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 Erle, 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 (Ib. 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 Cranworth 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.

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 *Peek* 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

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