

and directed judgment to be entered for the plaintiffs for \$746.37, a sum considerably less than the amount sued for. Neither party was satisfied with this adjudication.

It was rightly found by the trial Judge that there was a representation and warranty, that the warranty was broken, and that the defendants were entitled to a reduction in the contract-price. This was not seriously disputed—the whole question was as to the amount of the reduction to be allowed.

The abatement of the price to be allowed on a breach of warranty is the amount by which the subject-matter is reduced in worth by reason of the breach of contract: *Mondel v. Steel* (1841), 8 M. & W. 858; cf. *Davis v. Hedges* (1871), L.R. 6 Q.B. 687.

It is the actual reduction in value that must be considered, not an estimate made by either party. The price obtainable for the goods may not be quite conclusive of the actual value, but it is strong evidence, and in case of doubt may be practically conclusive. It was fairly proved that the selling price of these peaches, as they should have been, was at least \$2 per box.

The defendants used their best endeavours to sell the fruit to the best advantage, and the price realised might fairly be taken as the actual value, subject to what should be said as to claims by purchasers from the defendants.

The gross amount realised was \$1,023.60; but the defendants were obliged to make an allowance to certain of their customers by reason of the defects in the fruit, in all \$69.35, making the net proceeds \$954.25. Had the peaches been as they were represented, the amount would have been at least \$1,400. The defendants then were damaged to the extent of \$445.75, but of this \$17.75 was due to damaged boxes, for which the plaintiffs were not responsible. At least \$428 must be deducted from the purchase-price.

Reference to *Dingle v. Hare* (1859), 7 C.B.N.S. 145, and *Randall v. Raper* (1858), E.B. & E. 84.

There did not seem to be any probability of further claims being made, and there was no evidence of any sales that might result in claims. Nothing purely hypothetical should be taken into account.

The defendants were entitled also to an admitted set-off of \$32, thus reducing the claim of the plaintiffs by \$460, and making the amount to which they were entitled \$709, which was \$72.07 less than the amount paid into Court. The defendants should have the \$72.07.

When it became apparent that the peaches were not up to warranty, the defendants sent their cheque for \$740.25, asking the plaintiffs to accept it in full. On the evidence, it was doubtful whether this offer was formally without prejudice; but, in any