

tween the contractor and the owners. E. G. Porter, K.C., and W. Carnew, for the plaintiff. W. S. Morden, K.C., and W. D. M. Shorey, for the defendant company. W. H. Tilley, for the defendant Herbert.

SWALE V. CANADIAN PACIFIC R.W. CO.—LENNOX, J.—FEB. 27.

Carriers—Sale of Goods to Pay Charges—Negligence and Default of Auctioneers Employed by Carriers—Conversion of Goods—Loss—Failure to Deliver Surplus Goods—Third Parties—Remedy over—Limitation of Amount to be Recovered—Bill of Lading—Endorsement—Judgment—Costs—Set-off.—Action for an account of goods sold by the defendants or for damages for conversion. The goods were contained in 97 cases of settlers' effects delivered to the defendants in Liverpool, England, to be carried to Toronto, Ontario. The defendants claimed relief over against W. J. Suckling & Co., third parties, the auctioneers who sold the goods for the defendants to pay the charges the latter had against the goods. See the report of the case upon an interlocutory motion and appeals, 25 O.L.R. 492, 3 O.W.N. 601, 633, 664. The learned Judge said that the liability of the defendants arose out of the conduct of the third parties, the auctioneers employed to dispose of the plaintiff's goods; and that the auctioneers' method of handling, caring for, keeping track of, and accounting for the goods intrusted to them by the defendants was negligent and unbusinesslike to a marked degree. —A number of technical objections were raised on behalf of the third parties. One was that recovery was limited by the bill of lading to \$5 a package. Held, that this did not apply here. This was a sale under sec. 345 of the Railway Act; and, under sub-sec. 3, "the company shall pay or deliver the surplus, if any, or such of the goods as remain unsold, to the person entitled thereto." The defendants did not take the objection; and it is not an objection that the third parties can set up against their employers.—The third parties also said that the bill of lading had never been properly endorsed. The learned Judge said that this objection was not open to the third parties; and, even if it was, the facts were against them.—The defendants were paid in full when the sale was discontinued on the 21st October, 1909, and the plaintiff was entitled to immediate delivery of the goods now sued for, and would have got them at that time if the third parties had exercised reasonable care and kept a proper record. The transit was completed, the bailment was at an end, the