

the defendants against liability for injury to the persons carried free.

It was not pretended that the third parties in any way communicated to either Goldstine or Robinson the terms of the special contract.

I have been unable to find any authority which would support the claim that the third parties owed any duty to the defendants to inform Goldstine and Robinson of the terms of the special contract, and I do not think that on any principle can such a duty be rested. There is nothing in the contract itself to suggest that the defendants would rely on the plaintiffs being so informed by the shippers, but, on the contrary, the contract itself and the general rule in classification shew that the defendants were not to rely on any such suggested duty, because . . . both on the back of the contract and in the rule express provision is made for the person in charge to sign the special contract. It was, therefore, the clear duty of the defendants' agent, in order to deprive the person in charge of his common law rights against the defendants, in case of injury by negligence of their servants, to make him aware of the condition on which he was being carried free, and to obtain his express assent thereto. It must be assumed that the third parties knew of these provisions of the contract and rule, and they had to suppose that, before the person in charge was permitted to travel upon the defendants' train, their agent would perform his duty in regard thereto. . . .

I think the most that can be said is, that by omitting to inform the person in charge of the terms of the contract, the third parties took the risk of the person in charge refusing to accept or sign the contract, when presented to him by the defendants; in which case, if no one else was placed in charge, two results might follow under the contract, viz.: (a) the defendants would be "relieved from all liability to carry" the stock; or (b), "if the company carry such live stock without it being so accompanied, it shall not be liable for any loss or damage due to the live stock not being so accompanied and cared for."

Then as to liability under an implied agreement to indemnify, counsel for the defendants cited *The Moorcock*, 14 P. D. 64, and *Ogdens Limited v. Nelson*, [1903] 2 K. B. 287, [1904] 2 K. B. 410, [1905] A. C. 109. . . . *Hamlyn v. Ward*, [1891] 2 K. B. 488. . . .

Now, looking at the express terms of the written contract, including the rule set forth in classification 14, intended for the guidance of both parties, and having regard to all the circumstances under which the contract was entered into, I find it im-