

The appeal was heard by FALCONBRIDGE, C.J.K.B., BRITTON and RIDDELL, JJ.

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

I. F. Hellmuth, K.C., for the defendants.

RIDDELL, J.:— . . . I am wholly in accord with the judgment, and think it cannot be set aside. Even were the conclusions of the learned trial Judge erroneous in respect of the meaning of the word "impairing" in the statute—and I am of opinion that they are not—the clause in the contract is not, in my view, such as that it destroys the "liability in respect of the carriage of any traffic." "Traffic" means the traffic of passengers, goods, and rolling stock without discrimination: Railway Act, sec. 2(31). Both the plaintiff and his horse were "traffic," and carried under the one contract. The provision that the company should not be liable for injury to him is not a destruction of all liability under the contract of carriage, but a limitation to the goods carried. This, I think, comes within sec. 340(2) of the Act. . . .

The word "impairing" is a generic term, including "destruction," and there is nothing which indicates that "impairing" is used in a less narrow sense.

I agree also in the reasoning of the learned trial Judge.

FALCONBRIDGE, C.J., for reasons stated in writing, agreed that "there is some liability left under the original contract, and it is destroyed only as to the carriage of the passenger." He did not wish to be understood as in other respects not agreeing with the reasoning of the trial Judge. As to the meaning of the word "impair," he referred to *Blair v. Williams*, 4 Littell (Ky.) at p. 69.

BRITTON, J., agreed in the result.

Appeal dismissed with costs.

DIVISIONAL COURT.

FEBRUARY 6TH, 1912.

STERLING BANK OF CANADA v. LAUGHLIN.

Banks and Banking—Bill of Exchange—Indorsement by Payee to Bank—Presentment for Payment through Clearing-house—Delay—Failure of Drawee Bank—Acceptance of, as Debtor—Rights against Indorser—Absence of Evidence to Render Indorser Subject to Usages of Clearing-house.

An appeal by the plaintiffs from the judgment of the Third Division Court in the County of Peel dismissing an action to