

W. L. Haight, for the plaintiff.

D. L. McCarthy, K.C., and D'Arcy Tate, K.C., for the defendants.

HON. MR. JUSTICE LATCHFORD:—That the defendants caused injury to the plaintiff by their negligence was formally admitted at the trial, where the damages which the plaintiff thus sustained were fixed by a jury at \$3,000.

It is, however, contended on behalf of the defendants, that they are relieved from liability by the terms of a contract made between them and one Dr. Parker, who shipped a horse in charge of the plaintiff from Milverton, in the county of Perth, to South River, in the district of Parry Sound. Dr. Parker had purchased the horse for his friend, Dr. McCombe, of South River, and at the latter's request the plaintiff proceeded to Milverton to bring up the horse; the rules of the defendants requiring that live stock shipped more than a hundred miles should have a man in charge.

The plaintiff accompanied Dr. Parker to the railway station, and was present when the shipping bill and special contract upon which the defendants rely was signed by the agent and by Dr. Parker, who, thereupon, at the instance of the agent, handed it folded to the plaintiff. In the margin of the contract is written: "Pass man in charge at half fare." The plaintiff did not open or read the contract. Its purport was not made known to him by anyone, nor was he required by the agent (as the form directs) to write his name upon it. He paid no fare, and was asked for none. Half fare for him was, however, charged in the bill rendered to Dr. McCombe at South River for the carriage of the horse, and both charges were paid by Dr. McCombe. During the transit a rear-end collision negligently occurred at Burk's Falls, and the plaintiff sustained serious injury.

The contract under which the horse was carried was before the Board of Railway Commissioners of Canada for approval, on the 17th October, 1904, upon the application of the three great railway systems of the Dominion and of the Pere Marquette Railroad Company. An order was thereupon made which, after referring to the matter as one of great importance, "requiring that much circumspection should be exercised in examining into the forms which the Board hereafter has to approve, and also into the question of limitation of liability on the part of the carriers," empowered and authorized the applicants to use the forms