

upon the negligent one a duty not to be negligent. And the nature and extent of this duty is not a fixed and definite quantity applicable to all alike, but varies according to the circumstances. For instance, a passenger who has paid his fare and has a ticket, is legally entitled to assert a higher and more extensive duty in his case than has a mere trespasser who has paid no fare and has no contract. So that the fundamental enquiry into the nature and extent of the duty does not stop short at the point where the plaintiff is merely found to have been upon the defendants' train, but must involve and include the further question of how and by what authority he came to be there, with the inevitable result, as it seems to me, that the contract is thus reached, and must be received and acknowledged as the foundation and the measure of the rights, duties, and liabilities of all parties, the plaintiff included. The shipper under such a contract as the one in question may himself accompany the animals, or he may name a person to do so, who becomes in the language of the contract his "nominee." No one accompanying the animals is apparently compelled to accept the privilege of travelling under such a special contract at reduced fare, or no fare at all. Instead it is quite open to the person to purchase in the ordinary way the regular ticket, paying the regular fare, in which case he would be entitled to the rights of an ordinary passenger.

But if the travelling is done under special contract, and at the reduced fare, or no fare, as the case may be, its terms must I think be equally binding upon the shipper, if he alone accompanies the animals, or upon his nominee if he does not.

And as the contract in question clearly excludes liability on the part of the defendants, "whether caused by the negligence of the company, of its servants, or otherwise howsoever," and has been duly authorized by the Railway Board under sec. 340 of The Railway Act, R.S.C. 1906, ch. 37, the only remaining question must be the important one whether the Board had authority in the premises.

And that question I would answer in the affirmative.

The language of the section is "no contract, condition, by-law, regulation, declaration or notice made or given by the company impairing, restricting or limiting its liability in respect of the carriage of any traffic, shall except as hereinafter provided relieve the company from such liability unless such class of contract, condition, by-law, regulation, declaration or notice shall have first been authorized or approved by order or regulation of