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APPELLATE DIVISION.

MARCH 16TH, 1914.

SWALE v. CANADIAN PACIFIC R.W. CO.

Railway—Carriage of Goods—Sale of, to Pay Charges—Liability of Railway Company—Conversion and Abstraction of Goods—Absence of Evidence—Liability as Involuntary Bailee—Wilful Neglect or Misconduct—Onus—Acts of Auctioneers Employed by Railway Company—Proof of Loss of Plaintiff's Goods—Negligence—Findings of Fact of Trial Judge—Appeal—Evidence as to Receipt by Railway Company of Missing Goods—Inventories—New Trial as to Part of Goods Alleged to be Missing—Judgment Disposing of Others—Relief against Third Parties—Costs.

After the judgment of the Appellate Division in this action delivered on the 4th December, 1913 (5 O.W.N. 402, 29 O.L.R. 634), argument was heard on the other branches of the case by MEREDITH, C.J.O., MACLAREN, MAGEE, and HODGINS, J.J.A.

W. Laidlaw, K.C., and J. Bicknell, K.C., for the appellants, the defendant company and the third parties.

Shirley Denison, K.C., for the defendants, the Canadian Pacific Railway Company, on the appeal of the third parties.

W. M. Hall, for the plaintiff, the respondent.

The judgment of the Court was delivered by HODGINS, J.A.:—The respondent Swale has so pleaded in this action as to base her claim upon the abstraction by the railway company and its agents, and the conversion to their own use, of the goods in question. There is no evidence to support this charge, but the making of it caused the parties to insist on their legal rights, and has made it necessary to deal with the issues more exactly than