

to me on every ground unreasonable and wholly foreign to what in my opinion the parties could have intended.

The appeal should be allowed with costs and the action dismissed with costs.

OSLER and MACLAREN, JJ.A., concurred, giving reasons in writing.

MOSS, C.J.O., also concurred.

MACLENNAN, J.A., dissented, giving reasons in writing.

APRIL 12TH, 1905.

C.A.

JONES v. GRAND TRUNK R. W. CO.

Railway—Expulsion of Passenger—Indian—Passenger Rates—Special Contract—Custom—Withdrawal of Privilege—Absence of Notice—Accommodation—Jury—Damages.

Appeal by defendants from judgment of BRITTON, J., 3 O. W. R. 705, in favour of plaintiff for \$10 damages (assessed by jury) and costs on the High Court scale, in an action for damages for expulsion from a train of defendants.

The appeal was heard by MOSS, C.J.O., OSLER, MACLENNAN, GARROW, MACLAREN, JJ.A.

W. R. Riddell, K.C., for defendants.

A. G. Chisholm, London, for plaintiff.

Moss, C.J.O.:— . . . Plaintiff had frequently travelled upon defendants' train between Hagersville and Hamilton, and vice versa, as the holder of an Indian ticket, occupying a seat in the first class carriage, even when the train was composed, as it was on the occasion in question, of two carriages, one a first class carriage, and the other the carriage in respect of which the dispute has now arisen. Until the occasion in question she had always occupied a seat in the first class carriage, and had never been denied the accommodation. Upon the weight of evidence, the other carriage was, to all outward appearance, nothing more than a smoking car. There was nothing to indicate that it was a car for the accommodation of second class passengers. The conductor testified that the words "second class" were painted on the outside, but in this he is contradicted by the brakesman and plaintiff's husband, who made a careful examination of the carriage.