

he tested on the 14th February, a week before the shipment, and that the shipment to Toronto and the removal into the Harris Abattoir establishment would not account for all that difference.

On a shipment f.o.b. Owen Sound, the purchaser would ordinarily have to accept the usual deterioration during transit, yet where there is a sale by sample, and the goods are to be delivered and inspected elsewhere than at the point of shipment, the bulk must correspond at the delivery point with the sample, upon inspection. Both parties apparently agree in this view. But in this case the question is not whether the eggs were really up to sample or not, but what was the situation of the parties, including that of the appellants, when the eggs were inspected and rejected, rightly or wrongly. In any event the learned trial Judge does not specifically find that the eggs when received in Toronto were equal to the sample, nor yet that the deterioration was wholly attributable to the transit. . . .

If it were necessary to determine whether the eggs were up to sample or not, the evidence as a whole satisfies me that on the 18th February the bulk did not correspond with the cases sent down previously. . . .

But I do not think it is essential to determine this question as between the parties to this action. The appellants had a bill of lading in their possession, the explicit provisions of which they departed from. But in point of fact their breach of duty only enabled the Harris Abattoir Company to examine more easily, and that company never claimed to have any right to the eggs after the 18th February. The error of the respondent in attaching the invoice to the bill of lading sent to the Royal Bank contributed to lead the Harris Abattoir Company to think that the eggs were being delivered to them pursuant to their contract, subject to their right to inspect. Immediately on learning the real situation, they examined the eggs, and the respondent admits their right to do so when they did it. He puts his claim upon the neglect of the appellants or the Harris Abattoir Company to notify him until the 20th February, as the market was falling, and he ignores the notice on the 18th February to the bank, his agents, and the persons to whose order the goods were consigned. In so doing he is obliged to insist that the taking on the 17th February of the eggs into the Harris Abattoir establishment was a wrongful delivery, contrary to the bill of lading. This is an extreme position in view of the fact; but, as I have indicated, it was one that he was entitled to assume, and carries with it the right to damages.