

that between that time and the making of the will further advances were made to him and charged in the book. It appears that in April, 1904, testator made a will which contained in exact words the provisions of paragraphs 7 and 20 of the present will. The circumstances that the amount chargeable in 1904 against Norman, as shewn by the "family book," corresponded with the amount of the deduction to be made from his share by the terms of the earlier will, and that the paragraph referring to it had been copied into the new will, helps to confirm the view which I have expressed, but which I have arrived at altogether apart from that circumstance.

The answer to the first question submitted being that the executor ought to be guided by and to act on paragraph 7 and not paragraph 20, no further answer is necessary to the second question.

The costs of all parties will be out of the estate; those of the executors to be as between solicitor and client.

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HON. MR. JUSTICE LATCHFORD.

JUNE 6TH, 1912.

ROBINSON v. GRAND TRUNK R.W. CO.

3 O. W. N. 1345; O. L. R.

*Negligence—Railway—Injury to Person in Charge of Live Stock while being Carried at Half Fare—Liability of Railway.*

Action for damages sustained by plaintiff by reason of defendants' negligence while plaintiff was a passenger on defendants' railway. Plaintiff was in charge of a horse being shipped from Milverton, Ont., to South River, Ont., the rules of defendants requiring a man in charge. Defendants admitted negligence, but claimed they were absolved from liability by the terms of a special contract with the consignor on a form approved by the Dominion Railway Commission, providing as follows:—

"In case of the company granting to the shipper or any nominee or nominees of the shipper a pass or a 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."

The contract was signed by defendants' agent and the consignor, but not by the plaintiff, and it was handed folded to him with a note endorsed on the margin: "Pass man in charge at half fare." He did not open it nor read it, and no fare was asked for nor paid by him. Half fare, however, was charged the consignee in the account rendered for the carriage of the horse and paid by him.

LATCHFORD, J., held that plaintiff's rights were not extinguished by the contract between defendants and another, from which plaintiff derived no benefit, and of the terms of which he had neither notice nor knowledge.

Judgment for plaintiff for \$3,000 and costs.

*Goldstein v. Canadian Pacific R.W. Co.*, 23 O. L. R. 536, 18 O. W. R. 977, specially referred to.