

the vendor, because the defect of the unmixed lime in the interior of the bricks was a latent defect which could not be discovered by inspection. In the alternative, the defendants said that, if no right of rejection existed, they were entitled to a cross-claim against the plaintiffs for damages in respect to such of the bricks as did not answer the description of "face brick."

The learned Judge found that the purchase was not by sample.

It was plain that the contract was for delivery f.o.b. cars at Hepworth; and, whether the bricks were effectively inspected or not, there was an opportunity for inspection. The place for inspection is where the goods are to be delivered, unless there is a general custom to the contrary, or special circumstances are shewn which preclude the possibility of inspection at that point: *Trent Valley Woollen Manufacturing Co. v. Oelrichs & Co.* (1894), 23 Can. S.C.R. 682; *Towers v. Dominion Iron and Metal Co.* (1885), 11 A.R. 315; *Dyment v. Thomson* (1886), 12 A.R. 659.

The defendants were bound to inspect and reject at Hepworth if they desired so to do. Not having done so, the property in the bricks passed to them, and their only claim was for damages if certain of the bricks supplied were not of the kind called for by the contract.

The defendants, however, contended that the lumps of lime in the hearts of the bricks could not be detected by inspection, and a right to rejection would arise when the defect became known by the breaking of the bricks in transit or upon exposure: *Heilbutt v. Hickson* (1872), L.R. 7 C.P. 438, 41 L.J.C.P. 228; *Drummond v. Van Ingen* (1887), 12 App. Cas. 284, 297. That law, however, was not applicable to the facts of this case. Lumps of unmixed lime were visible on the faces of many of the bricks. If there were lumps of lime on the faces, it was plain that the same condition must exist inside the bricks, and a proper inspection at Hepworth would have disclosed the condition, both within and without. Not having been inspected, they were accepted and the property passed.

The learned Judge found that the plaintiffs were entitled to recover; but that defective bricks were delivered, in respect of which the defendants were entitled to damages.

There should be a reference to the Local Master at Sudbury to ascertain the damages; and further directions and costs should be reserved until after report.