

The defendants replied on the 18th October: "We acknowledge receipt of your favour of the 18th inst., but we did not wire reply, as we have already advised you that we are not interested in further samples. Should we, however, be in the market late for evaporated apples, we would be glad to give you every opportunity, in fact, would give you the preference. We return herein debit note for 10 boxes shipped, which are lying here to your order."

The defendants refused to examine either of the lots of 5 boxes each, sent by the plaintiffs, standing by their rejection of the first box, and insisting, as the correspondence shews, that the contract was off. The plaintiffs thereupon sold the lot, realizing \$300 less than contract price.

It was argued before us that the damages in the claim were unreasonable if the defendants were wrong in refusing to inspect either of the samples of the 5 boxes.

The first question is whether the contract was varied between the parties, submitting one case for five. During the argument, I was rather impressed with the view that this was the effect of the correspondence between the parties, but upon a closer examination of the letters of the 5th and 7th of October, between the parties, I do not think they have this effect. The plaintiffs merely said: "We are sending by express to-day sample case of evaporated apples which we think will be a fair representation of the 600 cases we can ship you."

No doubt, if inspection had proved satisfactory, this sample might have taken the place of the 5 boxes, but the plaintiffs do not expressly ask that this should be done, nor do the defendants, in their reply, accept it as such; for all that is contained in this letter, they clearly had the right to ask for the five boxes.

The letters, in short, are not sufficiently definite to introduce a new term in place of the old, and substitute one box in lieu of the five. The fact that the defendants inspected the sample box sent, does not necessarily imply that they thereby intended to treat that in lieu of the five boxes. They did, in fact, subsequently do so, but I mean their mere act of inspection would not necessarily imply that that was their intention. They might very well say the meaning of the plaintiffs' letter is that if they feel satisfied with this single box sample, they will fill the contract with goods of that class. But in the letters neither of the parties distinctly take this ground,