Where the purchaser has an opportunity to inspect the bulk of the goods, is requested by the seller to examine, and does examine, then it is not a sale by sample and no warranty is implied. Thus, where the goods were hemp in bales, and the purchaser, at the request of the seller, examined several of the bales by cutting them open, and might have examined all of them, it was held not to be a sale by sample, and that no warranty was implied that the interior of the bales corresponded with the exterior. *Salisbury* v. *Stainer*, 19 Wend. 159. See, also, *Kellogg* v. *Barnard*, 6 Blatchf. 279; S. C., 10 Wall. 383; *Hargous* v. *Stone*, 5 N. Y. 73.

In *Hubbard* v. *George*, 49 Ill. 275, where a purchaser of wheat by sample, on the arrival of one car-load hastily examined it, saying, "it will do," it was held that he was not thereby concluded from rejecting loads subsequently arriving under the same contract.

The general rule, however, is, that where goods in several lots are purchased under an entire contract, the purchaser must either accept or reject all or none. *Mansfield* v. *Trigg*, 113 Mass. 350; *Morse* v. *Brackett*, 98 id. 205; *Couston* v. *Chapman*, L. R., 2 Sc. App. 250.

If an inspection is ineffectual from the vendor's fraud or fault it is no inspection. *Heilbutt* v. *Hickson*, L. R., 1 C. P. 438. So, if by a defect not visible to the eye, the article has lost its distinctive character, as in *Josling* v. *Kingsford*, 13 C. B. (N. S.) 447, where the buyer not only inspected the samples, but the bulk, and the vendor said he would not warrant the strength of the "oxalic acid" sold, it was held that the purchaser was not bound to accept, because by adulteration with sulphate of magnesia the article had ceased to be "oxalic acid." And see *Williams* v. *Shafford*, 8 Pick. 250.

But where a sale was by sample of an article which the vendor called seed-barley, but said he did not know what it really was, and the bulk corresponded with the sample, it was held that the buyer took at his own risk, whether it was seed-barley or not. *Carter* v. *Crick*, 4 H. & N. 412.

That the manufacture of an article impliedly warrants it against secret defects arising from the manufacture is settled. *Hoe* v. *Sanborn*, 21 N. Y. 552, and cases cited: *Jones* v. *Just*, L. R., 3 Q. B. 197. So, if a manufacturer agrees to furnish goods according to sample, the sample is to be considered free from any secret defect of manufacture not discoverable on inspection and unknown to both parties. *Heilbutt* v. *Hickson*, L. R. 7 C. P. 438. But there is no implied warranty against a secret defect in both the samples and the goods where the seller is not the manufacturer. *Dickinson* v. *Gay*, 7 Allen, 29.

Where an average sample is exhibited taken from a number of packages by drawing samples from each and mixing them, the purchaser cannot reject any of the packages on the ground that they are inferior to the average; the true test is, whether, if all the packages were mixed together, the quality of the resulting bulk would equal the sample. *Leonard* v. *Fowler*, 44 N. Y. 289.

And a custom may be proved that upon a sale of articles, such, for instance, as berries in bags by sample, the sample represents the average quality of the entire lot. *Schnitzer* v. *Oriental Paint Works*, 114 Mass. 123.

But evidence is not admissible that, by the custom of merchants, there is an implied warranty that goods are not falsely or deceitfully packed. *Barnard* v. *Kellogg*, 10 Wall. 383; and see the American note to *Wigglesworth* v. *Dallison*, 1 Sm. Lead. Cas. Nor can a custom be proved limiting the time of the purchaser to examine and return the goods. *Webster* v. *Granger*, 78 Ill. 230.

The purchaser of goods sold by sample should examine them without delay; and if he finds that they are not conformable to the sample, he may reject them and rescind the contract, giving immediate notice to the vendor. Should the vendor not acquiesce, the purchaser should place the goods in neutral custody and duly apprise the vendor. *Couston* v. *Chapman*, L. R., 2 Sc. App. 250; *Freeman* v. *Clute*, 3 Barb. 424; *Park* v. *Morris, etc., Co.*, 4 Lans. 103.

Or if the vendor refuses to rescind, the purchaser may sell the goods at the best price he can obtain without notice to the vendor of the time and place of sale. *Messmore* v. *N. Y. Shot Co.*, 40 N. Y. 422.

The burden of proof to show that goods correspond with the sample is on the vendor in a suit for their price. *Merriman* v. *Chapman*, 32 Conn. 146.—*Albany Law Journal.*