

suggestion in the courts before it was adopted in Parliament.

In *Carr v. Lancashire & Yorkshire Railroad Company*, 7 Ex. 707, decided in 1852, on which the 16th condition we have cited as to live stock is plainly founded, where the jury found as a fact that the plaintiff's horse had been injured through the gross carelessness of the defendants, they had guarded themselves by a notice in these words: "This ticket is issued subject to the owner's undertaking all risks of conveyance whatsoever, as the company will not be responsible for any injury or damage, (howsoever caused) occurring to live stock of any description travelling upon the Lancashire and Yorkshire Railway, or in their vehicles." The finding of the jury was not complained of, just as we approve of the finding of the jury here, yet the Court of Exchequer held that this was a special contract by which the plaintiff had taken upon himself all risk, just as in this case the defendants stipulated that the hogs were carried "only at the owner's risk"—the only difference being in the words "howsoever caused," or "no matter how caused" on which we will presently remark. "It is not for us," said Baron Parke, "to fritter away the true sense and meaning of these contracts. * * * If any inconvenience should arise from their being entered into, that is not a matter for our interference, but it must be left to the Legislature, who may, if they please, put a stop to this mode which the carriers have adopted of limiting their liability. We are bound to construe the words used according to their proper meaning; and according to the true intention of the parties as here expressed, I think the defendants are not liable."

This case was much relied on by the defendants' counsel, with that of *Wilton v. Atlantic Mail Steam Company*, 10 C. B. N. S. 453, where the same principles were applied to carriers by sea, and the company was relieved of liability for the negligence of the master, by virtue of a special contract which provided that they should not be accountable for luggage unless a bill of lading had been signed therefor.

The decisions in favour of railroad companies, culminating in the case from 7 Ex., brought down upon them,—to use the strong expression of one of the English judges,—the Railway and Canal Traffic Act of 1854, 17 & 18 Vic. chap. 81, by the 7th section of which, "Every such company shall be liable for the loss of, or for any injury done to live stock or goods, occasioned by the negligence of their servants, notwithstanding any notice, condition, or declaration made and given by such company, contrary thereto, or in any way limiting such liability—every such notice, condition, and declaration being hereby declared to be null and void." Then follow five provisos, the first of which declares that "Nothing herein contained shall be construed to prevent said companies from making such conditions in the premises, as shall be adjudged by the court or a judge, before whom any question relating thereto shall be tried, to be just and reasonable."

The fourth proviso declares that "No special contract between such company and any other person respecting the forwarding or delivery of live stock or goods shall be binding upon or affect any such party, unless the same be signed

by him or by the person delivering such animals or goods respectively for carriage." This proviso and the practice under it, have doubtless suggested the form of the shipping papers or contracts used by the Grand Trunk Railway Company.

Subsequent to this Act of 1854, the cases have mainly turned on the justice and reasonableness of the conditions imposed by railroad companies, and the fact that this is to be settled by the courts, affords to the public an effective and most valuable protection. It is true that the 7th section, with its host of provisos, is not spoken of in the most complimentary terms. Lord Westbury assails it for its cumbrous language, and Mr. Justice Willes calls it "an element of confusion." Its true construction, too, has led to great variety of opinion. Still, though susceptible of improvement, it has been found a valuable enactment, and in the principal case from the House of Lords, it will be instructive to review the terms of the condition then in controversy, and the opinions it elicited.

The action was brought for injury done to three marble chimney pieces sent by railway, and the Company sought to protect themselves by the following condition, "That the company shall not be responsible for the loss of or injury to any marbles, musical instruments, toys, or other articles, which from their brittleness, fragility, delicacy, or liability to ignition, are more than ordinarily hazardous, unless declared and insured according to their value." It appeared by the evidence that the price of the carriage was 55s. stg., per ton. Ten per cent. of the value was demanded for insurance, which the consignor declined paying and sent the chimney pieces uninsured—their value was £210, and the injury done to them was estimated at £52.

To persons who are sometimes astonished at the difference of opinions in the courts of justice, it may give a curious and useful lesson, to mark the variety in this case. It was tried before Mr. Justice Erie, who thought the condition reasonable and just, and directed a verdict to be entered for the defendants. Upon argument in the Queen's Bench, (1 E. B. & E. 958) Lord Campbell and Mr. Justice Crompton took the opposite view, and judgment was given for the plaintiff. This decision was reversed in the Exchequer Chamber (1b. 980), by Chief Baron Pollock, Mr. Baron Martin, Mr. Justice Willes, Mr. Baron Watson, and Mr. Baron Channel, the judgment was given for the defendants, Mr. Justice Williams dissenting. Of the judges in the House of Lords, besides some of the above called in to assist, Chief Justice Cockburn and Mr. Justice Blackburn gave their opinions for the plaintiff. So that of these common law judges, including two Chief Justices and the Chief Baron, it turned out that five were in favor of the plaintiff and six for the defendants. In the House of Lords, the then Lord Chancellor (Lord Westbury) after remarking with deference that he could not believe that there was in the matter itself any very serious difficulty, combined with Lords Crauworth and Wensleydale in giving judgment for the plaintiff, thus reverting to the original judgment which had been reversed in the Exchequer Chamber; while Lord Chelmsford thought the judgment should be for the company.