

I have been able to discover, in England. . . . The English practice of periodical settling days for stock exchange transactions has no counterpart upon this side of the Atlantic; these stocks are carried as a rule by brokers from one settling day to another, instead of, as here, for indefinite periods.

The contract of plaintiffs with defendant in the present case was one which did not oblige them to carry the stock to a particular date, nor did it oblige defendant to pay for it at a particular date; but it did not permit plaintiffs to sell without giving notice to defendant. They sold without giving notice, and informed defendant that they had done so, and defendant made no protest, or demand upon them for the stock, or request that they should replace it. His first objection seems to have been taken when he set up in his statement of claim that plaintiffs had acted wrongfully in selling his stock without notice.

The rule known as "the New York rule," which was adopted as the correct one by the United States Supreme Court in *Galigher v. Jones*, 129 U. S. 200, is, that the proper measure of damages is "the highest intermediate value of the stock between the time of its conversion and a reasonable time after the owner has received notice of it to enable him to replace the stock:" see *Baker v. Drake*, 53 N. Y. 211, and *Wright v. Bank of the Metropolis*, 110 N. Y. 237, where the reasoning upon which this rule is adopted appears.

No such rule has been adopted in England, and I think its adoption would be inconsistent with the reasoning upon which the Court proceeded in *Williams v. Peel River Land and Mineral Co.*, 55 L. T. N. S. 689, and which was adopted in *Little v. London Joint Stock Bank*, [1891] 1 Ch. 283, by the Court of Appeal. The Court there refused to adopt a rule in fixing damages for a wrongful refusal to deliver bonds of fluctuating value, which assumed that the owner, had he obtained the bonds, would have sold them at the highest price between two dates. To the same effect is *Mansell v. British Linen Co. Bank*, [1892] 3 Ch. 159, 163. . . .

[Reference to *McArthur v. Lord Seaforth*, 2 Taunt. 257; *Owen v. Routh*, 14 C. B. 327; *Forrest v. Elwes*, 4 Ves. 492.]

Damages are not assessed as a penalty upon a person who has improperly dealt with the property of another, but only for the purpose of making good the loss which that other has sustained by the improper action taken, and if, in the result, the evidence shews that he has sustained no loss, he is not entitled to recover damages. In the present case defendant . . . stated that at the time when plaintiffs