

It appeared that the insolvent company used to send their goods to Scotland to be bleached, and a quantity was there when the winding-up order was made. The bleaching firm wrote to the defendant, stating the amount of their account in respect to their goods and asking for instructions. After some further correspondence the liquidator wrote them full information as to what had been done, and stating that the proceeds of sale of the assets would hardly pay the bank's claim. He ended his letter by saying: "I, as liquidator, have no objection to your disposing of the goods on the highest market, applying the proceeds of such sale on your claim and advising me accordingly." Under the law of Scotland the bleachers had no right to sell the goods to satisfy their lien without complying with certain formalities, which they did not do.

The plaintiffs brought action against the liquidator, claiming damages for conversion of the goods so sold and, at the trial, were allowed to amend by adding a claim for breach of the contract to sell the assets of the insolvent company "free from incumbrances." At the trial they recovered judgment on the latter ground, which the Court of Appeal reversed, holding that there was no conversion, as the defendant's letter quoted above did not amount to instructions to sell, and that there was no breach of contract, as the term "free from incumbrances," as used in the contract with Todd, was not intended to apply to the charges for bleaching, but to the mortgage on the buildings and liens on the stock.

The plaintiffs appealed to the Supreme Court of Canada, and were heard by SIR CHARLES FITZPATRICK, C.J., and IDINGTON, DUFF, ANGLIN and BRODEUR, JJ.

J. W. Bain, K.C., and M. L. Gordon, for the appellants.
Anglin, K.C., for the respondent.

THEIR LORDSHIPS after hearing counsel for the respective parties, reserved judgment, and on a subsequent day dismissed the appeal.

Appeal dismissed with costs.