

upon the evidence that there was actionable delay causing serious damage, and in this conclusion I agree without hesitation.

The real question must be confined to the goods actually forwarded, received, and kept by defendants, namely, the 291 bicycles in all, of which they apparently sold 289 in the season of 1897. The defendants say that their usual selling prices were \$87.50 each at wholesale and \$110 at retail, and that they could have disposed of all these goods at these prices but for the delay in sending the samples, and later of the bulk, and that in consequence of such delays they were obliged to reduce their prices until in the result they made a loss from those prices on the 289 bicycles sold of \$3,795, of which the particulars are given in detail. But it appears that in the season of 1897 the competition, owing to the advent of large local manufactories, and of increased sales by the United States factories, was much more keen than in previous years, and this no doubt helped to reduce the selling price of the articles in question. This competition, however, although threatened early, apparently only developed as the season advanced, and it is, I think, quite probable that, had defendants' order been promptly filled, the samples placed early in their agents' hands, and sales pushed with reasonable vigour, many, if not all, of the bicycles in question would have been disposed of at or near the old standard of prices. . . . It is the case of goods ordered for a particular season arriving late for the season, and in consequence sold at more or less of a sacrifice. In such circumstances, it appears to me that a fair and reasonable measure of damages as against the defaulting vendor is to charge him with the difference between the value to defendants of the goods in question if they had been delivered according to the contract and their value for the purposes of resale, as plaintiffs well knew, at the time when they were actually delivered. That was the rule applied in *Wilson v. Lancashire and Yorkshire R. W. Co.*, 9 C. B. N. S. 632, and *Schulze v. Great Eastern R. W. Co.*, 19 Q. B. D. 30.

Applying this rule or measure as well as I can to the actual facts, I have, after much consideration, come to the conclusion that the sum of \$1,000 allowed by the Chancellor is quite too little, and that, under all the circumstances, a fairer result would be to allow an average of \$10 on each of the 291 bicycles, or in all \$2,910, to defendants under this head of damage.

Defendants' appeal as to these two items allowed, and as