

The judgment of the Court (MEREDITH, C.J., MACMAHON, J.) was delivered by

MACMAHON, J. (after setting out the facts at length):—  
By the English Railway and Canal Traffic Act, 17 & 18 Vict. ch. 31, sec. 1, the expression "traffic" includes "animals," and it is the same in our Railway Act, 51 Vict. ch. 29, sec. 2 (v).

Section 2 of the English Act provides that the company shall afford all reasonable facilities for the receiving and forwarding and delivery of traffic. . . .

[Quotation from the judgment of Lord Esher, M.R., in *Dickson v. Great Northern R. W. Co.*, 18 Q. B. D. at p. 190.]

The Master of the Rolls points out that the condition sought to be imposed on the railway company for carrying the dog the loss of which occasioned the action, was unjust and unreasonable, and therefore void.

[Reference to sec. 246 of the Dominion Railway Act.]

As pointed out . . . in *Cobban v. Canadian Pacific R. W. Co.*, 23 A. R. at p. 119, the language of sec. 7 of the Imperial Act enables a company to make a special contract with just and reasonable conditions, while ours contains an absolute denial of power to escape from liability for negligence. . . .

[Reference to *Robertson v. Grand Trunk R. W. Co.*, 21 A. R. at p. 215.]

The defendants being by the Railway Act the common carriers of animals of all kinds, this dog was received by them as common carriers, and, as it was not delivered to plaintiff in accordance with the contract, the defendants are liable for the loss. . . .

In *The Queen v. Slade*, 21 Q. B. D. 433, it was held that a dog is "goods" within the meaning of 2 & 3 Vict. ch. 71, sec. 40. . . .

Appeal dismissed with costs.