

put back into cold storage. The defendants then assumed to take steps under the provisions of the Railway Act to sell them, and did sell them, realising the sum of \$615.59, which sum they paid into Court.

I was very favourably impressed with the evidence of Frank McKee, who had charge of the cold storage eggs for the plaintiffs, and also of Morley D. Lemon, one of the plaintiffs; and I find that, when the eggs were shipped by the plaintiffs, they were in accordance with the sample which had been furnished to the Harris company. The delivery by the defendants of the eggs to the Harris company without the production and surrender of the original bill of lading was a breach of their contract with the plaintiffs, and the defendants are responsible for, or at least cannot set up as a defence, the alleged condition of the eggs on delivery.

There will, therefore, be judgment for the plaintiffs for \$1,665 with interest from the 14th February, 1913, and costs.

The plaintiffs may take out the money paid into Court and credit the amount on their judgment.

I refer to *Tolmie v. Michigan Central R.R. Co.* (1909), 19 O.L.R. 26.

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MEREDITH, C.J.C.P., IN CHAMBERS.

JANUARY 30TH, 1914.

RE GODSON AND CASSELMAN.

*Vendor and Purchaser—Title to Land—Originating Notice under Vendors and Purchasers Act—Title Derived from Devisee under Will—Condition in Restraint of Alienation—Validity—Determination of—Parties—Notice to Persons Concerned—Rule 602.*

Motion by the vendor, by originating notice under the Vendors and Purchasers Act, for an order declaring that the vendor could make a good title to land, the subject of an agreement for sale, under a conveyance from one Ellen McCabe, devisee under the will of Patrick Trainor; alleging that she took a fee simple under the devise, notwithstanding a restraint upon alienation.

Fisher (Lennox & Lennox), for the vendor.

J. H. Campbell, for the purchaser.