

I am of opinion that the claim of C. Rally cannot prevail.

There will be no costs: none to the claimant—he was wholly wrong in his claim; and none to the executor—he was wrong in his practice, and he escaped paying the costs of a dismissed petition simply through the complaisance of the claimant.

The following authorities may be looked at: *Innes v. Johnson*, 14 Ves. 568; *Sidebotham v. Watson*, 11 Hare 170; *Ellis v. Walker*, Amb. 309; *Nelson v. Carter*, 5 Sim. 530; *Day v. Harris*, 1 O.R. 147; *Smallman v. Goolden*, 1 Cox Eq. 329; *Jarman on Wills*, 6th ed., pp. 1063, 1067, 1971, note (m); *Bevan v. Attorney-General*, 4 Giff. 361, 369; *Robertson v. Broadbent*, 8 App. Cas. 812, 815; *Higgins v. Dawson*, [1902] A.C. 1, and cases cited.

MULOCK, C.J.Ex.D.

NOVEMBER 24TH, 1911.

*HELLER v. GRAND TRUNK R.W. CO.

Railway—Injury to Passenger—Special Contract—Shipper of Animal—Privilege of Travelling for Half Fare—Condition—Freedom of Railway Company from Liability for Injury—Approval of Board of Railway Commissioners—Railway Act, sec. 340—"Impairing"—Right to Contract for Total Exemption—Knowledge of Passenger of Terms of Contract—Immateriality—Findings of Jury.

Action for damages for injury sustained by the plaintiff while travelling upon the defendants' railway, under the terms of a special contract, as the shipper of a horse. The contract provided that in case of the defendants granting to a shipper a pass or a privilege at less than full fare, the defendants were to be "entirely free from liability in respect of his death, injury, or damage," whether "caused by the negligence of the company, or its servants, or employees, or otherwise howsoever." The contract was signed by an agent of the company; and at the foot these words were printed: "The shipper declares that he fully understands the meaning of this special contract." This was signed by the plaintiff as the shipper. Thereupon he was given a ticket for himself, at half fare, and permitted to proceed in charge of his horse by the same train. The plaintiff was thrown from his seat by a sudden check in the speed of the train, and injured.

*To be reported in the Ontario Law Reports.