

Certainly such evidence was not enough without some evidence that the defendant knew, or, in the exercise of ordinary care, might have known of the insecurity of the well.

Lynch-Staunton for the plaintiff.

J. W. Nesbitt, Q.C., for the defendant.

Common Pleas Division.

Div'l Court.]

[March 4.

ROBERTSON *v.* GRAND TRUNK RAILWAY CO.

Railways—Special contract limiting liability—Validity of.

The plaintiff, on shipping a horse by defendants' railway, signed a document called a "Live Transportation Contract," which stated that the company received the horse for transport at the special rate of \$7.20; and in consideration thereof it was mutually agreed that defendants should not be liable for any loss or damage, etc., except in case of collision, etc., and should in no case be responsible for an amount exceeding \$100 for each or any horse, etc., transported. In a collision caused by the negligence of the defendants the horse was killed.

Held, that the agreement constituted a special contract limiting the defendants' liability to the amount named; and that s. 246, s.s. 3 of the Railway Act, 51 Vict., c. 29 (D.), did not apply so as to prevent the defendants from claiming the benefit of the contract where the negligence was proved.

Vogel v. Grand Trunk R.W. Co., 2 O.R. 197; 10 A.R. 162; 11 S.C.R. 612; and *Bale v. Canadian Pacific R.W. Co.*, 14 O.R. 625; 15 A.R. 388, considered.

Collier for plaintiff.

Osler, Q.C., and *Wallace Nesbitt* for defendants.

Div'l Court.]

[June 24.

REGINA *v.* BURK.

Criminal law—Speedy Trials Act—Bail surrendering—Right to elect to be tried summarily—Subsequent indictments quashed—Several offences—Valuable security.

The surrender of defendants out on bail, including the surrender by a defendant himself out on his own bail, committed to gaol for trial, has the effect of remitting them to custody, and enables them to avail themselves of the Speedy Trials Act, 52 Vict., c. 47 (D.), and to appear before the county judge and elect to be tried summarily; and where defendants had so elected indictments subsequently laid against them at the assizes were held bad and quashed, even after plea pleaded where done through inadvertence, 143 of R.S.C., c. 174, not being in such case any bar.

Two indictments were laid against defendants, one for conspiracy to procure W. to sign two promissory notes; and the other for fraudulently inducing W. to sign the documents, representing them to be agreements, whereas they were, in fact, promissory notes: