

[QUEEN'S BENCH DIVISION.]

MONTEITH V. THE MERCHANTS' DESPATCH AND
TRANSPORTATION COMPANY.

Carriers—Delivery at wrong destination—Measure of damages—Fall in market.

The defendants contracted with the plaintiff to carry a car-load of clover seed to Liverpool, and gave him a bill of lading therefor. While it was on the way, by a new contract its destination was changed to London, for delivery to a supposed customer of the plaintiff's, and a new bill of lading was given to the plaintiff; but, by a mistake of the defendants, the seed went by a line of steamships to Liverpool, and as soon as the mistake was discovered the defendants notified plaintiff. After great delay, which the learned Judge at the trial found to have been caused by the defendants, the seed reached London, and the plaintiff's supposed customer having refused it, was sold at a reduced price, the market having fallen between the day when the seed should have been delivered in London and the day of sale. The learned Judge found a verdict for the plaintiff, and assessed as damages, in addition to freight from Liverpool to London, the difference in market price between the date at which the seed should have arrived in London, if it had been shipped by the right line, and the day it arrived there.

Held (CAMERON, J., dissenting), that the damages were properly assessed, the finding of fact being that the delay was caused by the defendants. *Per* CAMERON, J.—The damages, which were the material result of the breach of contract to carry to London, were what it cost the plaintiff to have the goods taken to London, and a reasonable sum to compensate him for the expense, trouble, and correspondence occasioned by the seed having been sent to a wrong destination; and damages resulting from a fall in the market were not incident to the breach of the contract.

THIS action was brought by the plaintiff to recover damages from the defendants, for not delivering to the plaintiff 170 bags, or 26,774 pounds, of clover seed, at London, England, according to the terms of a bill of lading, bearing date, Waterford, January the 22nd, 1880, signed by one John Barr, agent of the defendants, within a reasonable time.

The case was tried at Toronto, on the 5th day of January, 1882, before Osler, J., without a jury, the jury during the trial having been dispensed with by consent of parties.

The action was commenced and issue joined before the Judicature Act, 1881, came into force, and the plaintiff's declaration contained three counts, as follows:—

1. That, in consideration that the plaintiff would deliver to defendants, as and being carriers of goods for hire, cer-