

not in fact sold; and as to them the conviction cannot be supported. There must be, to constitute an offence against the section, either a selling or an offering or exposing or having in possession for sale; and there was neither.

The other eight packages were exposed for sale and actually sold; an offence against the section was complete, though no sale or offer to sell had taken place. The having of them in possession for sale is an offence against the section. This being so, it is immaterial that when sold the purchaser was not imposed upon, because, as the fact was, the whole contents were tipped out of the packages for his inspection, and he saw the quality of the bulk.

The Legislature, for the purpose of protecting the public against the frauds which the Act is designed to prevent, has chosen to make the law so stringent that the mere having in possession packages of fruit fraudulently packed—where the having in possession is for the purpose of sale—is an offence, and we have no warrant for refusing to give effect to the law it has enacted, because in the particular case no one was imposed upon and no fraud was intended by the person charged with the offence.

As at present advised, I do not see why the branded end of the package is the only place where “a faced or shewn surface” may be forced, or why, if the bottom of the barrel is faced with fruit of a better quality than the bulk, that is not enough to bring the case within the section. As pointed out by Mr. Beaumont, if it were otherwise, the provisions of the section might be easily evaded and purchasers imposed upon by the bottom of the barrel being opened and the fraudulently packed surface exhibited to the purchaser.

The conviction must be amended by confining it to the eight packages, and the offence to having them in possession for sale, and the fine will be reduced to \$20.

There will be no costs to either party.

It would be well, I think, if the Act were amended by defining the meaning of the term “the faced or shewn surface,” and possibly also by relieving from the penalty one who has in possession for sale packages fraudulently packed, if he is able to shew that he did not know of the fraudulent packing and was not ignorant of it negligently.