

keep in his possession and take away a black collie dog . . . the property of the complainant" which was sworn by the defendant; a search warrant was issued to a constable who took the dog out of the plaintiff's possession, he insisting that it was his dog. The constable then laid an information against the plaintiff, charging that he "unlawfully did have and keep in his possession a black collie dog the property of Mr. Wyatt," and the plaintiff was summoned. Before the magistrate the plaintiff's counsel objected that the information and summons did not charge the plaintiff with any offence and at the request of the defendant and his counsel the information was amended by inserting the words "steal and take away." The magistrate dismissed the charge. In an action for malicious prosecution,

Held, that the defendant having fairly stated the facts to the magistrate he was not liable in damages for the erroneous view of the magistrate that he had jurisdiction to issue the search warrant, nor for summoning the plaintiff apparently to dispose of the question as to the property in the dog.

Held, also, that there was evidence that the defendant assented to the alteration charging the plaintiff with the crime of theft and his prosecution on that charge and that the defendant was not justified in charging the plaintiff with having stolen the dog because he believed the dog was his own; that the real question was not whether the defendant believed the dog to be his own, but whether he believed that the plaintiff had stolen him; that is, taken him without any belief that he had the right to take him; and that the trial judge should have left the case to the jury, telling them that if they found that the defendant had authorized the charge of theft and honestly believed when the amendment was made that the plaintiff had stolen his dog they should find for the defendant, otherwise they should find for the plaintiff—the case should not have been taken from the jury upon the ground that reasonable and probable cause for a criminal prosecution had been shewn and a new trial was ordered.

Judgment of the County Court of the County of Middlesex reversed.
J. H. Moss, for the appeal. *J. A. Meredith*, contra.

Meredith, J.]

[April 14.

ST. MARY'S CREAMERY CO. v. GRAND TRUNK R.W. CO.

*Railways—Bill of lading—Condition requiring insurance—Breach of—
Loss of goods—Negligence.*

Under sec. 246 of the Railway Act, a railway company is precluded from setting up a condition endorsed on a bill of lading relieving the company from liability for damage sustained to goods while in transit, where the damage is occasioned through negligence.

Where, therefore, a condition of a bill of lading given by a railway company on a shipment of goods, required the consignor to effect an