

contracting themselves out of liability for negligence in the cases therein provided for, that is, by "any notice, condition, or declaration;" the only question in this case being whether the words "notice, condition, or declaration" cover condition viii.

[Reference to Grand Trunk R. W. Co. v. Vogel, 11 S. C. R. 612; Robertson v. Grand Trunk R. W. Co., 24 S. C. R. 612; The Queen v. Grenier, 30 S. C. R. 42.]

The Vogel case is not overruled, but is yet an authority binding upon this Court. If, however, I am at liberty to give effect to my opinion upon the question, it is that the Vogel case was rightly decided.

It comes to this: either condition viii. does not apply to loss through defendants' negligence, and so is no defence to the action or ground of counterclaim; or it does so apply, and, if so, is made of no effect by the enactment.

[Reference to Willcocks v. Pennsylvania R. R. Co., 166 Pa. St. 81, 184; Rintoul v. New York R. R. Co., 17 Fed. R. 905; Providence v. Moore, 150 U. S. 99; Shouler on Carriers, secs. 450, 464, 465; Elliott on Railroads, vol. 4, sec. 1509.]

Judgment for plaintiffs for \$488 damages and costs of action.

MACMAHON, J.

APRIL 14TH, 1903.

TRIAL.

BANK OF MONTREAL v. LINGHAM.

Limitation of Actions—Promissory Notes—Indebtedness to Bank—Acknowledgement by Deed—Conversion of Simple Contract Debt into Specialty—Revival of Debt—Release—Accord and Satisfaction.

Action to recover a money demand based upon two promissory notes dated respectively 6th and 27th March, 1884, both at 3 months, for \$35,000 and \$25,000 respectively, and upon a deed executed by defendant dated 7th June, 1884, whereby defendant acknowledged that he owed plaintiffs \$58,875.52.

Defendant pleaded the Statute of Limitations and accord and satisfaction.

W. Cassels, K.C., and A. W. Anglin, for plaintiffs.

C. H. Ritchie, K.C., and W. B. Northrup, K.C., for defendant.

MACMAHON, J.—The overdue indebtedness of defendant to the plaintiffs was on the 7th June, 1884, about \$88,875.52