

five of Shore No. 1. They were first-class fish. After the consignment had arrived, and while on the wharf, some four or five barrels had been opened for Mr. Robert P. McLea and examined by him; some fish showed signs of oil, which is preliminary to rust, and he declined to buy, as it would not suit his trade. This was a few days prior to 18th November. It is possible that the rust may have developed shortly after, between the 18th and 30th November, and specially between the 18th November and the end of December, when the 187 barrels were examined. At the time that the barrels were brought into the warehouse some hoops were found faulty; the barrels were mended and pickle added to some, as it is generally the case. No. 1 Labrador herring being fat, is more liable than other herring to show sign of oil and to rust, and it requires more care and looking after.

Sign of oil is not rust, and rust might yet have been prevented by adding good pickle. Côté found many barrels wanting in pickle; the barrels had been unattended to from the 18th November up to the 19th December, a time long enough to greatly injure fat herring, short of salt.

On the 30th November, out of seven barrels opened, two were found rusty and one short of salt. Had the two become rusty since Mr. McLea had opened four or five barrels on the wharf? No one can tell. The opinions of traders vary on this, as men's opinions do in most things, and we are left in the greatest uncertainty.

Again, forty nine barrels, opened between the 19th and 30th December, were left open, standing on end, until this action was instituted, on the 3rd March following. They are there yet.

All herring left open standing on end, especially fat herring, will depreciate in a very short time; although the evidence is contradictory on this point as on all others. There is no doubt, though, that it will, should it be left short of pickle.

On the whole I find, as a jury would do, that the herring was open to inspection at the time of the sale; that six days after the sale and delivery plaintiff asked for delay to pay and inspect, and was denied time to inspect and requested to pay; that he made three partial payments after this without inspection; that he only complained about the quality of the herring on the 1st of December; that in the meantime the fish may have deteriorated, and the complaint was late and tardy and beyond a reasonable time.