

The owner of animals undertakes all risks of loss, injury, damage, and other contingencies in loading, unloading, transportation, conveyance, or otherwise howsoever, no matter how caused.

On the back it was (amongst other things) declared that live stock :

Is taken entirely at the owner's risk of loss, injury or damage, whether in loading, and unloading, conveyance, or otherwise all live stock shall be carried by special contract only, &c.

When free passes are given to those in charge, it is on condition that the company are not responsible for any negligence, default, or misconduct of any kind as to the injury of the person using the pass. A receipt for the animals was given by the defendants in the same form and conditions. The animals were killed or lost by the defendants' negligence. It was admitted that, but for these special conditions, the company would be liable. The plaintiff urged that, by statute, the conditions could not avail where there was actual negligence. To this the defendants replied, that their company was not bound by any such statutable provision; and secondly, that even if so bound, the law did not prohibit their making a special contract for the carriage of the goods. The case was tried at Belleville, before Wilson, C. J. The jury found in substance that the horses were not carried under the special contract, and that the plaintiff did not know what the terms on the back of the shipping bills were, but that he supposed the terms were of the like nature as those upon the other papers he had signed for the carriage of horses by the Grand Trunk. The jury assessed the damages at \$725. The Chief Justice (Wilson) entered the verdict for the defendants. The plaintiff moved in term in the Queen's Bench to set aside this verdict, and to have a verdict entered for him, because the damage having been occasioned by defendants' negligence, they were liable, notwithstanding the conditions of the contract, under the Consolidated Railway Act, 1879, Revised Statutes of Canada, cap. 109, sec. 104, sub-secs. 1, 2, 3.