

it at the sale of the salvage by the insurance company. That sale vested no title to the appellant's wheat in the respondents. The appraisal of the loss had gone forward on the assumption, afterwards discovered to be erroneous, that the respondents alone were interested in all the wheat. The evidence is clear that the appellant did not assent to the proceedings to adjust the loss, was not notified, and was not a party to the sale. He is not in any way bound by its result. The insurers could not sell nor could the respondent buy the appellant's wheat.

In the view I take, the appellant's wheat, though damaged, was his own. He had paid for it, and was entitled to receive it, and the respondents were wrong in refusing to let him have it. Their mistake in law forms no justification for their conversion of it. They learned, during the adjustment of the insurance loss, that the appellant's grain was included; but, as they had a large amount involved, they went ahead and guaranteed the trustee who distributed the salvage.

The appellant swears that, after the fire, he tested the bin in which this wheat was, and that there was sufficient there undamaged, of which he produced a sample, to allow him to receive the 3,000 bushels he had bought. The respondents say that it was all damaged, partly by fire and partly by smoke. But at the trial the latter refused to disclose the price at which they had sold the salvage, which included this bin, although the trial Judge pointed out that it was material. If they had done so, there might have been sufficient evidence to have enabled this Court to assess the damages, or at all events to have offered the appellant the choice between accepting that price or proving his damages on a reference.

I think the judgment must be reversed, and that judgment should be entered for the plaintiff directing the respondents to pay him such damages as are found by the Local Master at Owen Sound, to whom a reference must be had.

The respondents should pay the costs<sup>o</sup> of the trial and of this appeal and of the reference.

*Appeal allowed.*