HODGINS, J.A., reading the judgment of the Court, said that the learned trial Judge had held that the defendants were negligent, and had fixed the damages at 16½ cents per square foot of the goods (leather), holding that the plaintiffs were bound by the shipping order, which made the value of the goods, at the place and time of shipment, the limit of the carriers' responsibility. The sole right of the plaintiffs to the goods was by virtue of the shipping order, because they were then actively repudiating liability to the vendor for the price, and they had no independent contract with the defendants to deliver at all hazards. The goods were, at the time, by sec. 345 of the Railway Act, at the owner's risk; and, unless the plaintiffs could rely upon the shipping order, they must fail altogether. The view of the trial Judge that the parties were bound by the agreement set out in the shipping order was right. The defendants were still carriers, or their liability must be judged as if they were, because the resumption of the carriage, under its original terms, was within the contemplation of both parties.

Reference to Swale v. Canadian Pacific R. W. Co. (1913), 29 O.L.R. 634.

The right of action of the plaintiffs appeared to be governed by sec. 7(1) of the Mercantile Law Amendment Act, R.S.O. 1914 ch. 133.

The learned Judge said that he could find no authority for the proposition that where, innocently though negligently, a carrier has converted goods, damages must be limited to the price which he received at the sale, except in some cases where the person entitled to the damages was himself bound to sell.

Here there was no wanton conversion, but an honest effort to prevent the sale, and nothing defeated it but some unexplained congestion in the defendants' Montreal departments.

The appeal of the defendants should be dismissed.

It appeared that at the trial amendments had been permitted, including a plea bringing into Court $1,136.54, proceeds of the sale of the goods, in full satisfaction. As the amount found due was larger than that, no change could be made in the disposition of the costs.

The plaintiffs asked the appellate Court to allow interest, from the date of the writ of summons, instead of from that of the judgment. Section 35(3) of the Judicature Act leaves the giving of interest by way of damages in actions for conversion to the jury, and the jury's discretion will not be interfered with: Mayne on Damages, 7th ed., pp. 177, 178. The same rule should be applied to the decision of a Judge, especially where, as here, the defendants acted in perfect good faith.

Both appeals dismissed.