If the property in this 3,000 bushels had passed to the appellant, then, subject to the situation created by the subsequent salvage sale, must bear the loss; whereas, if it had not, the respondents are bound to perform their contract or pay damages.

The course of dealing shews that everything in the way of appropriation by intention had been done, short of a physical separation of specific bushels of grain. The quantity and price were settled, and the latter was paid in full. The respondents gave the appellant orders addressed to the agent of the Canadian Pacific Railway Company, in whose elevator the whole quantity of wheat was stored, directing him, on presentation, to deliver the wheat. One of these orders was acted upon, and 1,000 bushels delivered under it. The respondents, upon giving the orders, deducted 3,000 bushels from the account in their books, shewing what they had in store in the elevator. They also notified their insurers, the effect of this being that insurance on this 3,000 bushels was automatically cancelled, as they put it. They had allowed, as a deduction from the purchase-price, the charges which the elevator had against this exact quantity of wheat; and, by so doing, and by giving the order, they delegated to the railway company's agent the duty of measuring out the 3,000 bushels, and to the appellant the duty of paying the charges due the elevator. From the previous course of dealing, from the receipt of the 1,000 bushels, and from the evidence in the case, it is clear that both parties treated the duty of the respondents themselves as at an end, and that the subsequent acts necessary to place the grain in cars were to be done by the railway company's agent, at the request of the appellant, but at the cost of the respondents. The allowance to the appellant of the elevator charges was, if assented to by him, equivalent to payment of this expense by the respondents (Coleman v. McDermott, 1 E. & A. 445); and the words "track Owen Sound," if treated as imposing a duty to deliver on the track, would not prevent the property passing, if, under all the other circumstances, it would do so: Bank of Montreal v. McWhirter, 17 C.P. 506; Craig v. Beardmore, 7 O.L.R. 674. Treated purely as a matter of intention, the property would pass if, in what was done, there was any unconditional appropriation of specific grain, but not if it were conditional, as by a bill of lading in favour of the seller, and not the buyer (Graham v. Laird, 20 O.L.R. 11). But there was not, nor could there be, any appropriation of separated bushels of grain, in the sense in which these words are used when dealing with specific goods. . . .

Upon the whole it may, I think, be taken as proved that the