

The prohibition against railway companies contracting themselves out of liability for damages because of their negligence, substantially borrowed from Imperial legislation, first appears in Dominion legislation in the Railway Act of 1868 (31 Viet. ch. 68, sec. 20), and was in force (3 Edw. VII. ch. 58, sec. 214) when power was conferred on the Board of Railway Commissioners (3 Edw. VII. ch. 58, sec. 275, now sec. 340 of the Railway Act) to sanction contracts affecting a railway company's liability for negligence.

Reading the whole of sec. 340, it seems to me that the intention of Parliament was to change the law by enabling a company to do what they could not do before, viz., contract themselves either wholly or partly out of liability. The words "restricting or limiting" meet the case of a partial exemption from liability; and the word "impairing" was, I think, intended to cover the case of total exemption from liability. . . . Unless . . . it is given the meaning of "exempting from" liability, it is meaningless. My opinion is, that it was used in that sense; and, therefore, under sec. 340, the defendants, having the approval of the Board of Railway Commissioners to their form of contract, were entitled to make the special contract in question, whereby they are relieved from liability to the plaintiff.

The action, therefore, fails, and should be dismissed with costs.

CLUTE, J.

NOVEMBER 25TH, 1911.

STOCKS v. BOULTER.

Fraud and Misrepresentation—Sale and Purchase of Farm—Completed Transaction—Reliance on Representations Made by Vendor—Inspection of Farm—Purchase Induced by Representations—Rescission—Damages.

Action for the rescission of an agreement of the 9th November, 1910, for the purchase by the plaintiff and the sale by the defendant Wellington Boulter of a farm in the township of Sophiasburgh and certain chattels, and for rescission of the conveyance made by the defendant Wellington Boulter to the plaintiff and a mortgage made by the plaintiff to the defendant Nancy Helen Boulter, wife of the defendant Wellington Boulter, upon the ground of misrepresentations alleged to have been made by the defendant Wellington Boulter, upon which the plaintiff relied and which induced him to purchase.