

## HIGH COURT OF JUSTICE.

DIVISIONAL COURT.

OCTOBER 28TH, 1910.

MURPHY v. DUNLOP.

*Carrier — Licensed Baggage Transfer Agent — Loss of Trunk—  
Negligence—Contributory Negligence.*

An appeal by the plaintiff from the judgment of the Judge of the County Court of the County of Carleton dismissing the plaintiff's action to recover the value of a trunk and its contents which the defendant, as a licensed transfer agent, received from the plaintiff for delivery at the union station of the Canadian Pacific Railway Company at Ottawa, for which he was paid the fee demanded.

The appeal was heard by MEREDITH, C.J.C.P., TEEZEL and CLUTE, JJ.

A. E. Fripp, K.C., for the plaintiff.

A. C. Hill, for the defendant.

The judgment of the Court was delivered by TEEZEL, J.:—  
The defendant was informed that the plaintiff intended to take the train due to leave at 1.55 p.m., and that the trunk was to be taken with her on that train. The defendant placed the trunk on a platform of the station adjoining an open yard between the station and the highway, about twenty minutes before the train was due, and left it there, without putting any one in charge, and without having made any effort to place it in the baggage room, and without directing the attention of the baggageman or any employee of the railway company to the fact that the owner intended to send it on the 1.55 train.

The plaintiff was prevented by illness from leaving Ottawa on the day the trunk was delivered to the defendant, and took no steps to ascertain whether her trunk was safely at the station until the forenoon of the next day, when she learned that it was not at the station; and no trace of it has since been discovered.

There was evidence that the trunk was where the defendant had left it some time after the 1.55 train had left the station. The learned Judge was of the opinion that the defendant was guilty of negligence, but, as the trunk was shewn to have been on the platform after the departure of the train which the plaintiff intended to take, and which the defendant expected she would take, he was of opinion that the plaintiff had suffered no damage by reason of the defendant's negligence, but that her loss was the consequence of her own negligence in either not notifying the de-