

ticket by the company's agent. When about to commence her return journey, she drove to the St. Thomas station in a taxicab, having her trunk with her. On arriving at the station, she took her seat in the train, instructing the driver of the taxicab to check her trunk for Toronto, and to bring her the check therefor. This he did, handing her the check through the window of the car. Without examining it, she put it in her hand-bag, and arrived at the Toronto station at so late an hour (midnight) that the baggage transfer agent had left; and, accordingly, she did not apply to the defendant company for the trunk until the following morning. It was then ascertained that the trunk had duly reached Toronto and been placed in the company's baggage-room, and had disappeared between the time of its arrival—midnight—and the time next morning when Mrs. Spencer demanded it. It has not been found, and this action is brought to recover damages for the value of the trunk and contents.

The defence is, that the trunk was delivered to and received by the defendant company subject to the condition on the baggage check in question, that the company "shall not be liable for loss or destruction of or damage to baggage for any amount in excess of \$100 on an adult's ticket, and \$50 on a child's ticket, unless the passenger stipulates valuation in excess of these respective amounts at the time of checking, and charges paid for the excess valuation in accordance with the current tariff;" and that, by sending the trunk under the said baggage check, the plaintiff entered into a contract with the defendant company for it to carry the trunk on the condition above-quoted, and that the defendant company is not liable for a greater sum than \$100, which amount it tendered before action, and brings into Court now in satisfaction of its liability.

So far as appears, when the baggage check was delivered to the taxicab driver, the company's agent did not call the driver's attention to the condition in question, nor did the plaintiff when receiving the check know, or have any reason to know, of the condition printed on the check. She was evidently quite unaware of the existence of any such condition, and regarded the check as merely a receipt for her trunk.

In the absence of a special contract, the defendant company, as a common carrier, became liable generally for the safe delivery of the trunk. The onus, therefore, is on it to shew assent, actual or constructive, on Mrs. Spencer's part, to the condition pleaded in modification of the contract implied by law. Whether there has been any such assent is a question of fact: *Henderson v.*