

of master for act of servant—Summary conviction—Civil remedy.]—

The plaintiff who had purchased a special excursion ticket from Toronto to Niagara and return on the same day by a steamer of the defendants, and which had been taken up by the purser on that day, claimed the right to return by it on the following day under an alleged agreement with the purser, which the latter denied. On the purser demanding the plaintiff's fare, and the latter refusing to pay it, the porter by the purser's direction, laid hold of a valise which the plaintiff was carrying, and attempted to take it and hold it for the fare, whereupon a scuffle ensued, and the plaintiff was injured.

Held, OSLER, J., dissenting, that the purser was not acting within the scope of his duty in thus forcibly attempting to take possession of the valise, and the defendants were not liable for his act.

It appeared that the purser had been summoned by the plaintiff before a magistrate for the assault, and a fine imposed, which he paid.

Per WILSON, C. J.—This, under 32-33 Vic. ch. 20, sec. 45, D., through a release to the purser, did not constitute any bar to the present action against the company.

Held, also, that the alleged imprisonment of the plaintiff by the purser in his office for non-payment of his fare, not being an act which the defendants themselves could legally have done, the defendants were not liable for it. *Emerson v. Niagara Navigation Co.*, 528.

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