

a part of the goods and refused to pay for them, and this action was brought for the price.

J. T. Small, for defendants.

W. E. Middleton, for plaintiffs.

THE MASTER.—I entirely accede to what was argued by Mr. Small as to the duty of full disclosure of all material facts on applications under Rule 162. [Collins v. North British Co., [1894] 3 Ch. 228, Republic of Peru v. Dreyfus, 55 L. T. 802, 803, and In re Burland, 41 Ch. D. at p. 545, referred to.] . . . I do not see that there was anything here to be complained of. The plaintiffs' affidavit alleged a claim for goods sold and delivered. The fact that the defendants had thought fit to refuse acceptance and had returned them was not a necessary fact to be mentioned. Whether defendants could justify their conduct is the matter to be determined at the trial.

At present the only substantial question is whether . . . an action will lie for goods sold and delivered. And, in my opinion, it will . . .

The orders of defendants to plaintiffs which are in evidence on the motion both bear on their face these words: "Shipment to Liverpool," "Via Leyland line steamer from Boston," "Delivered f.o.b. vessel." The shipping bills are to the same effect. There is no evidence as to whether the goods were insured, or, if so, by whom, in whose name, and for whose benefit.

[Atkinson v. Bell, 8 B. & C. 277, Scott v. Melady, 27 A. R. 193, Fragano v. Long, 4 B. & C. 219, Wait v. Baker, 12 Ex. 1, and In re Wiltshire Iron Co., Ex. p. Pearson, L. R. 3 Ch. 443, Benjamin on Sales, 7th Am. ed., p. 348, and Blackburn on Sales, 2nd ed., p. 130-2, referred to.]

The facts of the present case seem clearly to resemble those of Fragano v. Long. . . . I cannot see how it can be seriously disputed that the goods became the property of defendants once they reached Boston: see Benjamin, p. 701. There is no pretence that the goods were not up to sample or as represented by plaintiffs. Indeed, defendant Kirkness . . . was in Toronto in the spring. Plaintiffs had, as requested, sent on samples, and afterwards defendants' order was filled and sent forward and only returned on account of the litigation in England about the copyright. These facts seem to distinguish the case from Bannerman v. White, 10 C. B. N. S. 844, and Varley v. Whipp, [1900] 1 Q. B. 513