undertake to do so. The claim for damages is greatly exaggerated, and as the plaintiff substantially fails in the action, we think justice will be done by declaring that the plaintiff has no title to the tail-race in question, save an easement, acquired by prescription, to discharge therein the water flowing from his mill, to the same extent as discharged in 1886, and that the defendants own the tail-race subject to this easement, and further declaring that the defendants have no right to interfere with the discharge of this water by discharging into the said tail-race any more water than 100 h.p., unless and until the tail-race has been so enlarged as to make it capable of taking care of any water the defendants desire to discharge in excess of 100 h.p., and enjoining them accordingly. The operation of this injunction to be stayed for six months to enable the tail-race to be enlarged.

The damages sustained, and to be sustained during these six months, may be assessed on a liberal basis at $250, but the plaintiff should have no costs.

BOYD, C., and LATCHFORD, J., concurred.

DIVISIONAL COURT. JUNE 9TH, 1911.

HAMEL v. GRAND TRUNK R.W. CO.

Railway Company — Common Carriers — Change of Status to Warehousemen—Liability for Loss of Baggage.

Appeal by the defendants from the judgment of the County Court of the 2nd May, 1911, in an action by the plaintiff, a passenger on the defendants' train, to recover the value of a trunk and contents, checked by the defendants, but alleged to have been lost by them, or so injured as to be of no use. At the trial, judgment was given for $156.05, the full amount claimed and costs.

The appeal was heard by BOYD, C., LATCHFORD and MIDDLETON, JJ.

W. E. Foster, for the defendants.

A. Lemieux, for the plaintiff.

BOYD, C.:—The case of Penton v. Grand Trunk R.W. Co., 28 U.C.R. 367, turns upon the fact that the traveller, the plaintiff,