

perly have withdrawn the case from the jury: see *Scriver v. Lowe*, 32 O. R. 290, and cases there cited.

Judgment for plaintiff for \$1,250 and costs.

NOVEMBER 26TH, 1903.

DIVISIONAL COURT.

McCORMACK v. GRAND TRUNK R. W. CO.

*Railway—Carriage of Goods—Escape of Dog in Transit—
Liability of Railway Company—Common Carriers.*

Appeal by defendants from judgment of senior Judge of County Court of Wentworth in favour of plaintiff for \$100 damages in an action for the loss of a field spaniel delivered to defendants by plaintiff to be carried from Hamilton to South River, in the district of Parry Sound, which, while in care of defendants' servants, escaped and was never recovered.

Plaintiff shipped a deer hound and the dog in question on the 1st November, 1902, for the carriage of which he paid 80 cents each, receiving from defendants a check for each dog. The dogs were put into the baggage car at Hamilton by the baggageman who had charge of them. Each had a collar. A chain was fastened to the collar of the hound by a snap, and the other end of the same chain was fastened to the spaniel's collar by a cross-bar to a ring on the collar. There was a ring in the middle of the chain for the use of the person leading or holding the dog. When the train reached Toronto, the baggageman removed the dogs from the car, and, taking the cross-bar from the ring of the spaniel's collar, put the chain through under the collar, bringing the heads of the two dogs together, and used the end of the chain to tie the dogs to a post at the overhead stairway in the Union Station, until the train for Parry Sound should be ready to leave. The baggageman was leading the dogs to the Parry Sound train, when the spaniel backed up and pulled his head through the collar and escaped and was not recovered.

The Judge found that the collar on the spaniel was sufficiently strong, and that the defendants, having for their convenience altered the way in which the dog was fastened, could not complain.

J. W. Nesbitt, K.C., for defendants, contended that they were not common carriers of dogs, and therefore not liable for the loss, citing *Dickson v. Great Northern R. W. Co.*, 18 Q. B. D. 176.

S. F. Washington, K.C., for plaintiff.