

There was sufficient ground for an honest belief that the plaintiff's actions might reasonably be attributed to mental weakness.

The plaintiff's release from the hospital was not proof that he had no mental infirmity.

Upon the evidence, none of the plaintiff's charges had been substantiated.

Action dismissed with costs.

MASTEN, J.

JUNE 25TH, 1920.

***GRAHAM & STRANG v. DOMINION EXPRESS CO.**

Carriers—Dominion Express Company—Common Carriers—Obligations Modified as to Tariff-rates by Railway Act of Canada—Tariff Approved by Railway Board—Carriage of Intoxicating Liquors from Export Warehouse in Ontario to another Province—Prohibition by Ontario Board of License Commissioners—Powers of Board—Ontario Temperance Act, secs. 41, 46—Constitutional Law—Powers of Ontario Legislature—British North America Act, sec. 92 (16)—Interference with Trade and Commerce.

Motion by the plaintiffs for an interim mandatory order, turned into a motion for judgment in the action.

Preliminary objections to the motion were overruled by MASTEN, J., in a judgment given on the 18th June, 1920, and noted ante 316.

In that judgment the learned Judge's decision on the merits in favour of the plaintiffs was also given.

On the 25th June, written reasons for that decision were delivered to the Registrar.

MASTEN, J., after stating the facts, said that the first question was, whether the defendants were common carriers. They were incorporated by a special Act of the Dominion Parliament, 1873, 36 Vict. ch. 113, and their powers were declared by sec. 4. In *Johnson v. Dominion Express Co.* (1896), 28 O.R. 203, 205, and in *F. T. James Co. v. Dominion Express Co.* (1907), 13 O.L.R. 211, 218, it was held that these defendants are common carriers. The defendants are fundamentally common carriers, with their obligations modified as to tariff-rates by the Railway Act of Canada; and the tariff-rates, filed by them and approved by the Board of Railway Commissioners, establishes that liquors, including whisky, come within the classes of goods which the defendants profess to carry.