

The terms of payment prevented the plaintiff from getting possession of the hay until he had paid the purchase-money to the bank, and until then inspection was impossible. Even inspection without opening up the hay—door-inspection, as it was called in the testimony—would not have revealed the condition.

It cannot be successfully argued that obtaining possession on such terms was an unconditional acceptance, not only of the goods but of the quality. The plaintiff did not thereby waive his right to rely upon the warranty as to quality and condition. There was nothing in the contract requiring inspection at any particular time or place. The defendant knew this, and knew also that the hay was being sold for delivery by the plaintiff in the United States and for use at the military camps there. Accepting the goods did not, in the circumstances, deprive the purchaser of his right to seek damages for inferiority of quality. The right of a purchaser to reject goods not in accordance with what has been contracted for, when delivery has been made and possession taken, must not be confused with the right to claim damages for delivery of goods of inferior quality.

Reference to *John Hallam Limited v. Bainton* (1919), 45 O.L.R. 483.

The only other objection offered was the delay by the plaintiff in giving notice to the defendant of the condition of the goods and making claim for damages. The plaintiff's explanation was, that this delay was due to his awaiting receipt from his correspondents in Chicago of full particulars of the condition and value on a resale of the contents of all the cars. There was no evidence that the defendant had been prejudiced by this delay; and the learned Judge was unable to say that it was without justification.

The only item in the particulars of damage which was expressly objected to was that covering the charges for inspection.

The plaintiff's agents were compelled to sell the hay at prices much less than those then current, and which they could have obtained, for hay of the grade, quality, and condition called for by the defendant's contract. This resulted in a loss to the plaintiff, exclusive of the charges for inspection, of \$1,647. The damages should be assessed at that sum, with interest thereon from the date of these agents' final report to the plaintiff of their disposal of the hay. The defendant should pay the plaintiff's costs.