

benefit of creditors, the notice of motion should state the grounds, or they would at least appear in the material filed in support of the application.

The ordinary procedure in an action is not applicable to such a motion; and where an appointment to examine the assignee in support of the application, under Con. Rule 491, was taken out and served, it was held that he was not obliged to attend upon it, the officer having no authority to issue it.

*A. C. McMaster*, for applicants. *D. L. McCarthy*, for assignee.

Meredith, C.J.C.P., MacMahon, J.]

[Nov. 26, 1903

MCCORMACK v. GRAND TRUNK R.W. CO.

*Railway—Carriage of goods—Liability for loss—Dog—Common carriers.*

The defendants are, by the Railway Act, 51 Vict. c. 29 (D.), common carriers of animals of all kinds; and in this case were held liable for the loss of a dog which was received by them for carriage by their railway and was not delivered to the plaintiff in accordance with the contract made with him.

Distinction between the English and Canadian Railway Acts pointed out.

Judgment of the County Court of Wentworth affirmed.

*J. W. Nesbitt*, K.C., for defendants. *Washington*, K.C., for plaintiff.

## COUNTY COURT—HALDIMAND.

REX v. DEALTRY.

*Liquor License Act—Conviction for third offence—Enquiry as to previous convictions—Necessity for first finding as to subsequent offence.*

Sec. 101, sub-s. 2, of the Liquor License Act, which provides for the case of previous convictions, requires that the magistrate "shall in the first instance inquire concerning such subsequent offence only, and if the accused be found guilty thereof he shall then, and not before, be asked whether he was so previously convicted."

Held, following *Regina v. Edgar*, 15 O.R. 142, that the language of the section is peremptory, and therefore to give a magistrate jurisdiction thereunder to enquire as to previous convictions he must first find the accused guilty of the alleged subsequent offence. In this case, which was a conviction for a third offence, this was not done, but the previous convictions were enquired into and admitted by the defendant on cross-examination. The conviction was therefore quashed.

[Cayuga, Nov. 20, 1903. Colter, Co. J.]

Appeal from a conviction made by Thomas Rice, police magistrate for the town of Dunnville, on Oct. 27, 1903. The defendant was tried before the above named police magistrate on a charge as a third offence of