

car-load of horses had been, on the Friday morning, 36 hours en route, having left Ottawa on Wednesday evening. The horses had not been rested. The car was between 9 and 10 o'clock placed in the Canadian Pacific Railway stock yards at North Bay. Plaintiff's men knew it was to remain there for about 8 hours. They found it so placed that a manger, which plaintiff had caused to be put in the car, blocked the only convenient door for unloading the horses. They knew, or should have known and realized, the necessity for such unloading and rest. They knew that the car could not leave before the following morning for Haileybury, and that the journey to that point was over 100 miles of uncompleted railway, still operated by the construction contractors. They say they applied to the yard-master to have the car turned to permit of the unloading of the horses without removing the manger erected in the car, or some part of it, and were told this could not be done, and that they thereupon, rather than remove such manger or part of it, decided to leave the horses in the car, though they should have known—would certainly have learned had they inquired—that there would be no further opportunity to unload before reaching Haileybury on the following Saturday night or Sunday morning. There is a great deal of evidence—uncontradicted—that the removal of the manger, or of so much of it as might be necessary to permit of the unloading of the horses as the car stood, would have been easily accomplished and would at the most have taken half an hour. The horses could thus have at least 5 or 6 hours' rest in the Canadian Pacific Railway Company's stables, which stood empty and ready for them in the stock yard. But, as stated by Mr. Young, plaintiff's agent at North Bay, the men in charge for plaintiff—Patrick Carroll and Thomas Carroll—told him, when he asked if the horses should not be taken out, that "it was just as well to leave them in." Though the Carrolls themselves admit that the manger could have been removed in half an hour, they attempt to excuse their failure to unload by saying that "by the time we got that manger out we would not have time to take them (the horses) out." They also admit that they were at the car about 9 or 10 o'clock, and knew it was to remain at the stock yards for at least 7 hours. They say further that they did not think it worth while to take the horses out for that time. The evidence of the witness Bell—plaintiff's foreman in charge of the shipping of the horses—is that even