

It is important to remark here that the English courts long ago omitted to observe such fundamental limitations of public policy in their early dealings with our young modern giant of inland traffic. Lapsing into the pernicious theory, about the dawn of the present century, that a common carrier might, by making special acceptance of goods, carry on that footing of qualification rather than in the strict exercise of a public vocation, they reached a standard quite opposed to our salutary American doctrine, about the same time that the latter became established. They concluded, in short, that a carrier who employed servants in the course of transportation might stipulate for complete immunity against losses which were occasioned by their default or misconduct in the course of the undertaking.¹ This conclusion proved intolerable; for the business of transportation, as organized in modern times, we find carried on almost altogether by the servants or agents of a corporation, whose irresponsibility for their acts must be almost tantamount to practical irresponsibility altogether. The British public would not tolerate such a conclusion; and Parliament in consequence, by the Railway and Canal Traffic Act of 1854,² proclaimed, as to the leading classes, at all events, of inland carriers, that no special condition which they might seek to impose should hold good unless "just and reasonable" in the opinion of the court, and embodied besides in a special contract signed by the sender of the goods. English legislation therefore, and not the English judiciary, directed the practice of that country to conform to something like that true bailment conception to which American courts steadily adhere of their own accord. And of American courts, those of New York furnish the only marked instance of national departure from our just national standard. Yielding too readily to the seductive influences of a powerful railway corporation, the Court of Appeals in that State discredited its own early traditions,³ and sanctioned the stipulations of a railway carrier to the effect that a sender of cattle, in consideration of certain favours, might be compelled to bear all the risks of the transportation for himself. This latter doctrine our Supreme Court of the United States, upon a last appeal, overturned; and in an exhaustive opinion, replete with learning, philanthropy, and sound sense, reaffirmed the principle that special conditions, unjust and unreasonable like that in controversy, could not be imposed by any carrier.⁴ To their own conclusion the New York courts still nominally adhered; yielding, however, so far, though quite ungraciously, as to presume for the future that a railway contract did not intend in reality the obnoxious exemption.⁵

¹ *Hinton v. Dibbin*, 2 Q.B. 646; *Peck v. North Staffordshire R.*, 10 H. L. Cas. 473, 494.

² Since extended by legislation to steamships.

³ See 19 Wend. 251; 25 Wend. 459.

⁴ *Railroad Co. v. Lockwood*, 17 Wall. 357 (1874).

The conclusions of the court are summarized at the close in the able opinion of the late Justice Bradley. "First, That a common carrier cannot lawfully stipulate for exemption from responsibility when such exemption is not just and reasonable in the eye of the law. Secondly, That it is not just and reasonable in the eye of the law for a common

carrier to stipulate for exemption from responsibility for the negligence of himself or his servants. Thirdly, That these rules apply both to carriers of goods and carriers of passengers for hire, and with special force to the latter. Fourthly, That a drover travelling on a pass, such as was given in this case, for the purpose of taking care of his stock on the train, is a passenger for hire." *Ib.* 384.

⁵ Observe the reluctant drift of such late New York decisions as *Mynard v. Syracuse R.*, 71 N.Y. 280; 89 N.Y. 370; 97 N.Y. 870.