cases cited. It appears to me, however, that the opinion of the majority of the learned judges in appeal delivered in the cases of *Parker & Gabell* against the *South Eastern Railway Co.*, (L. R. Com. Pl. Div. 2, 416) does not differ very materially from our law. I may be permitted also to add that the policy of our law is wise. It seems to me in the last degree absurd to presume that a passenger going to the wicket at a railway station, or a cloak-room, for a ticket, is presumed to have examined the legal value of a notice in minute print limiting the legal responsibility of the carrier or proprietor of the cloak-room. I can easily understand that a person might not consent to take charge of the Koh-i-noor diamond for two pence, but if he does it, it seems to me, he ought to be held liable, and he cannot relieve himself of the risk by saying that the depositor is presumed to know that there was a notice on the back of his ticket limiting the risk to £10. Nor is this an extraordinary application of the principle in England, for the courts there have very recently condemned a railway company to enormous damages because a very skilful physician had had his head injured in a railway accident. The cloak-room man can see whether the garment you give him to keep is valuable or the reverse, but the railway company can hardly be expected to judge of the occult science of every person who asks for a sixpenny ticket. It should be observed that it is fallacious to insist that 2d. is an insufficient recompense for the care of one article of great value. The carrying or care-taking is a business, for which the price charged is an equivalent not for one case, but for many. The question, then, seems to me to be whether there is evidence to show that the attention was directed to the numerous stipulations on the back of the bill of lading. I am unable to see any such evidence in the record. It is true that appellant took the bill of lading and raised money upon it. But what else could he do, even if he had seen the notices? His animals were on board the vessel, and he must either go without this very necessary receipt for their existence, or take what was offered. Again, by the ordinary course of business, the bill of lading was his only means to get money. He might, of course, have refused the bill of lading, and have brought an action to get one in the terms of his contract. This can hardly, however, be suggested as a practical remedy, or one the appellant was bound to adopt, if otherwise in the right.

But what seems to me to be more debateable ground is, whether the added clauses of the bill of lading are really more than were fairly covered by the original letters, or at all events whether the condition as to freight of animals lost on the voyage is anything more than a stipulation, which is presumed if nothing be said.

On this point a good deal of authority has been cited, or rather I should say many authors have dealt with the subject, but I can hardly say they have added much clearness to the subject. The fact is the writers have followed one another's expressions slavishly. They all refer to the few lines in the Dig. (XIV. 2, 10), which are to this effect:—"If you have leased your ship to carry slaves, no indemnity shall be due you for the carriage of those who die in the ship. But Paulus asks what is the contract, whether the bargain is made for what is put on board or for what is carried over. And he decides that if there be no stipulation, it will be sufficient for the captain to show that they were put on board." It is impossible, I think, to reconcile the first sentence of this paragraph with the latter part. If the general rule be that freight for live animals not delivered is exactly the same as for every other kind of merchandise, it seems strange that in the absence of any special stipulation the presumption should be for the ship instead of against it. It is useless, as some of the modern writers seem to see, to say that the contract when express shall be the law of the parties. But none of them give any good reason why Paulus should have arrived at a conclusion which seems exceptional. Roccus says that there is a rule that "a doubtful contract must be construed against the shipper." Flanders, No. 524, note. But why should it be *doubtful*, if the law supplies the stipulation? The first part of 2. 10, purports to be from Labeo; but it is quite possible what Labeo said may have had a context which would alter its meaning, or the passage may have been deliberately altered to keep up an imaginary symmetry in the law, to be pulled right in practice by a contradiction. We have examples of such legislative operations in our own days. Reason or not, it seems to be universally admitted law that when there is no stipulation on the point, freight is due for animals that perish without the fault of the captain, or as the Dig. puts it, it is sufficient if the master shall prove the putting on board.

But if we go back to the letters as the basis of the contract, they seem to support the idea that this doctrine was dominant in the mind of the contracting parties. It was not even necessary that the captain should prove the putting on board. He had to account for those he took on board, that is all; but his freight was due for space not for animals. Again, there is a clause of non-warranty for loss of cattle both in the letter of offer and in the letter of acceptance. To what did that refer if not to freight? Under our law it could not be intended to cover negligence (1676 C.C.) The most it could do in this respect would be to shift the burthen of proof from the owner to the shipper.

Taking this view I am to confirm with costs, and this is the judgment of the Court.*

Judgment confirmed.

*Kerr, Carter & McGibbon* for Appellant.

*Abbott, Tait & Abbotts* for Respondents.

*A similar judgment was delivered in the case of *Head & Murray*, (3 L. N. 47.)