

circumstances S. J. Carter & Co. cannot be held to have constructively accepted that portion of the peas that still remain in their possession unsold, and that the lapse of time from the 3rd of October to the 24th of November 1913 does not bar their action. The evidence discloses that of the 220 bags of peas, S. J. Carter & Co. sold 122 bags to their customers who returned 86 bags, and retain 36 bags. Each bag of peas represents 2.75 bushels; the 36 bags therefore represent 99 bushels @ \$1.65 per bushel —\$163.35.

As to the claim made against Limoges for damages \$196 representing the price required to duplicate the peas purchased from Limoges, it is unfounded, as the evidence shows that he did not know of the latent defects when he sold the peas to S. J. Carter & Co; he is obliged however to reimburse the buyer the expenses caused by the sale which amount to \$33.49, the freight charges, Art. 1528, C. C. Limoges' claim of \$163.35 is therefore to be declared compensated to the extent of \$33.49, leaving in his favor a balance of \$129.86 to the payment of which S. J. Carter & Co. should be condemned. As regards the other 184 bags the sale should be cancelled.

Under the circumstances therefore, I would favor a judgment reversing the judgment *a quo*. and deciding as follows:

1. No. 3363, *Carter v. Limoges*.

(a) dismissing the defendant's plea and maintaining the plaintiff's action; (b) cancelling the sale to the extent of 184 bags representing \$834.90 and granting the plaintiffs' record of their offer to return the 184 bags to the defendant; (c) condemning the defendant to pay to the plaintiffs \$33.49; (d) dismissing all the other conclusions of the declaration; (e) Condemning the defen-