

MACMAHON, J.

MAY 6TH, 1903.

TRIAL.

AMERICAN COTTON YARN EXCHANGE v.
HOFFMAN.

Sale of Goods—Part of Consignment not up to Sample—Purchaser Retaining Goods—Claim for Damages—Allowance of Set-off—Costs.

Action to recover \$366.34, the price of certain yarn sold and delivered by plaintiffs to defendants.

Defendants counterclaimed for breach of contract in not supplying some of the yarn of the colours ordered, and the consequent loss of profits.

E. Sidney Smith, K.C., and J. Steele, Stratford, for plaintiffs.

G. G. McPherson, K.C., for defendants.

MACMAHON, J. . . . The yarn reached Stratford on 16th September, and on the 17th defendants wrote saying the colours of parcels 2 and 4 were not as ordered. On 20th September plaintiffs directed defendants to return the two parcels to the Indian Orchard Company, by whom they had been dyed. . . . Defendants received and used the rest of the yarn, the value of which amounted to \$195.67, so that the value of the yarn required to be redyed was \$169.89. Defendants sent to plaintiffs samples of the colours for dyeing of the yarns, of which about one-half was not dyed in accordance with the sample colours. Defendants, having ascertained the insufficiency of the two parcels by inspection at Stratford, could have rejected them, stating that the goods were not according to contract, and remained there at the vendors' risk: *Greinoldby v. Wells*, L. R. 10 C. P. 91; *Heilbut v. Hickson*, L. R. 7 C. P. 438.

Instead of doing this, or complying with the plaintiffs' request to ship the yarns to the Indian Orchard Co., defendants refrained from answering plaintiffs' letters, retained the goods, treating them as their own, and sending part of what they retained to be redyed. If defendants had at once sent the yarn to the Hamilton Cotton Co., it could have been redyed in a month. . . . There were 443 pounds to be redyed, and it cost defendants \$6 to redye 120 pounds, so that if \$25 is allowed by way of set-off to plaintiffs' claim, it will be fair.

Judgment for plaintiffs for \$340.36, with interest from 16th December, 1901, and costs on the High Court scale. Counterclaim dismissed without costs.