

of the bill of lading, the Royal Bank, communication of the rejection should have reached the respondent earlier. As it was, the Harris Abattoir Company refrained from giving the latter notice otherwise than by telling the bank messenger that they would not pay the draft, and that the eggs were bad, and communicated directly only with the appellants. Apparently in order to cancel their previous delivery and give the respondent the impression that they still held the eggs, the appellants asked for permission for the purchasers to inspect, who, in their turn, on that day, without further inspection, notified the respondent that the eggs were refused.

On McKee's arrival, he must have learned the fact, and, while agreeing that the eggs were not up to sample, declined to deal with them in any way.

I do not agree with the argument that if no real damage was shewn to have resulted from the misdelivery there could be no recovery. The general principle is, that, if a legal right is invaded or a contract broken, the person injured thereby may maintain an action. . . .

[Reference to *Sanquer v. London and South Western R.W. Co.* (1855), 16 C.B. 163; *Hiort v. London and North Western R.W. Co.* (1879), 4 Ex. D. 188.]

The contract was partly verbal, partly in writing, but there is no dispute as to its terms. The eggs were to be "same as sample," and the offer and acceptance both say "f.o.b. Owen Sound." The samples candled at 4 to 6 eggs bad to the case [each case containing 30 dozen], according to Cowan, and 6 to 8 eggs according to Fox—i.e., about half a dozen to the case. The shipment, tested by 11 cases, ran 10 dozen bad to the case, or 110 dozen in 330 dozen. This is confirmed by McKee for the respondent, who also says that he candled out of this same room a week previous to the sale, and found 2 dozen bad to the case, and that after he returned from Toronto he tried three more cases, and found a little less than 3 dozen bad to the case.

The respondent says that a fair average for storage run in February would be 3 or 4 dozen bad to the case. Upon McKee's evidence and that of the respondent the learned trial Judge finds that when the eggs were shipped to the Harris Abattoir Company they were in accordance with the sample which had been furnished to that company. This finding would be embarrassing if the case were between vendor and purchaser, for McKee admits that he cannot account for the difference between the eggs as he saw them on the 21st February and those