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No. 6

APPELLATE DIVISION.

SECOND DIVISIONAL COURT.

APRIL 14TH, 1919.

ATLANTIC FRUIT CO. v. OKE.

Sale of Goods—Shipment of Car-load of Fresh Fruit from Distant Place—Delivery f.o.b. at Place of Shipment—Delay of Carriers and Neglect to Ice Car—Fruit Arriving in Overripe Condition—Loss upon Resale by Purchaser—Attempt to Make Vendor Responsible—No Neglect Shewn—No Implied Warranty or Condition—Risk of Transit—Evidence—Correspondence—Invoice—Terms of Sale—Express Exemption of Vendor—Liability of Carriers.

An appeal by the plaintiffs from the judgment of the Judge of the County Court of the County of Peterborough dismissing an action for the balance of the price of a car-load of bananas shipped by the plaintiffs to the defendant.

The appeal was heard by MEREDITH, C.J.C.P., BRITTON, RIDDELL, LATCHFORD, and MIDDLETON, JJ.

F. D. Kerr, for the appellants.

G. N. Gordon, for the defendant, respondent.

MEREDITH, C.J.C.P., giving the judgment of the Court, said that the defendant was a wholesale dealer in fruit, carrying on business at Peterborough, Ontario; and the plaintiffs were large dealers in the like goods, carrying on business in Baltimore, Maryland.

The parties had dealt with each other in the purchase by the defendant and sale by the plaintiffs of such goods to a considerable extent before the transaction in question took place; and both were quite familiar with the course of business in, and the nature and incidents of, the trade.