

SUPREME COURT OF ONTARIO.

FIRST APPELLATE DIVISION.

JUNE 8TH, 1914.

MANCELL v. MICHIGAN CENTRAL RAILWAY.

6 O. W. N. 451.

Railway—Contract for Transportation of Horses—Breach—Canadian Railway Act, Authority of Tariff under—Agent, Authority and Knowledge of.

SUP. CT. ONT. (1st App. Div.) *held*, that the "Eugene Morris Freight Tariff, 130 F." has no authority under the Canadian Railway Act. Also.

"That the undertaking to have a car in readiness for the shipment of horses imposed an obligation to take initiatory steps towards transportation, and that the respondent was justified, on discovering the lack of efficient action, in treating that as a breach of contract sufficient to relieve him from the necessity of bringing the horses forward."

That the railway agent's authority was sufficient to bind railway company in matters such as this; and that knowledge peculiar to a certain private business and derived from experience therein, cannot be imputed to every wayside agent of a railway company. *Kennedy v. Am. Express Co.* (1895), 22 A. R. 278, distinguished.

Appeal by defendant company from a judgment of HON. SIR GLENHOLME FALCONBRIDGE, C.J.K.B., in favour of plaintiff for the recovery of \$1,989, in an action for damages for defendant company's breach of an agreement to furnish a palace horse-car to take plaintiff's horses to Guelph Fair, whereby, as plaintiff alleged, he lost his entry fee, prizes, etc.

The appeal to the Supreme Court of Ontario (First Appellate Division) was heard by HON. SIR WM. MEREDITH, C.J.O., HON. MR. JUSTICE MACLAREN, HON. MR. JUSTICE MAGEE, and HON. MR. JUSTICE HODGINS.

W. B. Kingsmill, for defendant, appellant.

J. G. Kerr, for plaintiff, respondent.

THEIR LORDSHIPS' judgment was delivered by

HON. MR. JUSTICE HODGINS:—The telegraphic correspondence shews a request from Fletcher to St. Thomas for the Ames Palace Horse Car on 27th November, 1913, from St. Thomas to Detroit on November 29th, and from Detroit to Chicago on December 3rd. On the 4th December Detroit advises St. Thomas that the New York Central Ry. Co. will deliver car at Suspension Bridge and that it should