

retention of part of the fees collected by him. He it was who allowed the car to be taken without the surrender of the bill of lading.

It was not necessary to pass upon the question of the third parties' responsibility for the wharfinger's act; for, even if the unauthorised delivery to Steepe (or to Purvis, if it could be said to have been to him) was an "act, neglect, or default of" the third parties, it did not cause or result in any "loss, damage, or injury to" the car; and so the condition endorsed upon the bill of lading did not make the defendants liable. The car was not lost; if it ever got into the possession of Purvis, he refused to keep it, and, if it is still on Manitoulin Island, it is there because first Steepe and then the plaintiffs refused to take it away.

Assuming that the defendants were responsible for the unauthorised delivery, and guilty of a conversion of the car, the damages recoverable were limited to the real loss caused to the plaintiffs by the deprivation of their control over the car, from the time of the wrongful delivery until the time when their control was re-established, if they chose to exercise it: *Lemon v. Grand Trunk R. W. Co.* (1914), 32 O.L.R. 37. If there was any such real loss, it was less than \$25, the sum which was awarded to the plaintiffs by the County Court, and which the defendants did not object to pay. If the plaintiffs had a contract with Purvis by which he came under obligation to pay for the car, nothing that was done or omitted by the carriers or the wharfinger had relieved him of that obligation; if there was no such contract, the plaintiffs did not prove that they had sustained a real loss by saying that, perhaps, if the third parties had refused to part with the car until payment was made, Purvis might have paid the amount of the draft.

Appeal dismissed with costs.