

load of live stock, as the case may be, when the distance is over 100 miles, unless special authority is first obtained”

Neither Robinson nor Goldstine signed the special contract, nor was any pass issued and delivered to them embodying its terms, nor was there evidence that either of them knew the contents of the special contract; hence there was nothing to defeat their common law right to damages occasioned by the negligence of the defendants' servants.

W. Nesbitt, K.C., and G. A. Walker, for the defendants.

W. R. Smyth, K.C., for the third parties.

TEETZEL, J.:— The third parties endeavoured to establish at the trial that they were not the owners of the horses I am of opinion, upon the evidence, that for the purpose of determining the rights of the parties in this action, they must be deemed to be both owners and shippers. . . .

Though the evidence does not shew that the third parties expressly nominated Goldstine and Robinson to take charge of the horses while in transit, I think they must be treated as their nominees under the special contract and as their agents within the meaning of the above general rules. They were certainly in charge when the horses were loaded upon the cars, and on the face of each special contract was written, with the concurrence of the representative of the third parties, when the special contract was delivered, the words, “Pass man in charge.” No money was paid for the fare of either Goldstine or Robinson, the only consideration for carrying them free apparently being the restricted liability of the defendants as to the stock and their freedom from liability to the person carried, conferred by the special contracts.

Quite independently of the special contract having been approved by the Board of Railway Commissioners, it was, according to the decisions in *Hall v. North Eastern R. W. Co.*, L. R. 10 Q. B. 437, and *Bicknell v. Grand Trunk R. W. Co.*, 26 A. R. 431, quite competent for the shippers or their nominees to agree with the defendants to travel at their own risk of personal injury, in consideration of being allowed to travel free. . . .

The defendants rest their claim against the third parties on two grounds: (1) that, under the provisions of the special contracts, it was the duty of the third parties to inform the plaintiffs of the terms and conditions of the special contract before allowing or requiring them to travel upon the defendants' train as their nominees in charge of the horses; (2) that, under the contract, there was an implied agreement by the third parties to indemnify