CRITICISMS ON RECENT DECISIONS.

A NEW CRITERION OF CONTRACT.

BY R. C. MCMURTRIE, ESQ.

AN answer to an inquiry for rate of transportation makes a contract complete on delivery of the goods to the carrier, so that the actual contract then made by the acceptance of the bill of lading is a nullity, and the contract remains as if the carrier had accepted the goods in silence.

This is the decision of the highest Court of the greatest commercial State of the Union. Jennings *v.* Grand Trunk R. R., New York Court of Appeals, 30 Am. Law Reg., 638.

The necessary corollary, nay, the direct decision is, that the exclusion of perils of the sea, or fire, or acts of the public enemy, is impossible, if *rates* have previously been given in reply to an inquiry. Apply this to policies of insurance—life or fire—to sales of merchandise, to contracts for hire!

Plainly, if such a piece of folly requires analysis for exposure it lies here: There was no contract until acceptance by the carrier. No one is bound to sell because he has named a price at which he sells. The contract made when the goods were delivered would have included the inference of a contract on the proposed terms, had not such an inference been excluded by annexing the substituted contract; and if it was not intended that the substituted contract should have such an operation, it was the duty of the shipper to demand acceptance on the naked promise to carry for a certain rate. If the New York rule were the correct canon for construing conduct and words, it undoubtedly follows that there was no right to a bill of lading or a receipt, or any acknowledgment. If that document was a right, it was because the intention to act on the usual terms of shippers and carriers was implied in the making of the rate. In truth, there was no contract at all, but for a rate—and that conditioned upon the delivery and acceptance of the goods. To force a carrier into a contract to carry when there was no correlative obligation to ship, is inconsistent with accuracy. Common sense, it may be said, implies such an obligation; but, if implied at all, surely it must be upon the customary terms of bills of lading and other similar documents.

If A asks B the rate for cotton or sugar, will anyone contend that by naming a rate, B is bound to sell whatever A demands—it may be ten times what he has got? A man cannot but be amazed that anything so elementary has been overlooked as what does constitute a contract.