The cases to which I shall subsequently refer show that shortly after 1792 carriers in England commenced a practice of qualifying their liabilities within certain limits, by posting up and advertising notices to the effect that they would not be responsible for goods above a certain value, unless the same was declared and an additional sum paid for the extra risk. This was only reasonable, for in those days, before railways were invented, the risks attending the carriage of goods in stage coaches, etc., were very much greater than they are now. The difference between such a qualification and a stipulation to protect the carrier from his own fraud or negligence is very manifest.

To entitle him to the benefit of such a notice it was always necessary to bring it home to the shipper's knowledge (*Kerr* v. *Willan*, 6 M. & S. 150); and when this was done the notice operated by way of contract (*Nicholson* v. *Willan*, 5 East 507).

As I have above remarked, even this liberty was not open to carriers when the English law was introduced here (*Leeson* v. *Holt*, 1 Stark, 186). But granting that carriers in this country had the same right to qualify their liabilities as their brethren in England had, let us see how matters proceeded there. The rapid increase of these notices, and the difficulties which they entailed upon both carriers and shippers led to the passing of the Carriers Act, 11 Geo. IV., and 1 W. IV., cap. 68. This Act did away with these notices almost entirely, but provided that nothing in the Act contained should be construed to affect any special contract between the parties for the conveyance of goods.

It soon became apparent that the Act gave undue advantage to the carriers, and that they made it an excuse for exempting themselves from just liabilities by means of protective conditions inserted in their contracts.

The climax appears to have been reached in *Carr* v. *The Lancashire and Yorkshire Ry. Co.*, 7 Ex. 707, when an alteration of the law was recommended by the court, and this was answered by the passing of the Railway and Canal Traffic Act, 1854.

The change effected by this statute may be shortly stated to be that while it left the carriers free to make such contracts as they pleased (in writing and signed by the shipper), it reserved to the Courts the power to say whether any particular condition relied on by the carrier was just and reasonable.

Soon after this Act came into force the railway companies adopted the plan of offering alternative rates to shippers, so that on payment of the higher or parliamentary rate the companies accepted their full common law liabilities; but if a shipper desired it, they carried his goods at a lower rate, and imposed such conditions as they saw fit.

This was a fair and reasonable system, and is well illustrated in the case of *Brown* v. *Manchester*, L. R. 8 App. Cas. 703, where it was held that a contract exempting the defendants "from all liability for loss or damage by delay in transit, or from whatever other cause arising," was not unreasonable in the case of a shipper who had chosen to take advantage of the lower rate. But even under these circumstances Lord Fitzgerald doubted whether the carrier would have been protected from wilful misconduct. So far as I am aware, this system of alternative rates has never been adopted in this country.

Bearing in mind then the changes effected by legislation in England since 1830, let us see in what manner our Courts have dealt with this branch of the law.

In *O'Rorke* v. *Great Western Ry. Co.*, 23 U. C. R. 427, the plaintiff sent some cattle from Beachville by defendants'