

the Harris Abattoir Company, but without the bill of lading. On this the eggs were examined, and not coming up to the sample were condemned. Notice of this was given to the appellants but not to the respondent, the Harris Abattoir Company thinking that the respondent was trying to make them take bad eggs, and desiring to protect the appellants, who had delivered them. The appellants, on Thursday the 20th February, applied to the respondent, through their Stratford agent, for permission to inspect, which was granted, and on the same day notice was sent by the Harris Abattoir Company that the eggs were bad.

On Friday the 21st February, McKee, representing the respondent, came down and inspected the eggs in company with the officers of the Harris Abattoir Company. In the result he agrees that the eggs were not up to sample. He, however, refused to reload them or do anything with them, and they remained with the Harris Abattoir Company until the 27th February, when they were reloaded into a car, but at the request of the appellants were re-transferred on the 6th March into the Harris Abattoir establishment, where they remained till the appellants sold them for the unpaid charges. The sale was on the 20th March, and realised \$653.99, leaving \$615.59 after deducting freight charges. The details are given in the evidence. The appellants say that the respondent would do nothing, preferring to rest on his supposed rights arising out of the premature delivery.

Under the circumstances the appellants contend that, if they are liable at all, there are no damages, because, if they had retained possession and allowed the Harris Abattoir Company to inspect, the eggs would have been rejected, and properly so. Hence they say no damage has resulted to the respondent except what is the natural consequence of shipping eggs which were not up to sample and then refusing to make the best of the position.

The bargain is not all in writing, but before shipment the Harris Abattoir Company had bought the eggs and had the right to see if they were up to sample. If the regular course of retaining possession until delivery was demanded by the holder of the bill of lading had been followed, the difficulty would not have arisen. The act of unloading on Monday into the Harris Abattoir Company's establishment was, upon the evidence, no detriment to the eggs. The inspection was made on Tuesday, and the eggs proved not to be according to contract. Had this inspection been made by consent or arrangement with the holder