

handed it folded to the plaintiff. In the margin of the contract is written, "Pass man in charge at half fare." The plaintiff did not open or read the contract. Its purport was not made known to him by any one, nor was he required by the agent (as the form directs) to write his name upon it. He paid no fare, and was asked for none. Half-fare for him was, however, charged in the bill rendered to Dr. McCombe at South River for the carriage of the horse; and both charges were paid by Dr. McCombe. During the transit a rear-end collision occurred, at Burk's Falls, and the plaintiff sustained serious injury.

The contract under which the horse was carried was before the Board of Railway Commissioners of Canada for approval on the 17th October, 1904. . . . An order was . . . made which . . . empowered and authorised the applicants to use the form submitted "until the Board shall hereafter otherwise order and determine."

The form signed by Dr. Parker is identical with that . . . authorised by the Railway Commissioners; and, though nearly eight years have since elapsed, no further or other order has been made

The important provision is as follows: "In case of the company granting to the shipper or any nominee or nominees of the shipper a pass or privilege at less than full fare to ride on the train in which the property is being carried, for the purpose of taking care of the same while in transit and at the owner's risk as aforesaid, then as to every person so travelling on such a pass or reduced fare the company is to be entirely free from liability in respect of his death, injury, or damage, and whether it be caused by the negligence of the company, or its servants or employees, or otherwise howsoever."

In view of the decisions in *Bicknell v. Grand Trunk R.W. Co.* (1899), 26 A.R. 431, and *Sutherland v. Grand Trunk R.W. Co.* (1909), 18 O.L.R. 139, it cannot be doubted that the contract was binding upon Dr. Parker. That point, however, is not involved in the present case. . . . Is the plaintiff bound by a contract between the shipper and the carrier to which the plaintiff was not a party and of the terms of which he had no knowledge? I have been referred to no case which decides this affirmatively. . . .

[Reference to *Goldstein v. Canadian Pacific R.W. Co.* (1911), 23 O.L.R. 536.]

I am firmly of opinion that the plaintiff's common law rights against the defendants were not taken away by the contract made between the defendants and Dr. Parker. Any other