

The transaction in question was a purchase by the defendant from the plaintiffs of a car-load of bananas at Baltimore, the delivery of the goods to be f.o.b. at Baltimore.

The goods were so delivered in good condition, and were delivered to the competent carriers, with all the care and precaution usually taken and necessary in such cases.

In the ordinary course of carriage the goods should have reached the defendant in good marketable condition; but something unusual happened: the goods were delayed by the carriers, and, according to the evidence, they neglected "to ice" the car, in order to retard ripening of the fruit too rapidly for the Peterborough market: the result was that the fruit arrived in too ripe a condition for marketing purposes, though in better condition for immediate consumption. The defendant was consequently obliged to sell it at once at a considerable loss; and contended that the loss should fall on the plaintiffs.

The sale was f.o.b. Baltimore; and the bill of lading was at once sent on in the usual way to, and received by, the defendant; and so plainly the property in the goods, and, in usual course, the possession of them also, passed to the defendant: if, therefore, he could have any claim against the plaintiffs by reason of the condition in which the goods reached Peterborough, it must be by reason of some implied warranty or condition. But why should any such warranty or condition be imputed in the circumstances of this case?

There was no neglect on the plaintiffs' part of any precaution which is usually taken in the shipping of such goods; and they were goods which ordinarily should, in such a case, arrive in marketable condition without any unusual care. But something unusual happened while the goods were the defendant's, out of the control of the plaintiffs, something which, if the facts really were as they now appeared to be, gave the defendant a right of action against the carriers.

But it was said that things which happened subsequent to the arrival of the goods shewed that the plaintiffs were to bear the risks of the transit; and, standing alone, the correspondence immediately following that event might well prove that; but the evidence made it plain that the intervention of the plaintiffs was only for the purpose of assisting their customer, according to their common practice, in recovering his loss from the carriers; it being considered that they, being such large customers of the carriers, were better able than their own customers to obtain a satisfactory settlement of such claims.

And all this was made very plain by the later correspondence, in which the defendant demanded a return of his bill of lading so that he might make his own claim against the carriers, and by the