

acknowledging that he had received the car from the defendants in good order. The defendants' servant told him that there were no charges. Wangeheim observed that the car was not a new one, and told Morris that he would not accept it. The car was left in Wangeheim's garage; but he declined to accept it as a compliance with his bargain, and refused to pay the draft. Wangeheim sued Morris & Lewington in a Division Court for the \$100; in that action the present plaintiffs were added as defendants, and judgment was given against all the defendants, and the amount paid by them. The plaintiffs sued the defendants for damages for the wrongful delivery of the car to Wangeheim; the defendants brought Wangeheim in as a third party; and an order was made by the Master in Chambers directing that the questions between the defendants and the third party should be tried and disposed of at the trial of the action. The trial took place before SUTHERLAND, J., without a jury. At the trial it was not disputed that the car was not a new one. The learned Judge was of opinion that the defendants were bound by the terms of the bill of lading under which they received the car and undertook to transport and deliver it, and were not justified in delivering it to Morris and Wangeheim. The plaintiffs were, therefore, entitled to judgment against the defendants for \$1,300 and interest from the 30th March, 1914, with costs. But, if the defendants elected to do so, they might obtain the car from the third party, transport it to St. Catharines, and deliver it to the plaintiffs within two weeks, and, upon their doing so, the plaintiffs' judgment against the defendants will be only for \$100 damages and the plaintiffs' costs of the action and the third party proceedings. The defendants also to pay the costs of the third party. G. Lynch-Staunton, K.C., for the plaintiffs. W. N. Tilley, for the defendants. O. L. Lewis, K.C., for the third party.

DONOVAN v. WHITESIDES.—SUTHERLAND, J.—JUNE 5.

Sale of Goods—Condition as to Quality—Non-fulfilment—Rescission—Return of Money Paid and Promissory Notes Given—Damages—Return of Goods.]—Action to recover \$500 paid in cash to the defendants as part of the purchase-price of a yacht sold by the defendants to the plaintiff for \$850, for the return of two promissory notes made by the plaintiff in favour of the defendants for \$175 each, and for damages. The plaintiff set up that he relied on the statements made by the defendants and believed that the yacht was seaworthy, which turned