

The appeal was heard by BOYD, C., LATCHFORD and MIDDLETON, JJ.

A. J. Russell Snow, K.C., for the defendants.

W. C. McCarthy, for the plaintiff.

The judgment of the Court was delivered by MIDDLETON, J.:—We reserved judgment upon the question of the amount of damages.

The defendants were authorised to make repairs to the amount of \$350 only, and were bound to return the machine to the plaintiff when demanded, and had no claim against the plaintiff or the machine for more than this sum.

Having converted it to their own use, they must answer for its value at the time of the conversion, and cannot reduce the liability by any increased selling value attributable to the unauthorised repair. Had they returned it, as was their obligation, the amount spent in repairs beyond the sum authorised would have been lost to them, and they cannot better their position by the further unlawful act of conversion.

Faulkner v. Greer, 14 O.L.R. 360, 16 O.L.R. 123, and 40 S.C.R. 399, is in point.

Appeal dismissed with costs.

POWELL-REES LIMITED v. ANGLO-CANADIAN MORTGAGE CORPORATION—MASTER IN CHAMBERS—MARCH 8.

Writ of Summons—Foreign Corporation Defendant—Service on Person in Ontario—Motion by Person Served to Set aside—Affidavit Denying Connection with Company—Insufficiency—Practice.—It was stated that the defendants were incorporated in England, but as yet had not a license to do business in this Province. The action was on a judgment recovered in England against the company, for over \$15,000, on the 9th February, 1912. The writ of summons was served on E. R. Reynolds, who moved to set it aside, supporting his motion by his own affidavit in which he said that he was not an officer of the defendant company nor in any way authorised to accept service for them. There was no affidavit in answer, and an offer to enlarge the motion so as to allow of Mr. Reynolds's cross examination was declined. It was contended that the motion must fail on two grounds: (1) because it should have been made by the company; and (2) that the affidavit filed was insufficient because it did not say that, *at the time of service*, the