

Mr. Mackay, however, contended that upon hypothecation of the stocks by the defendants, there was a conversion, and that, therefore, all the moneys paid by her on account of the purchase money, or a sum by way of damages, is recoverable in an action of deceit. . . .

In a case like the present, where the plaintiff has sustained no damage, the delivery of the stocks to her after their technical conversion, would, I think, have prevented her maintaining trover because of such conversion. . . .

[Reference to *Fisher v. Burns*, 3 Burr. 1364; *Moon v. Raphael*, 5 C. B. N. S. 46, 2 Bing. N. C. 314; *Gibson v. Humphrey*, 1 Cr. & Mees. 544; *Stimson v. Block*, 11 O. R. 103.]

The cases shew the practice in England to be that, where no damage by the conversion is shewn, the defendant is permitted to bring the property into Court and to tender it to the plaintiff. Here, it has not been shewn that the wrongful acts of the defendants caused any damage to the plaintiff. It would have been competent for the defendants, in an action of deceit, to have set up all the facts, including the delivery of the stocks to the plaintiff, and the absence of damage to her. Such a defence, if established, would, I think, have been an effectual bar to the plaintiff's claim for relief in such an action.

Applying that reasoning here, the plaintiff was not damaged by the hypothecation of the stocks, and there was, therefore, no misrepresentation which gave her a cause of action. The delivery of the stocks to her annulled the effect of their previous technical conversion, and restored both parties to their former positions, thus leaving the plaintiff in debt to the defendants for the unpaid purchase money, which they would have been entitled to recover in an action of debt against her. In paying the amount to the defendants, she was simply discharging a legal liability, and therefore has no cause of action because of such payment. I therefore think the learned trial Judge was right in holding that, in the absence of damage, the plaintiff was not entitled to maintain this action.

She also claimed repayment of interest paid to the defendants in excess of the legal rate. At the commencement of the transactions between the parties there was no agreement as to rate of interest to be charged to the plaintiff, but she had reason to know that the defendants would have to borrow the money, and would themselves be liable for the amounts borrowed on her account. During the continuance of the loan they charged her the rates which they themselves had to pay for her money, together with one-half per cent. by way of remuneration to themselves for their