

client disentitled to a reduction in price on this account because of his failure to give prompt notice of his contention that the cheeses were inferior and to afford the vendor an opportunity to protect himself by taking back his goods, or directing some other disposition of them. A careful perusal of the reasons for judgment discloses no finding that the Garatton cheeses were of inferior quality. . . . No doubt, the Judge proceeds upon the failure of defendant to give reasonably prompt notice of his objections to the quality of the Garatton cheese. But this delay is first referred to rather as indicative of the purchaser's satisfaction with the quality than as disentitling him as a matter of strict law to compensation, if in fact the quality was inferior. . . . Though not definitely based upon the want of notice to him of objection to the cheeses, the Judge's conclusion in plaintiff's favour seems to depend almost entirely upon that ground.

This sale was of a specific lot of cheese. It was accompanied by a warranty of quality. If that warranty was broken, the purchaser's right was not to reject the cheese; his remedy was to sue for damages for breach of warranty, or he might claim a reduction on that account in the vendor's action for the price: *Behn v. Burness*, 3 B. & S. 755. To maintain either position it is not at all essential that he should give notice of his contention that the warranty of the vendor has been broken: *Pateshall v. Tranter*, 3 A. & E. 103; *Fielder v. Starkin*, 1 H. Bl. 17; *Poulton v. Lattimore*, 9 B. & C. 259.

It therefore becomes necessary to consider what, upon the evidence, should be the finding as to the alleged breach of warranty in regard to the Garatton cheeses, and, if there were breach, to what reduction in price it should entitle defendant. . . . The evidence, in my opinion, fully justifies a finding that the warranty of quality was broken. . . . My conclusion is, that a cut of 1 cent per lb. would be the proper allowance to make. This would entitle plaintiff to recover 1-2 cent per lb. or \$20.05.

The judgment below should, therefore, be varied by reducing the recovery of plaintiff from \$75.57 to \$35.47. Taking all the circumstances into account, justice will probably be better done by allowing no costs here or below to either party.