

plaintiffs' claim. The goods were the subject of war-orders and were required for as prompt delivery as possible, and it was not in the interest of either the plaintiffs or the defendants to return them to be altered. In estimating the amount and value of time and labour expended upon these alterations, the defendants had a right to the allowance which they claimed for "factory overhead expenses," being about 92 per cent. of productive labour. They should not be allowed the commercial expense of 15 per cent. nor the profit of 5 per cent. nor the price of the motor. Claims made on both sides for damages for delay in output should be disallowed. Judgment for the defendants with costs both of action and counterclaim. There was no contest or evidence as to the plaintiffs' claim. G. A. Stiles, for the plaintiffs. Shirley Denison, K.C., for the defendants.

ALGOMA PRODUCE CO. v. CANADIAN PACIFIC R. W. CO.—
FALCONBRIDGE, C.J.K.B.—SEPT. 8.

Railway—Carriage of Goods—Negligence—Damage by Freezing—Finding of Fact of Trial Judge.—Action to recover the value of 325 bags of potatoes said to have been frozen, by reason of the defendants' negligence, in course of carriage to Crain Hill, Ontario, and for the freight paid by the plaintiffs thereon. The action was tried without a jury at Sault Ste. Marie. The learned Chief Justice, in a written judgment, referred to the evidence, and, with some doubt, concluded that the freezing was the result of the defendants' negligence in allowing one of the heaters in the car in which the potatoes were, to go out when the weather was very cold—this notwithstanding the evidence of the defendants' witnesses as to the sufficiency of one burner. Judgment for the plaintiffs for \$720.35, the value of the potatoes, plus \$67.50 paid for freight—\$787.85 in all—with costs. J. E. Irving and U. McFadden, for the plaintiffs. W. H. Williams, K.C., for the defendants.