conversion or as adopting the conversion and suing for the proceeds, or as vendors on a sale assented to by the defendant in treating the goods as his own, the fair measure of their claim, in the absence of other evidence, was the carat price agreed on. This the judgment appealed from had allowed. The case was like Cox v. Prentice (1815), 3 M. & Sel. 344, where the purchaser recovered back the overpayment for silver, and where the thing sold was not of arbitrary value, but dependèd on the quantity of silver it contained. It was not the case of a unilateral mistake with want of knowledge thereof on the other side, as in Islington Union v. Brentnall and Cleland (1907), 71 J.P. 407, cited for the defendant.

Appeal dismissed with costs.

SECOND DIVISIONAL COURT. OCTOBER 23RD, 1918.

CROMPTON CORSET CO. v. CITY OF TORONTO.

Municipal Corporations—Drains and Sewers—Claim for Flooding of Premises—Evidence as to Cause of Flooding—Liability—New Trial—Costs.

Appeal by the plaintiffs from the judgment of MIDDLETON, J., 14 O.W.N. 197.

The appeal was heard by MULOCK, C.J. EX., CLUTE, RIDDELL, and SUTHERLAND, JJ.

Shirley Denison, K.C., for the appellants.

Irving S. Fairty, for the defendants, respondents.

THE COURT directed that, unless the parties agreed to a judgment for the plaintiffs for $105 and County Court costs of the action and appeal, there should be a new trial, and the costs of the former trial and of the appeal should be costs in the cause.