a stranger, and to the second the defendants are in the same position. And, in addition as to both, if the reasoning in . . . Martin v. Great Indian R. W. Co. is sound, as, in my opinion, it is, the exemptions claimed would not extend to include an act of collateral or "active" negligence . . . such as the collision. Such indemnity or exemption clauses are, quite properly, construed strictly, and, if intended to exclude claims for negligence, that should be clearly expressed: see Price v. Union Lighterage Co., 20 Times L. R. 177. . . .

[Lake Erie, etc., R. W. Co. v. Sales, 26 S. C. R. 663, distinguished.]

But, if the agreement between the plaintiff and the express company has any application, I agree with the construction placed by Riddell, J., upon the obscurely expresed clause relied on, "that the stipulation contained herein shall extend to and inure to the benefit of each and every company or person to whom through this company the below described property may be intrusted or delivered for transportation," namely, that it was not intended to apply and does not apply to the defendants, but to a company or person beyond the line of the defendants' railway, over the whole of whose lines in Canada the express company operate, to which company or person it might be necessary for the express company to part with the property in order that it might reach its destination.

Appeal dismissed with costs.

JUNE 15TH, 1910.

LECKIE v. MARSHALL.

Contract — Option — Construction—Election—Time—Extension —Tender—Waiver.

Appeal by the plaintiffs from the judgment of MACMAHON, J., ante 222, dismissing the action and allowing the counterclaim of the defendants.

The action was brought to recover possession of certain mining claims in the district of Nipissing, into the possession of which, it was alleged, the defendants had been permitted to enter under a written option to purchase which they afterwards failed to exercise within the time limited.