

Full Court.]

GREEN v. DENNISON.

[June 12.

Sale of goods—Repudiation of contract by buyer—Failure of seller to prepay freight as agreed—Damages for refusal to accept—Duty of seller in making re-sale of the goods.

When the purchaser of an article has absolutely refused to accept it because he had changed his mind about buying it, he cannot avoid paying damages on the ground that the seller was to prepay the freight and had not done so. *Braithwaite v. Foreign Hardwood Co.* (1905), 2 K.B. 543, followed.

When the seller of the rejected goods has re-sold them by auction fairly conducted and reasonably advertised, due notice having been given to the buyer, he is entitled to recover the difference between the contract price and the net amount realized, and he is not required to exercise the utmost amount of diligence and skill and the most accurate judgment in an endeavour to save the wrong-doer from loss. *Dunkirk Colliery Co. v. Lever*, 41 L.T. per James, L.J., at p. 635, followed.

The expenses of storing the article in question in this case, a cab, for an unnecessary length of time and of sending it from Brandon to Winnipeg to be sold were disallowed. *RICHARDS, J.A.*, agreed with the trial Judge in holding that the plaintiff could and should have sold the cab at a higher price than that obtained at the auction and should therefore be charged with such higher price as against the contract price.

Galt, K.C., and *J. S. Tupper*, for plaintiff. *Kilgour*, for defendants.

Macdonald, J.]

KING v. STARK.

[June 21.

Criminal law—Criminal Code, s. 181—Bawdy house—Excessive fine—Summary trial of indictable offence.

A conviction adjudging a fine of \$100 without any mention of costs upon the summary trial before a police magistrate of a charge of keeping a common bawdy house sufficiently complies with s. 181 of the Criminal Code, which provides that the magistrate may condemn the party convicted to pay a fine not exceeding, with the costs of the case, one hundred dollars. *Regina v. Cyr*, 12 Pr. R. 24, distinguished.

Hegel, for prisoner. *Patterson, K.C., D.A.-G.*, for the Crown.