Man.] [March 29.

WINNIPEG FISH CO. *v.* WHITMAN FISH CO.

Sale of goods by sample—Delivery—Condition f.o.b.—"Sale of Goods Act," R.S.M. 1902, *c.* 152—*Notice of rejection—Reasonable time—Breach of warranty—Damages.*

By contract made at Winnipeg, Man., the plaintiffs sold to the defendants, by sample, a carload of cured fish to be shipped during the winter from their warehouse at Canso, N.S., "f.o.b. Winnipeg." The sample was sound and satisfactory. The fish arrived in Winnipeg in a frozen state and were received by the defendants and kept by them in an outhouse for several weeks before being placed in the freezer, the atmospheric conditions be such that the fish could not, in the meantime, have deteriorated by thawing. When some of the fish were sold they proved unsound, were returned by customers and the whole shipment was found not up to sample and unfit for food. On inspection the health inspector condemned the whole carload and it was destroyed. About six weeks after the fish had been received by them, the defendants notified the plaintiffs of the rejection of the carload so delivered. In an action for the price at which the fish had been sold, the defendants counterclaimed for damages for breach of warranty and consequent loss in their business.

Held, reversing the judgment appealed from (17 Man. R. 620) that the sale had been made subject to delivery at Winnipeg, that any loss occasioned by deterioration in transit should be borne by the sellers, and that, under the circumstances, the purchasers had notified the sellers of the rejection within a reasonable time, as contemplated by the Sale of Goods Act, R.S.M. 1902, c. 152; that the plaintiffs could not recover and that the defendants were entitled to have damages on their counterclaim. Appeal allowed with costs.

Newcombe, K.C., for appellant. *Ewart,* K.C., for respondent.

Ont.] [April 5.

EQUITY FIRE INS. CO. *v.* THOMPSON.
STANDARD FIRE INS. CO. *v.* THOMPSON.

Fire insurance—Statutory condition—Construction of statute—Gasoline "stored or kept"—Temporary use.

A condition of the contract of insurance against fire imposed by the Ontario Insurance Act (R.S.O. 1897, c. 203, s. 168, sub-s.