1914, the defendant cancelled the order and asked for a return of the $50. The goods did not leave the possession of the plaintiffs, nor did they sell them or try to sell them. They brought this action to recover damages for the defendant's breach of contract—his refusal to accept.

The action was tried without a jury at Toronto.

A. A. Macdonald, for the plaintiffs.

No one appeared for the defendant.

CLUTE, J., said that the plaintiffs' evidence shewed that the goods might probably have been sold within a short time after the order was cancelled. The actual expense incurred by the plaintiffs in packing and unpacking the goods, storage, insurance, etc., would not exceed $50; and the goods could have been sold at a price equal to the purchase-price. The sum of $50 would thus cover the plaintiffs' claim, unless they were entitled to the profits on the sale. In a case of breach of contract the plaintiff, as a general rule, is entitled to be put in the same position as if the contract had been performed.

Reference to In re Vic Mill Limited, [1913] 1 Ch. 183; Benjamin on Sale, 5th ed., p. 812; Silkstone and Dodsworth Coal and Iron Co. v. Joint-Stock Coal Co. (1876), 35 L.T.R. 668; Todd v. Gamble (1896), 148 N.Y. 382; Cort v. Ambergate etc. R.W. Co. (1851), 17 Q.B. 127.

In the present case it did not appear that there was a general market fixing the price of goods of this kind, but that sales by the plaintiffs were by order; and this case was, therefore, distinguishable from the class of cases where there is a general market price. The plaintiffs could not be placed in the same position that they would have been in if the contract had been performed without taking into account the profits they would have made upon the sale.

Judgment for the plaintiffs for $461.40, with County Court costs, and without a set-off in favour of the defendant.