doubt, the plaintiffs' solicitor was at one time of opinion that the companies were liable for the full amount of loss, and issued a writ upon the policy. The evidence, undisputed, was that the issue of the writ was not authorised by the plaintiffs. Even if the issue of the writ was authorised, the defendants are not, in my opinion, entitled to use that fact as in itself a defence to this action. The defendants were not hurt by the issue of this unserved writ. It was issued on the 19th September, 1913, whilst the writ in the present action was issued on the 24th day of July, 1912. It does not appear that the defendants in any way offered to pay, taking over the policy, or objected to the plaintiffs' settlement with the insurance companies.

It seems to me a very reasonable thing to treat this policy as marine, whatever liabilities might attach or whatever exemption from or limitation of liability may follow. In greater part it was marine, and placing the grain in elevator was without the consent or even knowledge of the plaintiffs.

A marine policy may cover a risk on land during part of the voyage: Rodocanachi v. Elliott (1873), L.R. 8 C.P. 649.

It was not the fault of the plaintiffs, and ought not to enure to the benefit of the defendants, that the plaintiffs became, if they did become, co-insurers of their property to the amount of the excess in value over $200,000. If the insurers had the right, as a matter of agreement with the plaintiffs, express or implied, upon the facts, to treat the plaintiffs as co-insurers, the defendants ought not to be allowed, in relief of their negligence, to take advantage of a situation created by them, to the prejudice of the plaintiffs.

No doubt, it is a general rule that, in the absence of agreement, the insured should in case of loss recover that loss up to the full amount of it, if the amount of insurance is sufficient; but a different rule prevails under such circumstances as these. Wherever unconnected properties or perils of goods are insured under one sum, the rule of average is applied, by which the insured recovers only such proportion of his loss as the total sum insured bears to the total value of the property carried.

That is this case. Grain of different kinds was at different times placed in elevator "B." Even as to the cargo of the "Kewatin," it was of different grades of oats, shipped under different bills of lading, and this cargo was placed upon the grain of the plaintiffs already in the elevator.

The defendants did not comply with the bills under which they received and carried the grain of the plaintiffs. These bills