The appeal was heard by MEREDITH, C.J.O., GARROW, MACLAREN, MAGEE, and HODGINS, JJ.A.

S. H. Bradshaw, K.C., for the appellant company.

A. A. Ingram, for the plaintiff, respondent.

GARROW, J.A., delivering judgment, said that the plaintiff had a quantity of white ash lumber manufactured and piled at Dutton station for sale, and the defendant company entered into negotiations with the plaintiff for its purchase. One Schriner, a buyer for the defendant company, came to Dutton and saw the pile, and made some, but not a complete, examination of it. The plaintiff's price was $45 per thousand feet. Schriner informed the plaintiff that the defendant would purchase only subject to what is called "national inspection"—a term well understood in the lumbering trade. To this the plaintiff, at the time, objected, and they parted without making a bargain. Negotiations were subsequently renewed, and in the end the plaintiff agreed to accept national inspection. The lumber was inspected, loaded on cars, and shipped, apparently to Detroit.

The defendant company contended that some 9,920 feet more of No. 1 lumber was in the quantity inspected and shipped than, under the terms of the agreement, the defendant company was obliged to take, for which the defendant company claimed a reduction at the rate of $20 per thousand. The defendant company also contended that a cash allowance of 2 per cent. was customary, and should have been made. The learned Junior Judge held in favour of the plaintiff on both contentions.

The first contention was concluded by the inspection and delivery at Dutton. The goods were in esse from the beginning of the negotiations—they were not goods to be manufactured. The rule caveat emptor, therefore, applied to exclude implied warranties. See Jones v. Just (1868), L.R. 3 Q.B. 197, at p. 202. And the inspection, followed by the acceptance and shipment, settled all other questions, both of quantity and quality. See Towers v. Dominion Iron and Metal Co. (1885), 11 A.R. 315.

There was no evidence in the case sufficient to justify a holding that the defendant company was entitled to the 2 per cent. trade discount claimed.

The appeal should be dismissed with costs.