

the amount proved, viz., \$487.35, and that the defendants should pay the costs, including the costs of this appeal. I would repeat that I think it would be an unfortunate thing if the result were different—and, if the result should be different, the fact cannot be too well known—travellers should know that those soliciting baggage to be transferred do not intend and cannot be made to pay for it, if it disappears while in their custody.

*R. S. Robertson*, for plaintiff. *B. N. Davis*, for defendants.

Teezel, J.]

ING KON v. ARCHIBALD.

[Nov. 11, 1908.

*Intoxicating liquors—Destruction under magistrate's order—Liquor License Act—Proprietary medicines—61 Vict. c. 30, ss. 2, 3 (O.)—Police officers—Oral direction of magistrate—Bona fides—Reasonable and probable cause—Absence of malice—Notice of action—Costs of action—R.S.O. 1897, c. 88, s. 22.*

The plaintiffs were on July 9, 1906, convicted by a magistrate of keeping intoxicating liquors for sale without license, contrary to the Liquor License Act. The conviction was not formally drawn up and signed until Oct. 25, 1906, when it was made part of the return to a writ of certiorari. The conviction as returned contained a declaration that a large quantity of liquor found on the plaintiffs' premises, including portions alleged by the plaintiffs to be proprietary medicines, should be forfeited, and an order and direction to the defendants, who were police officers, to destroy the liquor and the vessels containing it. This direction was given orally at the time of the conviction, and was acted upon by the defendants about three weeks later. On the 10th December, 1906, the order for the destruction of the portions of the liquor alleged to be medicines was quashed by the order of the High Court of Justice. In an action for damages for the destruction of those portions,

*Held*, 1. The liquors in question came within the protection of ss. 2 and 3 of 61 Vict. c. 30(O.), as proprietary medicines or medicine wines.

2. In destroying the liquors in question the defendants in good faith believed they had the right to do so in their capacity as police officers, and it was their duty to obey the direction, though merely oral, of the police magistrate.

3. The goods being in the custody of the law, and under the jurisdiction of the magistrate, and the destruction being a minis-