

The action was tried with a jury, who found: (1) that the defendants were guilty of negligence which caused the accident; (2) that the negligence consisted in "fault of engineer applying brake too quick;" (3) that the plaintiff had no opportunity of knowing that the special contract in question contained a term relieving the defendants from liability in respect of injury to him when riding on the train in which his horse was being carried; (4) that he did not, when riding on the train, know of the contract containing such term; and (5) they assessed the plaintiff's damages at \$500.

W. S. Brewster, K.C., for the plaintiff.

I. F. Hellmuth, K.C., and W. E. Foster, for the defendants.

MULOCK, C.J. (after setting out the facts):—The evidence shews that the plaintiff signed the shipping bill in question at the request of the defendants' agent. The plaintiff said that he was urged by the agent to hurry up and sign it and get into the caboose, and that he did so without reading it or knowing its contents.

The plaintiff is not an inexperienced shipper by the defendants' railway, and his signature was not obtained by fraud. It is, therefore, immaterial that he may not have read the contract or even may not have known its contents: *Parker v. South Eastern R.W. Co.*, 2 C.P.D. 416; *Taylor v. Grand Trunk R.W. Co.*, 4 O.L.R. 362.

The defendants rely on the special contract, which was approved of by the Board of Railway Commissioners for Canada, as relieving them from liability; and the question is, whether it is competent for the company thus to contract themselves out of liability. . . .

[Reference to secs. 284 and 340 of the Railway Act, R.S.C. 1906 ch. 37.]

The effect of sec. 340 has been considered in various cases, which are collected . . . in *Sutherland v. Grand Trunk R.W. Co.*, 18 O.L.R. 139; and it may be accepted as settled law that a railway company may by special contract *limit* their liability for negligence, where the Board of Commissioners has approved of the general form of the contract; but in none of those cases was it necessary to determine whether, even with the sanction of the Board, the company could *contract themselves out of liability*. *Goldstein v. Canadian Pacific R.W. Co.*, 23 O.L.R. 536, was cited as supporting that view; but in that case the defendants admitted liability, and the Court was not called upon to determine the point involved in the present action.