That the loss of the goods was occasioned through defendants' default is quite clear, but whether that alone would make them liable, according to the law of the Province, upon the principle adverted to by Blackburn, J., in Martineus v. Kitchen, L. R. 7 Q.B. 436, at p. 456, a principle which seems to have been embodied in the Imperial Act, 56 & 57 Vict. ch. 71, codifying the law relating to the sale of goods (see sec. 20), need not be now considered.

There will be judgment for plaintiffs with costs; the damages will be the balance of the price of the tan bark hauled to the railway, less what would have been the additional cost to the plaintiffs if they had been able to and had put it on board the cars, as the contract required.

NOVEMBER 16TH, 1903.

DIVISIONAL COURT.

AMERICAN COTTON YARN EXCHANGE v. HOFFMAN.

Sale of Goods—Part of Goods not as Ordered—Retention of Goods—Waiver—Conversion.

Appeal by defendants from judgment of MACMAHON, J. (ante 416), in favour of plaintiffs in action to recover $365.56, the invoice price of four parcels of cotton yarn supplied by plaintiffs at Boston, Mass., to defendants at Stratford, Ont. Defendants received the yarn on 16th September, 1901, and at once wrote objecting to the color of parcels 2 and 4, invoiced at $169.89, and were told by plaintiffs to return it to be redyed. As this would involve further payments of duties, defendants suggested that they could have it redyed in Canada. Some further correspondence took place, and finally plaintiffs on 28th November, 1901, wrote to defendants suggesting that defendants should "take the matter up at their end and straighten it out." Defendants made no reply to this letter; they used all the yarn in parcels 1 and 3, invoiced at $195.67; they were told on 28th December, 1901, by the Forbes Co. at Hespeler, Ontario, to whom they had written about redyeing the yarn, that the Hamilton Cotton Co. would be able to redye it; but defendants endeavoured to have it done by some local men of no experience, with unsatisfactory results, using part of it from time to time. During this time plaintiffs frequently wrote asking defendants what they were doing, and why they sent no money, but no replies were made by defendants to any letters.