

personal representatives of Goldstein, who was killed. Garrow, J., in his judgment (p. 540), says:

"No trial having taken place, it is now quite impossible accurately to ascertain what the defendants feared or exactly why they settled; the only really material fact appearing so far as the third parties (the shippers) are concerned being that before doing so the defendants took the precautions of obtaining from them the undertaking not to dispute the liability of the defendants to the plaintiffs or the amounts at which it was proposed to settle."

The learned Judge then proceeds to say that the question before the Court was merely the right of the railway to indemnity for the amounts so paid; and, applying the rule that generally the right to indemnity, unless expressly contracted for, must be based upon a previous request, express or implied, to do the act in respect of which indemnity is claimed, the learned Judge held that in the circumstances there was no express covenant or contract of indemnity and that it would be impossible in law to imply one. The case against the third parties was, therefore, dismissed.

In my opinion, I am not bound by the opinions expressed by Meredith, J., in his judgment (pp. 542 and 543) as to the right or absence of right on the part of those injured by the carriers, arising out of the contract made between the shippers and the railway company. These opinions are, I think, mere dicta, not necessary to the determination of the question of indemnity which was before the Court.

I am firmly of the opinion that Robinson's common law rights against the defendants were not taken away by the contract made between the defendants and Dr. Parker. Any other view appears to me necessarily to imply that by a contract to which he was not a party, under which he derived no benefit—the reduction in fare benefiting only the consignee—and of the terms of which he had neither notice nor knowledge, his right to be carried without negligence on the part of the defendants was extinguished, and they were empowered, without incurring civil liability, to maim and almost kill him while he was lawfully upon their train. If such can possibly be the effect of the special contract, a higher Court must so decide.

I direct that judgment be entered for the plaintiff for three thousand dollars and costs. There may be a stay of thirty days.