

seller, the plaintiff, divested himself of all proprietary right in the goods? . . .

A quantity of apples . . . ordered from Regina by the defendants were placed on cars at Belleville by the plaintiff in pursuance of one term of the contract, i.e., "f. o. b. Ontario." They were to be carried to the North-West, and, according to another term of the contract, to be paid for "cash on delivery at Regina." . . . The goods were sent with contemporaneous bills of lading made out to the seller, or his agents, the Bank of Montreal, to be held against the arrival of the goods. Drafts at sight were also forwarded with the bills of lading, to be accepted and paid by the defendants, and upon payment the bills of lading were to be handed over to the defendants. The invoice did not say that the goods were shipped on account of or at the risk of the buyers, whereas the bills of lading did shew that the goods were shipped as the property of the seller, or of his agents, the Bank of Montreal.

The shipment "f. o. b." at Belleville was not a constructive delivery to the carrier for the purchasers; it was a delivery of possession to the railway company pursuant to the bill of lading, and for the seller or his agents, the bank, at Regina; and no delivery of possession to the purchaser was contemplated till he accepted and paid for the apples at Regina. Till then possession and property were alike withheld by the seller, and in this view the property was to be divested from him and lodged in the purchasers first and only when payment was made. . . .

[Reference to *Gilmour v. Supple*, 11 Moo. P. C., at p. 568, per Cresswell, J.; *Anderson v. Morice*, L. R. 10 C. P. 609.]

When the seller selected the apples called for by the order and placed them in barrels on the cars "f. o. b. Ontario," he had to that extent appropriated the apples to the particular contract, but he had not done so unconditionally by reason of the terms of the bill of lading. By these he had retained for himself and the bank the power of disposal or control till payment at Regina. . . .

[Reference to *Mirabita v. Ottoman Bank*, 3 Ex. D. 172; *Brown v. Hare*, 3 H. & N. 489, 490, 4 H. & N. 822; *Ogg v. Shuter*, L. R. 10 C. P. 159, 1 C. P. D. 47; *Sheppard v. Harrison*, L. R. 5 H. L. 131; *Cahn v. Pockett's Bristol Channel Steam Packet Co.*, [1899] 1 Q. B. 643, 663.]

Appeal allowed with costs and action dismissed with costs.