The plaintiff resided at Chesterfield, and was in the habit of sending cattle by the defendants' line. On the 27th April he delivered ten heifers and five cows to the defendants at Boroughbridge to be carried to Chesterfield. The defendants had no line to Chesterfield themselves; but the station there belonged to the Midland Company. The plaintiff received a ticket for the beasts and signed the counterfoil. The ticket contained conditions as follows;—"This stock is received by the company subject to the following conditions: That the owner undertakes all risks of loading, unloading, and carriage, whether arising from the negligence or default of the company or their servants, or from defect or imperfection in the station platform or place of loading or unloading, or of the carriage in which they may be loaded or conveyed, or from any other cause whatsoever. That the company will not be responsible for the non-delivery of the stock within any certain or reasonable time. The company will grant free passes to persons having the care of live stock as an inducement to owners to send proper persons with and to take care of them." The plaintiff sent a drover with the cattle, and he sent his nephew to meet them at the Chesterfield station. They arrived there late in the evening, and the night was dark. At that station there was a wharf for landing cattle, but it was only large enough for one truck to come alongside at once. There was no pen to put cattle in, and no fence round the wharf, but it was open to the line. The heifers were in one truck and the cows in another. On arriving at the station the drover gave up his ticket. The truck with the heifers was first brought to the wharf, and a porter and the plaintiffs nephew opened the doors of the truck and let them out; the drover stationing himself at what was admitted to be the proper place for preventing their escape. The other truck was then brought up and unloaded, and while this was being done some of the heifers out of the first truck escaped up the line. They were only missed as the others were being driven out of the station-yard, when search was made for them, and they were found to have been killed by a train.

Upon these facts it was contended that there was no evidence of any bailment on the terms alleged, the conditions being inconsistent with it; and secondly, that there was no evidence of any breach.

The learned judge left it to the jury to say, first whether there was a complete delivery; and secondly whether the delivery was in a safe and proper place.

The jury found for the plaintiff upon both points, with £67 damages; leave being reserved to the defendants to move to enter a verdict for themselves if the Court should think that the condition exempted them from liability.

Field, Q. C., in Michaelmas Term obtained a rule *nisi* to enter a verdict for the defendants pursuant to the leave reserved; or for a new trial on the ground that there was no evidence of non-delivery, or of delivery at an unsafe place, and that the verdict was against the evidence.

Cave now showed cause.—As to the conditions, they can afford no protection to the defendants, for they are clearly unreasonable. It could not be disputed that the first part of the condition repudiating all responsibility would be unreasonable if it stood alone. Such a condition has often been held to be so; *M'Manus* v. *The Lancashire and Yorkshire Railway Company*, 7 W. R. 547, 4 H, and N. 327; *Peek* v. *The North Staffordshire Railway Company* 11 W. R. 1023, 10 H. L. C. 473; *Gregory* v. *The West Midland Railway Company*, 12 W. R. 528, 2 H. & C. 944. The contention on the other side will be that the subsequent condition entitling drovers to free passes makes the first reasonable; and *Pardington* v. *The South Wales Railway Company*, 5 W. R. 8, 1 H. & N. 392 will be relied upon. But it is not in point. No doubt a company may reasonably decline liability of any particular kind, if they offer a reasonable alternative security instead; *Peak* v. *The North Staffordshire Railway Company*, *supra*; *Robinson* v. *The Great Western Railway Company*, 14 W. R. 206, 35 L. J. C. P. 123. But the alternative they offer must itself be reasonable; *Lloyd* v. *The Waterford and Limerick Railway Company*, 15 Ir. C. L. R. 37. In *Pardington* v. *The South Wales Railway Company*, *supra*, the condition exempted the company in respect of "damage on the loading or unloading, or from suffocation in transit." and free passes were to be given for drovers. The loss there was from accidental suffocation in the transit, one of the very matters which the drovers were sent to guard against. But here the exemption is in respect not only of loading and unloading and other things which the drovers might well be responsible for; but defect of carriages, negligence of the defendants' servants, defect of stations and so on, against which the presence of drovers can afford no security. There is no consideration for the exemption claimed. The presence of the drover is for the benefit of both parties, for it diminishes the risk of both. Therefore the owner sacrifices his time, and the company his carriage. As to the breaches, the question was one for the jury, and their verdict is fully supported by the evidence. There was nothing here amounting to a delivery at all; and at all events, it is clear that the place was not a safe one. *Roberts* v. *The Great Western Railway Company*, 4 C. B. N. S. 506, may be cited on the other side, but it does not apply. There the plaintiff alleged an absolute obligation to fence the station-yard, and it was held that no such obligation existed. But it was admitted that the company was bound to provide a safe landing-place, per Williams, J., p. 523. And that is all we contend for here.

Field, Q. C. and *A. Wills*, in support of the rule.—First, there was a complete delivery. The drover had given up his ticket, and he and the plaintiff's nephew had received the cattle on the wharf. And secondly, the place was a reasonably safe one. It was the place where the plaintiff intended them to be delivered; and he knew the station, and knew that it did not belong to the defendants. Nothing has been shown that the defendants ought to have done to make the place safer. And if it had been attempted to bind them to take any special precaution, *Roberts* v. *The Great Western Railway Company* (*supra*) would have been an answer.

But, at any rate, the defendants are protected by the condition. The condition is severable, and may be good in part, though bad in another part. This is so with bye-laws: *Rex* v. *Fishermen of Faversham*, 8 T. R. 352. And so far as