dangerous for robbing, or drive by night, or in other inconvenient time, and be robbed; or if he overcharge a horse whereby he falleth into the water, or otherwise, so that the stuff is hurt or impaired;

[1] 42 E. 3, 11, pl. 13 (1367). In 43 E. 3, 33, pl. 38, it was alleged that a "marshal" had undertaken to cure a horse, but had proceeded so negligently that the horse died. The defendant was driven from a denial of the undertaking, and was obliged to traverse the defect of care.

[2] 46 E. 3, 19, pl. 19 (1371).

[3] 41 Ass. 254, pl. 12 (1366).

[4] 11 H. 4, 45, pl. 18 (1410).

[5] 19 H. 6, 49 pl. 5 (1441).

[6] 33 H. 6, 1, pl. 3 (1455).