

La Cour de revision a rendu un jugement admettant chaque demande en partie.

*Mr. Justice Guerin.* The 220 bags of peas which were all delivered by Limoges to S. J. Carter & Co. were sold on a written express warranty *garantie de fait*, that the peas were "prime boilers". Whatever therefore might have been the custom of trade between merchants as to the sale of peas, S. J. Carter & Co. had a right to rely upon the warranty that the peas sold were "prime boilers" and they were under no obligation to have them examined and tested to verify whether the warranty was true or false. They immediately began to sell and to ship the peas to several of their customers, and within a short time they received letters telling them that these peas were not boilers at all. The evidence shows that the peas would not soften when boiled, and that they are therefore unfit for making pea soup; they are not of the quality stipulated by the express warranty upon which the sale was made. In view of this express warranty, Art. 1530, C. C., referring to latent defects does not apply as to the diligence within which a redhibitory action must be brought, which results from the obligation of warranty against latent defects.

As a matter of fact, the evidence does not justify the conclusion that S. J. Carter & Co. were lacking in reasonable diligence, when they brought their action, nor that their conduct implies an acceptance of all the peas sold them by Limoges.

In principle, it is true that after the delivery of goods sold, the delay of the purchaser to refuse them, his silence, his inactivity may imply a construction acceptance on his part. The delay for acceptance is not fixed by the law, and when the delay is not mentioned in the contract, it