

articles lost or stolen from the plaintiff's trunk during the passage. The claim was resisted on the ground that, even if the loss occurred during the passage, by the condition of the passenger ticket, the appellants (defendants) were relieved from any responsibility for loss or injury to her baggage during the voyage, unless such loss or injury was proved to be the fault of the appellants or their employees in the care and safe keeping of the trunk and effects. The plaintiff had a return ticket, with the following among other conditions printed on the back:—

"It is expressly agreed between the passengers within named and the Montreal Ocean Steamship Company, that the latter is not responsible for the safe keeping during the voyage, and delivery at the termination thereof, of the baggage of said passengers." The Court below maintained the plaintiff's action, considering that the articles, the value whereof was sought to be recovered by the action, were lost while in the custody of the defendants, as carriers, through their want of care of the same.

In appeal,

Cross, J., dissenting, held that it was not proved that the loss occurred during the passage to Portland. After the trunk arrived there it was put into a sealed car and brought to Coaticook, and handed over there to the Canadian authorities, and then put into an ordinary baggage car. It was carried in that baggage car until it was landed in the usual way at Sherbrooke. The Court had no distinct proof of the way in which it was dealt with, but there was the evidence of the baggage agent that it was put into a room and kept over night. There was no proof as to how it got to Miss Woodward's residence, the excuse being that the servant man who must have brought it is not forthcoming. Now, the Court had here a contract to carry a passenger's baggage from Liverpool to Portland; it was supposed to end there, but Miss Woodward made a new contract with the Grand Trunk to carry her baggage to Sherbrooke. The question was, where and how did the baggage get astray? While the trunk remained on board the steamer the presumption was against the appellants, but once Miss Woodward had taken the trunk and made a contract for its carriage with the Grand Trunk, the presumption changed, and she was bound to show that the loss occurred on board the

steamer. It was said, by way of showing this, that before leaving the steamer the trunk was opened and the hasp was found to be broken. But this evidence worked both ways, for the respondent did not follow up this discovery by making an examination of the contents. His Honor held that, although the Messrs. Allan were strictly responsible while the trunk was in their custody, they were relieved when it passed from their custody, unless it was shown that the loss of the goods occurred before that time.

MONK, J., remarked that there was no difficulty about the law, but there was a slight difference of opinion with regard to the facts. The contract of the Allans was for safe carriage from Liverpool to Portland. The lady went on to Sherbrooke before the loss was discovered, and there was no evidence where it occurred.

RAMSAY, J., for the majority of the Court, admitted that the case was not without difficulty, but said it was only a question of evidence after all. One question of law had been raised at the argument, that on the back of the contract ticket there was a clause exempting the carriers from liability. That did not apply; carriers could not evade responsibility in the way in which they proposed to do. On the question of evidence, the difficulty in the case unquestionably arose from the particular fact that Miss Woodward had not given the Court a perfectly satisfactory account of this trunk from the moment of its arrival at Portland to its delivery at the house. But there was an important piece of evidence—before the vessel had reached Portland, and while this passenger contract was in full force, one of the officers of the ship, the Doctor, got her trunk out for her, and went with her to open it, and then the lid of the trunk started up, the hasp being broken. Now, here was a fact going strongly to establish that the lock of the trunk had been tampered with on board the steamer. The appellants attempted to get over the difficulty by saying that the place where the baggage was stored was so secured that nobody could enter it; but the evidence was not conclusive or satisfactory. It was as clearly proved as could be that things belonging to passengers were found lying about in the hold of the ship. It might be said the trunk might never have been locked; but the