

But in determining these damages the real circumstances must be taken into account. On the 18th February, the Harris Abattoir Company rejected the eggs, and made no claim to retain them further. On the 20th February, the respondent knew of the rejection; and on the 21st February his representative, McKee, was aware of where the eggs were, and that they were at his disposal. The respondent, if the rejection was wrongful, could have insisted upon his bargain being carried out and could have looked to the Harris Abattoir Company, thus relieving the appellants from any liability. If it was rightful, he had the eggs then under his control, and might have endeavoured to dispose of them without any let or hindrance from the Harris Abattoir Company, in whose warehouse they were and whose possession of them minimised the danger of further deterioration.

Indeed, on that assumption he was bound to take them away: *Heilbutt v. Hickson* (1872), L.R. 7 C.P. at p. 452. In either view, the appellants made such reparation as they could by the offer to McKee—for such the interview on the 21st February amounted to—of the eggs free from any claim. . . .

[Reference to *Hiort v. London and North Western R.W. Co.*, 4 Ex. D. 188, per Bramwell, L.J., at p. 195, and per Brett, L.J., at p. 200.]

I think it is clear that the respondent, if entitled to damages, is only so entitled to his real loss caused by the deprivation of his control over the eggs from the time when admittedly the Harris Abattoir Company might inspect and reject, i.e., the 18th February, until the time when his control was re-established, if he chose to exercise it, namely, the 21st February. The respondent in bringing this action elects not to look to the Harris Abattoir Company on their contract, thus admitting that the rejection was proper; and he is only entitled to damages against the appellants on the basis I have indicated, treating as in the nature of a return the offer to McKee on the 21st February to give up the eggs. This is enforced by the consideration that unreasonable conduct on the part of the person whose property has been converted may always be taken into consideration in assessing the damages. See *Wilson v. Hicks*, 26 L.J. Ex. 242.

Some evidence was given as to damage at the trial, but I think the real point to be decided is, whether the eggs could have been sold on the 18th February for a better price than on the 21st February, when the respondent could have disposed of them if he had chosen so to do. They were actually sold afterwards at a