

clerks, plaintiff's representative was informed that the consignment in question had been stopped by the consignor; that the sum of \$1,225.23 was an exceptionally high price to pay for the goods in question and that said goods could easily have been replaced in the Montreal market for far less than the sum of \$451.00 in excess of the New York price, to wit, \$574.23; and defendant specially deny plaintiff's right to abandon the shipment of goods and throw them upon him, he only being responsible for loss occasioned by non-delivery of the goods, and that loss was not directly due to that cause. And defendant alleges their willingness at any time to deliver the said consignment to plaintiff.

The Superior Court maintained the action.

The Superior Court, (Dunlop, J.), held that the plaintiff should not have abandoned the goods, because on their delivery to him on the 10th of April, 1908, the millinery season was not closed, and plaintiff should have tried to sell the millinery in the Montreal market. The only damages the Superior Court would allow were simply the excess of price paid by plaintiff before the delivery of the goods. These damages were assessed at \$59.45, for which judgment went with costs of an action for that amount.

The Court of Appeal has reversed this judgment, admitting the abandonment and condemning the defendant Company to pay the proved value of the merchandises.

Trenholme, J. — "It was admitted in one of the paragraphs of the plea that the goods had not been delivered "through an unfortunate mistake" until one month after their arrival in Montreal. That was a very important admission to make, and the evidence shows that the appellant was unable to use the goods when he finally received them. The season during which their use had been intended had gone by.

"When the goods were offered to appellant, he refused