

The answer of the Court should be that the learned trial Judge had power so to amend the indictment; and acted rightly in so amending it and allowing the trial to proceed.

SUTHERLAND, J., and FERGUSON, J.A., agreed with MULOCK, C.J.Ex.

MASTEN, J., agreed in the result, for reasons stated in writing.

RIDDELL, J., read a dissenting judgment. He was of opinion, for reasons stated, that the answer of the Court should be in the negative; but that the Court should exercise the powers expressly given by sec. 1018 (e) of the Criminal Code, and order that the defendant be indicted for the offence of which he had been found guilty.

Conviction affirmed.

SECOND DIVISIONAL COURT.

DECEMBER 20TH, 1920.

*ADAMS v. WINDSOR TRUCK AND STORAGE CO.

Appeal—Application for New Trial—Complaint as to Charge to Jury—General Verdict—Objection not Made at Trial and Grounds not Specified in Notice of Appeal—Rule 493—Evidence—Damages—Dismissal of Appeal.

Appeal by the defendants from the judgment of the Judge of the County Court of the County of Essex, in favour of the plaintiff, upon the verdict of a jury, for the recovery of \$500 and costs, in an action for the value of goods alleged to have been delivered to the defendants for storage and sold by the defendants without notice to the plaintiff.

The appeal was heard by MULOCK, C.J. Ex., RIDDELL, SUTHERLAND, and MASTEN, JJ.

D. L. McCarthy, K.C., for the appellants.

H. J. Scott, K.C., for the plaintiff, respondent.

MASTEN, J., in a written judgment, said that no specific relief was asked for in the notice of appeal—neither that the judgment should be set aside nor that a new trial should be directed. But on the hearing of the appeal counsel for the appellants asked for a new trial, and complained of the charge to the jury.