come within the exception. It is urged that the malice referred to in the exception is malice towards the individual personally, such as is meant, for instance, in a statute for maliciously injuring or destroying property, or for malicious mischief, where more intentional injury without special malice towards the individual has been held by some courts not to be sufficient. *Commonwealth* v. *Williams*, 110 Massachusetts, 401. We are not inclined to place such a narrow construction upon the language of the exception. We do not think the language used was intended to limit the exception in any such way. It was an honest debtor and not a malicious wrongdoer that was to be discharged."

The circumstances disclosed suffice to show a wilful and malicious injury to property for which plaintiff in error became and remains liable to respond in damages. The judgment below is

Affirmed.

CHESAPEAKE & OHIO RAILWAY COMPANY *v.* McLAUGHLIN.

ERROR TO THE CIRCUIT COURT OF POCAHONTAS COUNTY, STATE OF WEST VIRGINIA.

No. 100. Argued November 14, 1916.—Decided December 4, 1916.

A stipulation in a "uniform live stock contract" signed and accepted by both shipper and carrier to govern an interstate shipment, and declaring in effect that the carrier shall not be liable for loss or damage unless a claim therefor be made in writing, verified by affidavit, and delivered to a designated agent of the carrier at his office, in a place named, within five days of the removal of the stock from the cars, is on its face unobjectionable and, in the absence of any proof of circumstances tending to render it invalid or excuse a failure to comply with it, will be enforced.

THE case is stated in the opinion.

Mr. F. B. Enslow, with whom *Mr. Herbert Fitzpatrick* was on the brief, for plaintiff in error.

No appearance or brief filed for defendant in error.

MR. JUSTICE MCREYNOLDS delivered the opinion of the court.

McLaughlin recovered judgment against the railway company in the Circuit Court, Pocahontas County, West Virginia, for injuries to a horse which it transported from Lexington, Kentucky, and delivered to him at Seebert, West Virginia, February 17, 1914.

The shipment was under a "uniform live stock contract" signed by both parties and introduced in evidence by defendant in error which among other things provides:

"That no claim for damages which may accrue to the said shipper under this contract shall be allowed or paid by the said carrier or sued for in any Court by the said shipper, unless claim for such loss or damage shall be made in writing, verified by the affidavit of the said shipper or his agent and delivered to the General Claim Agent of the said carrier at his office in Richmond, Va., within five days from the time said stock is removed from said car or cars; and that if any loss or damages occur upon the line of a connecting carrier then such carrier shall not be liable unless a claim shall be made in like manner and delivered in like time to some proper officer or agent of the carrier on whose line the loss or injury occurs."

It conclusively appears that McLaughlin did not present a verified claim to the carrier's agent as provided by the contract. Upon its face the agreement seems to be unobjectionable and nothing in the record tends to establish circumstances rendering it invalid or excuse failure

to comply therewith. The court below erred in denying a seasonable request for a directed verdict; and its judgment must be reversed. Our recent opinions render unnecessary any further discussion of the reasons for this conclusion. *Northern Pacific Railway Co.* v. *Wall*, 241 U. S. 87; *Georgia, Florida & Alabama Railway Co.* v. *Blish Milling Co.*, 241 U. S. 190; *Cincinnati, New Orleans & Texas Pacific Railway Co.* v. *Rankin*, 241 U. S. 319.

Reverse and remand for further proceedings not inconsistent with this opinion.

Reversed.

GREAT NORTHERN RAILWAY COMPANY *v.* CAPITAL TRUST COMPANY, ADMINISTRATOR OF WARD.

ERROR TO THE SUPREME COURT OF THE STATE OF MINNESOTA.

No. 107. Submitted November 15, 1916.—Decided December 4, 1916.

Such pain and suffering as are substantially contemporaneous with death or mere incidents to it, as also the short periods of insensibility which sometimes intervene between fatal injuries and death, afford no basis for a separate estimation or award of damages under the Employers' Liability Act, as amended by the Act of April 5, 1910. *St. Louis & Iron Mountain Ry.* v. *Craft*, 237 U. S. 648, 655.

Although an error not challenged in the State Supreme Court may not be relied on here as a ground of reversal, it is proper for this court to point it out in anticipation of a possible new trial.

Under the Employers' Liability Act, as amended April 5, 1910, when the personal representative unites a claim for the injury suffered by the decedent with a claim for losses resulting to the beneficiaries from his death, the damages recoverable under the former claim are limited to such as will reasonably compensate for the loss and suffering of the injured person while he lived, and it is error to permit