

The testatrix in this case speaks of "issue" with reference to the parent's share, and that indicates that she uses "issue" as synonymous with "child." By this reading of the will an intestacy is prevented, and there is a confirmation of the absolute gift intended for the adopted daughter by the first part of the will.

MABEE, J.

MAY 26TH, 1906.

TRIAL.

COSTELLO v. GRAND TRUNK R. W. CO.

*Railway—Carriage of Goods—Loss—Negligence—Contract
Limiting Liability—Findings of Jury—Recovery of
Amount Fixed by Contract—Costs.*

Action for damages for loss of horses in course of carriage by defendants. Plaintiff alleged negligence on the part of defendants.

E. F. B. Johnston, K.C., and R. McKay, for plaintiff.

D. L. McCarthy and W. E. Foster, for defendants.

MABEE, J.:—At the trial I was strongly pressed . . . to nonsuit—first, because . . . there was no evidence of negligence that could be submitted to the jury, and second, because, if there was negligence, there was nothing connecting plaintiff's loss with such negligence.

In my view of the case there was ample evidence of negligence, and the whole matter was one solely for the jury.

The findings of fact, then, upon which the case must be disposed of, are: that, by reason of defects in the floor of the car, and by not promptly delivering the horses at North Bay, defendants were guilty of negligence that caused the death of the two horses in question; that plaintiff was not guilty of contributory negligence; that he was not aware of the different freight rates, and did not assent to the terms upon which the lower rate was granted to him; and damages for the loss of the horses were assessed at \$297.

The contract for shipment signed by plaintiff is in the same form as that in question in the recent case of Booth v. Canadian Pacific R. W. Co., ante 595, where it was held that this form of contract does not exempt the railway company from liability for the negligence of their servants.