

regulations, no person travelling in a first class carriage would be permitted to smoke in the midst of the other passengers. He would be obliged to conform to the ordinary usages and decencies. And surely there can be no license to such a person to enter a car filled perhaps with women and children, and because they are travelling on second class instead of first class tickets, and in a second class carriage, subject them to the nuisance caused by tobacco smoke, which would not be tolerated in the car he came from. There is no evidence in this case that it is the usage to allow smoking among the passengers in a second class carriage.

If, as defendants contend, there was a small compartment of the carriage in question not devoted to smoking, plaintiff was not aware of it. As before mentioned, there was nothing on the outside to indicate that it was a second class passenger carriage, and all the indications plaintiff observed pointed to its being a smoking car. I think it was the conductor's duty, seeing, as he must have seen, that plaintiff was under that impression, to have told her of the compartment. The duty is to "furnish" sufficient accommodation, and I cannot think that duty was performed in this instance. To furnish must include to make known or bring to the notice of those for whom the accommodation is provided, some intelligible direction to where it is. Plaintiff was allowed to continue under the belief that the only accommodation offered her was a seat in a smoking car, and, in the view I take of the facts and findings, this was not furnishing her with sufficient accommodation.

Appeal dismissed with costs.

MACLENNAN and MACLAREN, JJ.A., concurred.

GARROW, J.A., dissented, giving reasons in writing, in which OSLER, J.A., concurred.

APRIL 12TH, 1905.

C.A.

GRAHAM v. INTERNATIONAL HARVESTER CO.

*Master and Servant—Injury to Servant—Negligence of Master
—Common Law Liability—Defective System—Findings
of Jury—Workmen's Compensation Act.*

Appeal by defendants from judgment of MEREDITH, C.J., in favour of plaintiff, upon the findings of a jury.