

TEETZEL, J.

JULY 14TH, 1910.

\*GOLDSTINE v. CANADIAN PACIFIC R. W. CO.

\*ROBINSON v. CANADIAN PACIFIC R. W. CO.

*Railway—Carriage of Live Stock—Contract—Approval by Board of Railway Commissioners — Injury to Persons in Charge Travelling Free—Neglect of Servants of Railway Company to Obtain Assent to Terms of Contract—Liability — Indemnity from Owners and Shippers—Duty to Inform Persons in Charge—Implied Obligation.*

Trial of issue between the defendants and Burns and Sheppard, third parties.

The plaintiff in the first action was administrator of the estate of one Goldstine, who was killed on a train of the defendants, through the negligence of the defendants' servants; and the plaintiff Robinson was injured on the same occasion.

At a former sittings judgment was entered by consent against the defendants in favour of the plaintiffs for \$1,750 and \$750 respectively, without costs; and the question for determination in each case was whether the third parties were bound to indemnify the defendants against payment of these sums.

At the time of the accident the deceased Goldstine and the plaintiff Robinson were each in charge of a car-load of horses shipped from Toronto to points in the western provinces under special contracts for shipment of live stock, signed by the defendants' agent and by Burns and Sheppard, the third parties, as shippers. The deceased Goldstine was a member of the firm of Fawcett & Goldstine, who were the consignees named in the contracts, and Robinson was an employee of that firm.

The contracts were in the exact form approved by the Board of Railway Commissioners on the 17th October, 1904, under the provisions of the Railway Act.

The rate of freight charged was that authorised under Canadian classification No. 14 (15th December, 1908), and approved of by the Board of Railway Commissioners, in cases where the stock is shipped under the terms and conditions of the special contract, which classification contains the following rule: "The owner or his agent must accompany each car-load or less than car-

\* These cases will be reported in the Ontario Law Reports.