this latter appeal are reported in *G. T. R. Co.* v. *Vogel*, 11 S. C. C. R. 612 (1885.)

The Supreme Court were also divided in their opinions, Ritchie, C.J., Fournier and Henry, JJ., holding that the company was subject to the General Railway Act and could not protect themselves against liability for negligence, while Strong and Taschereau, JJ., were of opinion that the words "notice, condition or declaration" in the statutes referred to contemplate a public or general notice, and do not prevent a company from entering into a special contract to protect itself from liability, and that the judgment of Chief Justice Wilson for the defendants should be restored.

Counting the judges who took part in the decision of *Vogel* v. *G.T.R.Co.* by heads, five were for giving a verdict and judgment in favor of the defendants, and eight in favor of the plaintiff.

The case which in its material circumstances most resembles the one under consideration is *Bate* v. *C.P.R. Co.*, 14 O.R. 625.

That was an action for damages sustained by the plaintiff for loss of passengers' baggage on the occasion of an accident on the Railway by the negligence of the defendants. The plaintiff claimed that the value of the lost baggage was $1077.40, which on the trial was admitted to be personal luggage, wearing apparel and suitable to the plaintiff's position in life, and of the value of $1077.50.

The defendants in their statement of defence, amongst other pleas, set up as a defence a special contract with the plaintiff which contained a condition limiting the liability of the Company to a sum not exceeding $100. The plaintiff signed the ticket having such a condition printed on it. The circumstances connected with the giving and signing of the ticket, were stated in the judgment of Rose, J., as follows:—

"The evidence showed that the plaintiff with her brother, went to the office of the Company at Ottawa to get a ticket for Winnipeg. She asked for a return ticket. At the time the ticket was purchased the agent asked her to sign her name to it. The plaintiff asked him why she was to sign it, and the agent said that the ticket was not transferable and that she was to sign it for identification and that she would also have to go to the office at Winnipeg and sign her name there. The plaintiff accordingly signed her name to the ticket. She said she did not read the ticket, because, she said, she could not do so as her eyes were sore. She said she heard nothing about different rates, and that her brother paid the money for the ticket.

"The plaintiff's brother corroborated the plaintiff's evidence. He said that nothing was said about reduced rates or different rates; but a return ticket was asked for and he paid for it.

"The ticket was a special form of ticket called a 'Land Seeker's ticket,' and was issued at a reduced rate. The price of an ordinary ticket to Winnipeg and return was $85, while the price of this ticket was $55.

"On the ticket was printed a condition limiting the liability of the Company in case of damage, to a sum of not more than $100. In case of an ordinary ticket there was no such condition and the purchaser was not required to sign it."

Held—(Rose, J., dissenting) that Sec. 25 of 42 Vic. Cap. 9 only applied to negligence in the management of the train or handling of goods during transport, or at the point of receipt or delivery . . . and therefore the defendants could avail themselves of the condition, which was one they were competent to make, and the plaintiff must be bound by it.

Cameron, J., in delivering his judgment, said, "I incline to the view," referring to the judgment in *Vogel* v. *G.T.R.Co.*, 10 O.R. 197; "that they"—the Railway Company—"could relieve themselves from responsibility by contract in any case in which the injury or damage was the result of negligence, where the contract conferred a benefit or advantage upon the passenger in abatement of fare or freight."

The result of the cases referred to, then, is that it is competent to railway companies to enter into such a contract as that made by the defendants in this case with Mrs. Redgrave, limiting their liability, except in cases of negligence on their own part or that of their servants. In this case there is no allegation that the loss, damage or detention