ted, which presumption it was the duty of the other side to rebut by counter evidence. This is a ruling which would doubtless elicit considerable difference of opinion, especially when it is remembered that the indications of the trunk having been tampered with did not excite the suspicion of the passenger herself sufficiently to cause her to make an examination then and there. The judgment is of a nature to guard the interests of travellers, and to urge carriers to greater vigilance in the protection of the property of which they take charge.

REPORTS AND NOTES OF CASES.

COURT OF QUEEN'S BENCH.

Montreal, Sept. 18, 1878.

Present: DORION, C. J., MONK, RAMSAY, TESSIER, and CROSS, JJ.

LARIN (plaintiff in the Court below), appellant; and CHAPMAN (defendant below), respondent.

Sale—Delivery—Mode of Sale of Goods after Tender and Non-acceptance.

The plaintiff, May 7, sold defendant 500 tons of hay, deliverable "at such times and in such quantities" as defendant should order. The defendant having ordered only a portion of the hay, the plaintiff, July 28, notified his readiness to deliver the balance, and then disposed of it by private sale. *Held*, that the terms of the contract bound the purchaser to order the hay within a reasonable time, before the new hay was put on the market, and that the vendor was at liberty to sell at private sale, and hold the purchaser responsible for the loss sustained.

The appellant claimed damages under the following circumstances: He sold respondent, on 7th May, 1874, 500 tons of hay at $21 per ton, the same to be delivered "at such times and in such quantities" as respondent should order. The respondent ordered a portion of the hay, but the balance not being asked for, the appellant, on the 28th July, notified the respondent that he was ready to deliver the hay according to contract, and would hold him responsible for all loss and damages incurred by reason of his not receiving it. He then stored it in Montreal, and subsequently sold it in small quantities during a period of several months. The action was for the difference of price. The Court of first instance maintained the claim, but in Review this decision was set aside, the Court holding that even if Larin had a right under the contract to tender the hay at the time he did, he ought to have caused it to be sold at public sale after proper notice.

DORION, C. J. On the 7th May, 1874, the respondent entered into a contract with appellant, by which the latter sold him 500 tons of hay deliverable at the canal, at such times and in such quantities as the purchaser should require it. Larin delivered 147 tons in June, 1874, but the price of hay having then declined, the respondent took advantage of the terms of the contract not to order any more. Larin offered to deliver the balance, and when it was refused he sold it at private sale, and now seeks to recover the difference between the amount realized and the contract price. The Superior Court sustained the action, but when the case was taken to Review, the judgment was reversed and the action dismissed, the reason given being that Larin had no right to dispose of the hay except at public auction or sale at one time. It is evident that this reason is bad, and the judgment is bad, and must be reversed. The contract required Chapman to accept within a reasonable time, and as to the private sale, more was realized in that way than could have been obtained by offering the whole quantity at auction at one time.

Judgment reversed.

Longpré & Dugas for Appellant.

Abbott, Tait, Wotherspoon & Abbott for Respondent.

SIR HUGH ALLAN et al. (defendants in the Court below), appellants; and Miss JOSEPHINE WOODWARD (plaintiff in the Court below), respondent.

Carrier—Condition on back of Ticket—Proof of Loss.

A condition, printed on the back of a passenger ticket, exempting the carrier from responsibility for safe-keeping of baggage during the voyage, does not relieve him from liability for loss.

The fact that a trunk, when opened by a passenger towards the close of the voyage, bore traces of the lock having been tampered with, raised a presumption that goods, afterwards discovered to be missing, had then been abstracted, though no examination was made by the passenger at the time.

The action in this case was brought by a passenger on an Allan vessel from Liverpool to Portland, and the claim was for $272, value of