

Now as to the condition itself, which is the converse of the second condition in the case in hand, it was remarked that the defendants had chosen the very words used by the Legislature in the Carriers Act, and that these very words were determined in *Hinton v. Dibdin*, 2 Q. B. 646, to exempt the carrier from liability for loss or injury occasioned by gross negligence of the carrier's servants. Mr. Justice Crompton observed, that he had great difficulty in making a refined distinction between a stipulation to be free from any loss or injury, and to be free from responsibility for any injury or damage, "however caused," which the Court of Exchequer decided in *Carr v. The Lancashire & Yorkshire Railroad Company*, to include cases of gross negligence, "but," he added, "I think that a condition that the company shall not be responsible for losses (which appears to me to include losses by every species of gross negligence,) ought not to be held just and reasonable." It is to be noted that the judges, who were for the defendants, did not dissent in substance from this view, but thought that in the true construction of the condition, losses occasioned by gross negligence did not come within it.

The court of ultimate appeal, by a majority of three to one, forming with the other judges a majority of eight to seven of the judicial minds employed upon this important case, decided that the condition imposed by this company was unreasonable and unjust, and the minority did not differ with them as to its essential character. Now, this is an inquiry of the highest practical importance to us. This court has now unanimously held that by the law as it obtains in this Province, and probably in all the other Provinces of the Dominion, there is no law to restrain the Grand Trunk Railway Company from exacting such terms and imposing such conditions as they think fit, in their printed papers which the public using the railway must accede to. We give no opinion whether the condition in the case in hand is reasonable or otherwise; much is to be said for, and something against it. But as it is essentially the same with the condition in *Peck v. North Staffordshire Railway Company*, it is well to ponder on the significant words of the Lord Chancellor that "the necessary effect of such a contract would be, that it would exempt the company from responsibility for injury however caused, including therefore, gross negligence and even fraud or dishonesty on the part of the servants of the company; for the condition is expressed without any limitation or exception" (p. 567). In a passage we have already cited, Mr. Justice Blackburn, with the apparent assent of the Law Lords, and certainly with that of Lord Wensleydale, declared that at common law a carrier might by a special notice make a contract, (and the Queen's Bench of Ontario has decided that there is no distinction between a notice and a condition forming a part of a special contract*) limiting his responsibility even in the cases of gross negligence, misconduct or fraud on the part of servants!

We are far from thinking that the Grand Trunk Railway Company would push its advantages or avail itself of the law to such extremes. But as the British North America Act, 1867, in the

91st and 92nd sections declares that exclusive legislative authority belongs to the Parliament of Canada over "lines of steam or other ships, railways, canals, telegraphs, and other works and undertakings connecting the Provinces with any other or others of the Provinces, or extending beyond the limits of the Province," we think it right to call the attention of the Dominion Government and the Legislature to what we conceive to be the actual state of the law upon a question so deeply affecting the trade and commerce of the country.

It may be that with a view to their protection, Parliament may deem it advisable to enact a law for the whole Dominion, founded on the Imperial Act of 1854, with such modifications as the experience of the mother country and the decisions since that period will naturally suggest.

In the case in hand, we are constrained by the authorities to set aside the verdict for the plaintiff, and award the defendants a new trial with costs of argument.

Rule absolute.

Plaintiff's attorney, *Mr. Peter Lynch.*

Defendant's attorney, *Mr. J. N. Ritchie.*

[We are indebted to Mr. N. H. Meagher, student-at-law, Halifax, as well for the above report as for others previously received.—Eds. L. J.]

ENGLISH REPORTS.

COMMON PLEAS.

THE QUEEN v. WHITE.

Abandoning child whereby life was endangered—Child allowed by father to remain in danger—Misdemeanour—24 & 25 Vic. c. 100, s. 27.

The prisoner was convicted under section 27 of 24 & 25 Vic. c. 100, of having unlawfully abandoned and exposed a certain infant under the age of two years whereby its life was endangered.

The prisoner and his wife were the parents of the child, which was about nine months old on the 1st of September, 1870, the time mentioned in the indictment. They had been living apart for three weeks, when the mother came to the house of the prisoner at seven o'clock in the evening, laid the child down outside the door, and called out, "Bill, here's your child; I can't keep it; I am gone." She then went away, and was not seen again that night. Shortly afterwards the prisoner came out, stepped over the child, and walked away. About ten o'clock the prisoner returned, and was told that the child was lying outside the house, in the road; he then refused to take it in. About one a.m. a police constable who had been sent for found the child lying in the road, cold and stiff; he took charge of it, and by his care it was restored to animation. At 4.30 a.m. the prisoner admitted to the constable that he knew the child was in the road.

Held, that the prisoner was properly convicted.

[19 W. R. 783, C. C. R.]

Case stated by the Chairman of Quarter Sessions for the County of Southampton. The prisoner was indicted at the Quarter Sessions for the County of Southampton, held at Winchester, on the 19th day of October, 1870, under the Act 24th and 25th Vic. c. 100, s. 27, for that he did on the 1st day of September, 1870, unlawfully and wilfully expose and abandon a certain child, then being under the age of two years, whereby the life of the said child was endangered. It appeared from the evidence that Emily White (the wife of the prisoner) was the mother of the child, which was about nine months old at the time mentioned in the indictment. On that day

* *La Pointe v. The Grand Trunk Railway Company*, 26 U. C. Q. B. 479.—Eds. L. J.