

loan and in support of the alleged dividend—evidence which I have not seen my way to accept. But in any case, even **wealthy men sometimes need, and often want, more money.** It proves nothing.

As to the promissory notes, they have no necessary connection with the issues in this case. The indorsements may have grown out of the loan; but the relations between the defendant and the plaintiff were very intimate and cordial in any case.

The notes help me to determine from what date the interest should run. The first note is dated the 29th December, 1909. I am disposed to think that it was not contemplated that this loan would immediately bear interest. There is no evidence that I recall of a demand for repayment until about the date of the first discount.

There will be judgment for the plaintiff for two thousand dollars and interest from 29th December, 1909, with costs.

HON. MR. JUSTICE LENNOX.

FEBRUARY 27TH, 1913.

SWALE v. CANADIAN PACIFIC RW. CO. & W. J.
SUCKLING & CO. (THIRD PARTIES).

4 O. W. N. 884.

Railways—Action for Conversion of Goods Entrusted to Them—Railway Act (Can.) s. 345—Sale to Realize Charges—Negligence of Auctioneer—Loss—Third Parties—Limitation of Liability—Want of Endorsement of Bill of Lading—Right of Third Parties to Set Up—Damages—Assessment of—Set-off—Costs.

LENNOX, J., gave judgment for plaintiffs against defendants, carriers, for \$1066.40 damages for loss or conversion of certain goods entrusted to them and for defendants against the third parties, auctioneers, for the same amount, as the loss had occurred by reason of the negligence of the latter, to whom the goods were entrusted for sale under sec. 345 of the Railway Act, in order to realize certain charges due and owing by plaintiffs to defendants.

Action tried at Toronto without a jury, on 19th November, 1912, and argument heard on 9th January, 1913, for conversion of certain goods entrusted to defendants as common carriers for shipment from Liverpool, Eng., to Toronto, Ont. Defendants claimed relief over against the third parties, the auctioneers who had sold the goods in question as agents for defendants, to pay certain charges of the latter upon them. Vide 20 O. W. R. 997; 21 O. W. R. 225; 25 O. L. R. 492, for interlocutory motion herein as to the addition of the third parties.