

The attaching order having been set aside by the referee after the making of the interpleader order, and the sheriff having relinquished possession of the goods, the claimant contended that the latter order then lapsed; but the attaching order had been re-instated on appeal to a judge, when the sheriff again took possession of such of the goods formerly seized as he found to be still in the claimant's possession.

*Held*, that the plaintiff had a right to have the interpleader issue disposed of and that, as the merits were in his favour, the verdict for him should stand, but limited in its effect to the goods seized by the sheriff after the attaching order was restored. *Howe v. Martin*, 6 M.R. 616, followed.

Appeal from CAMERON, J., dismissed with costs.

*Galt and J. H. Leech*, for plaintiff. *Coyne and Forrester*, for defendant.

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Full Court.] *WHITMAN FISH CO. v. WINNIPEG FISH CO.* [June 8.

*Sale of goods—When property passes—Retention of goods without notice of rejection to seller within reasonable time—Right of buyer to damages for breach of warranty as to quality of goods.*

The defendants disputed liability for the price of a carload of finnan haddie purchased from the plaintiffs and received by defendants on February 4. The sale was by sample and the defendants discovered by the 9th of February that some of the cases were not up to sample. Thereafter they made complaints by letter of the quality of the goods, but, instead of definitely rejecting them, they sold a large number of the cases out of the carload, and it was not until March 18 following that the defendants wrote to the plaintiffs positively refusing to accept the goods.

*Held*, reversing the judgment of Cameron J., that under ss. 35 and 36 of R.S.M. 1902, c. 152, the defendants had retained the goods without rejecting them within a reasonable time and were liable for the price agreed on subject to their right, under s. 52 of the Act, to whatever deduction from the price they could establish or claim for by reason of any breach of warranty as to the quality of the fish or for damages by counterclaim. *Couston v. Chapman*, L.R. 2 H.L. Sc. 250 and *Grimolby v. Wells*, L.R. 10 C.P. 393, followed.