

The view of Latchford, J., is thus expressed:—"I am firmly of the opinion that Robinson's common law rights against the defendants were not taken away by the contract made between the defendants and Dr. Parker. Any other view appears to me necessarily to imply that by a contract to which he was not a party, under which he derived no benefit—the reduction in fare benefiting only the consignee—and of whose terms he had neither notice nor knowledge, his right to be carried without negligence on the part of the defendants was extinguished, and they were empowered, without incurring civil liability, to maim and almost kill him while he was lawfully upon their train. If such can possibly be the effect of the special contract, a higher Court must so decide."

In the Goldstein case the main question was as to the right of indemnity which the defendant claimed against the third parties. And in considering that question I incidentally referred to the nature of the contract under which the plaintiff was travelling at the time of his injury, and indicated my opinion of its proper construction as far as the then plaintiff was concerned: see page 539.

Further consideration in this case, in which the question is of course more directly involved, has only served to confirm what I there expressed, that a person in the position of the plaintiff, travelling under such special circumstances, paying no fare himself, and having no other ticket or other authorization entitling him to be upon the train at all, cannot be heard to deny that he was travelling under the provisions of the contract in his possession, whether he had taken the trouble to read it or not. And the result would in my opinion be the same, whether or not the signature of such person upon the back of the contract, in the blank for that purpose, had been obtained. Such signature is clearly not essential to the creation of the contract, its only use being obviously for the purpose of identification, and to prevent anyone else from travelling upon it.

I am not quite certain what is meant in the judgment by the "common law rights" of the plaintiff to which the learned Judge thought he might be remitted. He cannot, of course, have meant a common law right to travel free, or at a reduced fare, upon the defendants' railway, for of course no such right exists or ever existed. The only other common law right which occurs to me is the ordinary right of every one to be protected against negligence. But negligence in such connection does not mean abstract negligence, but negligence under circumstances which imposed