

It was argued by Mr. McCarthy that under this contract defendants were relieved from all liability for damages to stock except for injuries arising from collision, or the cars being thrown from the track during transportation, neither of which was the moving cause of the loss in the present case, he contending that the prohibition against the company contracting themselves out of liability for negligence provided for by sec. 214 of the Railway Act was avoided by reason of this contract having been approved by the Board of Railway Commissioners under sec. 275. It is unnecessary to consider this latter point, as the Booth case is clear authority for the contention that upon the proper interpretation of this contract defendants have not escaped liability for the negligence of their servants. See also *Price v. Union Lighterage Co.*, [1904] 1 K. B. 412. The right of the company to limit their liability in consideration of a special rate was not under discussion in the Booth case, the question there being whether the contract in this particular form absolved the company from liability for the negligence of their servants.

Here defendants have, in consideration of a special rate granted to plaintiff, limited their liability to \$100 for each horse, and upon the authority of *Robertson v. Grand Trunk R. W. Co.*, 24 O. R. 75, 21 A. R. 204, 24 S. C. R. 611, they have the right so to do.

Against the objection of defendants' counsel, it was left to the jury to say whether plaintiff knew of the lower rate that was being given him, and assented to the terms upon which the lower rate was granted, that is, the limitation of defendants' liability. The contract was signed by plaintiff; he had an opportunity of reading it; no advantage was taken of him by defendants' agent; and, notwithstanding the finding of the jury upon this point, I think plaintiff is bound by its terms, and that it must govern the rights of the parties: *Taylor v. Grand Trunk R. W. Co.*, 4 O. L. R. 357, 1 O. W. R. 447.

The result is that plaintiff is entitled to judgment for \$200, being the damages fixed by the contract, and not the actual loss as found by the jury. In view of plaintiff's loss being one-third more than his recovery, he may have costs upon the High Court scale.