THOMAS ROSS, (PLAINTIFF).....APPELLANT; 1890

AND *Nov. 20, 21.

MATTHEW HANNAN, (DEFENDANT)....RESPONDENT. 1891

ON APPEAL FROM THE COURT OF QUEEN'S BENCH FOR LOWER CANADA (APPEAL SIDE.) *June 22.

Sale of goods by weight—Contract when perfect—Damage to goods before weighing—Possession retained by vendor, effect of—Depositary—Arts 1063, 1064, 1235, 1474, 1710, 1802 *C. C.*

Held, Per Ritchie C.J., Strong and Fournier JJ., affirming the judgment of the court below, that where goods and merchandise are sold by weight the contract of sale is not perfect and the property of the goods remains in the vendor and they are at his risk until they are weighed, or until the buyer is in default to have them weighed; and this is so, even where the buyer has made an examination of the goods and rejected such as were not to his satisfaction.

Held, also, Per Ritchie C. J., Fournier and Taschereau JJ., that where goods are sold by weight and the property remains in the possession of the vendor the vendor becomes in law a depositary, and if the goods while in his possession are damaged through his fault and negligence he cannot bring action for their value.

Per Patterson J., *dubitante*, whether there was sufficient evidence of acceptance in this case to dispense with the writing necessary under art. 1235 C.C. to effect a perfect contract of sale.

APPEAL from a judgment of the Court of Queen's Bench for Lower Canada (appeal side) (1), reversing the judgment of the Superior Court for Lower Canada, sitting in and for the District of Montreal (2).

This was an action brought by the appellant to recover from the respondent the sum of $2955.49 which he alleged to be the loss resulting to him on the resale of a certain quantity of cheese damaged after the cheese was at the purchaser's risk.

*PRESENT.—Sir W. J. Ritchie C.J. and Strong, Fournier, Taschereau and Patterson JJ.

(1) M. L. R. 6 Q. B. 222.

(2) M. L. R. 2 S. C. 395.

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The plaintiff, present appellant, by his declaration alleged that on the 9th of April 1886, he through William Fuller, sold the defendants 1642 boxes of cheese, then stored on Fuller's premises, at 10½ cents a pound, cash on delivery; that defendant selected, examined and set apart the cheeses, ordered a large number to be removed from the second floor to the ground floor and coopered a large number of boxes; that it was agreed that the weights should be tested according to mercantile usage; that the price of cheese immediately afterwards fell, and the defendant offered to re-sell the cheese; that the defendant refused to remove or pay for the cheese and was protested on the 25th April, to have the weights tested on the 27th, and to remove the cheese before the 29th, on pain of the sale of the cheese at his risk; that he disregarded the protest and the cheese was tested on the 27th by the City weigher, the sale was advertised and held, and the cheese sold; that after the purchase of the cheese, the portion of it which defendant had caused to be removed to the ground floor of Fuller's warehouse was wet by reason of the flood on the 17th April, the cause being beyond the plaintiff's control, and it became necessary to dry it, and to purchase new boxes; that the plaintiff paid for the handling and re-boxing of the cheese the sum set forth in the declaration, the total claim for depreciation in price and money laid out and expended amounting to $2946. 45.

To this, the defendant pleaded, besides a general denial, a special plea that there was never any contract but only a proposition to sell the cheese to defendant, he to take delivery at his own time, but the proposition was never carried out, and the property never passed; that the cheese was never tested in accordance with mercantile usage, and he was never called upon to test it until after it had become damaged; that the

defendant never had any control over the cheese; that whatever agreement there was between the parties did not constitute a complete contract of sale, but a mere agreement to buy; that by law and the universal custom of trade existing between and recognised by all merchants carrying on trade and business in the City of Montreal and elsewhere such agreement to buy could not and did not produce the effect of a complete sale, and could not and did not pass the property in the said cheese to the defendant, but the same, until the completion of the said contract by the doing of all the things above mentioned, remained and was the property of the plaintiff.

The plea further says that, consequent on the damage by the flood, the defendant was not bound to carry out the agreement, and denies expressly that he caused the removal of any part of it from the second flat to the ground floor, or caused any part to be coopered, or did an act of ownership.

The case was tried in the Superior Court before Torrance J. who gave judgment in favor of the plaintiff. In the Court of Queen's Bench this judgment was reversed, and the plaintiff's action dismissed, Tessier & Bossé JJ. dissenting.

Abbott Q.C. and *Campbell* for appellant.

The intention of the parties was to pass the property, and by law the sale of the cheese was perfect, and if so the risk of loss was on the respondent. Art. 1474 C. C. and arts. 1585 and 1586. C. N., compared. Delamarre and Lepoitevin (1); *Gilmour* v. *Supple* (2); *Logan* v. *Lemesurier* (3); Campbell on Sales (4); and authorities cited by Torrance J. in his judgment in the Superior Court in *Ross* v. *Hannan* (5). As to

(1) 4 Vol. Nos. 118, 128.
(2) 11 Moo. P. C. 570.
(3) 6 Moo. P. C. 134.
(4) P. 229.
(5) M.L.R. 2 S. C. 397.

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whether the sale had been sufficiently proved the verbal proof which was tendered was sufficient. *Munn* v. *Berger* (1).

Doherty Q.C. for respondent.

There is in the record no legal evidence whatever of the alleged sale from appellant to respondent.

Appellant's evidence consists entirely of parol testimony—that of his agent, Mr. Fuller, being the principal, indeed, almost the sole, evidence relied on as proving the sale.

Neither is there legal evidence of any such delivery or acceptance as would suffice to take the alleged contract out of the operation of the provision of the Statute of Frauds as embodied in the civil code of Lower Canada by article 1235 of that code.

Even if parol evidence of the contract were admissible, that adduced in this cause does not establish the existence of any completed or *perfect* sale, such as would transfer ownership or place the object sold at the risk of the respondent.

That such a sale leaves the goods up to the time of the weighing or testing at the risk of the vendor clearly results from the term of article 1474 C. C. above cited. The sale is not perfect; the property remains in the vendor; the purchaser has no recourse, failing recovery, but his action in damages.

That this is both the French and the English law a brief examination of the authors who have written under both systems will clearly demonstrate.

That such was the law in France previous to the code Napoléon is undoubted. Pothier, Vente, (2) makes this perfectly clear, and shows, moreover, that the sale now in question is in its nature a sale by weight, and governed by the rule above stated.

(1) 10 Can. S. C. R. 512.

(2) Pp. 308 and 309.

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The commentators on the code Napoléon, respondent submits, equally support his position. Troplong, Vente (1) and following, under article 1585, of the code Napoléon, has a very full exposition of the doctrine of the French law upon the subject, which bears out perfectly respondent's contention. Marcadé, on the same article (1585) of the code Napoléon (2) also sustains the pretension of respondent, as does Mourlon (3).

It is true there exists a divergence of opinion among the authors who have commented on the French code, resulting from the apparently limited terms of article 1585 of that code, as to whether or not in such a sale the property does or does not pass to the purchaser before weighing. All, however, are agreed that at all events the goods are up to the time of weighing at the risk of the vendor.

A third ground which respondent would submit as entitling him to a dismissal of appellant's action is the gross negligence of appellant's agent who had possession of the cheese, and to which is directly attributable the loss resulting from the flood. It is proven that the approach of the flood was known in time to give ample opportunity to put the cheese upstairs in a place of safety. The evidence of Fuller on this subject shows that he knew in time of the approaching flood, but took no precaution whatsoever to protect the cheese. Had he but had it removed upstairs there would have been no damage. Whether the cheese belonged to respondent or appellant, whether it had been brought down by respondent's orders—at a time when no flood was anticipated —or not, it was clearly the duty of the vendor, as whose agent Fuller held the cheese, to use ordinary prudence in keeping it safe—and the fact that being on the spot

(1) P. 81
(2) Vol. 6 pp. 154 et seq.
(3) Vol. 3 pp. 473 et seq. under arts. 1085-86, C. N.

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and able to prevent it, he willfully neglected to do so, and stood by inactive and saw the damage done, is alone sufficient to justify respondent's refusal to accept and pay for the damaged goods. Appellant in his declaration recognized his obligation to prevent the damage if he could, and alleges that "he could not prevent it." The testimony of his agent in the transaction shows that he could have prevented, but would not.

Campbell in reply—referred to Aubry et Rau (1); and *Frigon* v. *Busselle* (2).

Sir W. J. RITCHIE C.J.—The article agreed to be sold in this case was uncertain and indeterminate until the weight of the cheese was determined, and the objectionable cheese separated, and I cannot think that the intention was that the property should pass until the amount secured by the warehouse receipt and the balance of the cash was paid. At any rate, even if the property had passed it was in the possession of the seller as depositary and he was bound to take reasonable care for its preservation, which I think the evidence clearly shows he did not do. In fact he admits that he did nothing towards preserving the property which might have been done had the proper steps been taken. I therefore think the appeal should be dismissed.

STRONG J.—Was of opinion that the judgment of the Court of Queen's Bench should be affirmed.

FOURNIER J.—L'appelant demandeur en cour Supérieur, réclamait par son action $2,955.49 de dommages, lui résultant de l'inexécution par l'intimé d'un contrat pour l'achat de 1643 boîtes de fromage, à 10½ centins la livre. Il alléguait que la vente avait été faite par

(1) 2 Vol. p. 341.

(2) 5 Rev. Lég. 559.

l'intermédiaire de W. M. Fuller, chez qui elles étaient en entrepôt, que l'intimé les avait choisies et mises à part, et ensuite transportées du deuxième au premier étage où il les avait fait *coopered*, réparer,—qu'elles devaient être pesées pour s'assurer de leur exacte pesanteur.

Il alléguait encore que par protêt notarié, en date du 25 avril, il avait notifié l'intimé d'avoir à faire peser le fromage, le requérant en même temps d'en payer le prix et de l'enlever de l'entrepôt de Fuller, avant le 29 avril, à défaut de quoi il le ferait vendre à l'encan public et réclamerait la différence entre le montant que rapporterait cette vente et celui de la vente faite à l'intimé ; que l'intimé ayant refusé de se conformer à cette notification, la vente avait eu lieu à une perte de $2,995.45, qui'l réclamait par son action.

L'intimé plaida à cette action qu'il n'y avait pas eu vente du fromage en question, mais de simples pourparlers, que la propriété en était toujours restée à l'appelant ; que le fromage n'avait été ni pesé ni délivré à l'intimé ; que celui-ci n'avait été mis en demeure de peser le fromage qu'après l'inondation mentionnée dans la déclaration de l'appelant, pendant laquelle le fromage avait été considérablement endommagé et détérioré ; que s'il y avait eu promesse d'acheter le dit fromage, cette promesse ne constituait pas un contrat de vente,—mais tout au plus ;

At most an agreement requiring for its completion the doing of certain things.

et spécialement la vérification de la quantité et la livraison du fromage ; que le fromage étant demeuré la propriété de l'appelant et ayant été endommagé par l'inondation, l'intimé n'était pas obligé d'en payer le prix.

Il y a eu une défense en droit partielle dont l'examen n'est pas important pour la décision de la cause.

La contestation étant liée et la preuve faite, la cour

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Supérieure rendit jugement en faveur de l'appelant, mais ce jugement fut plus tard infirmé par la cour du Banc de la Reine. C'est ce dernier jugement qui est maintenant soumis à la revision de cette cour.

La première objection de l'intimé est à la légalité de la preuve. Le contrat allégué par l'appelant est sans doute d'une nature commerciale et la preuve en doit être faite conformément aux articles du code civil et spécialement aux articles 1233 et 1235. Il n'y a eu aucun écrit ou mémorandum de ce contrat entre les parties. Toute la preuve a été faite par les témoins et plus particulièrement par Fuller, l'agent de l'appelant. Il n'y a pas eu non plus de commencement de preuve par écrit, bien que l'intimé ait été interrogé comme témoin de l'appelant. Les seules questions qui lui ont été faites ont rapport à l'agence de William Hannan avec qui Fuller a négocié cette vente. L'intimé a admis cette agence. Mais en prenant la preuve qui a été faite comme étant légale, cette preuve établit-elle une vente parfaite transférant la propriété de la chose vendue à l'intimé et la mettant à ses risques et périls? Telle est la seule question que présente cette cause.

La preuve de l'appelant consiste dans le témoignage de Fuller qui déclare que William Hannan, agissant pour l'intimé, convint d'acheter 1643 boîtes de fromage de l'intimé à raison de 10½ cts la livre, le fromage devant être pesé et le montant du prix établi avant la livraison. C'est une vente de choses mobilières faite au poids suivant l'article 1474 du code civil qui dit :—

> Lorsque des choses mobilières sont vendues au poids, au compte ou à la mesure, et non en bloc, la vente n'est parfaite que lorsqu'elles ont éte pesées, comptées ou mesurées.

En prenant la version de la convention donnée par Fuller, il s'agirait de la vente d'une certaine quantité de fromage avec la condition que le poids en serait vérifié (*tested*). Une telle vente ne peut être parfaite

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qu'après que les choses vendues ont été pesées et le montant de la vente établi; la propriété demeure au vendeur, et à défaut de livraison, l'acheteur n'a que son recours en dommages. Notre article 1474 déclare qu'une telle vente n'est pas parfaite, adoptant la doctrine de Pothier, de Marcadé et Troplong, qui sont les auteurs cités par les codificateurs sur cet article.

La règle est la même dans le droit anglais. Lord Blackburn dans son traité du contrat de vente la formule ainsi (1) :

The second [rule] is that where anything remains to be done to the goods for the purpose of ascertaining the price as by weighing, measuring or testing the goods where the price is to depend on the quantity or quality of the goods, the performance of these things, also, shall be a condition precedent to the transfer of the property, although the individual goods be ascertained, and they are in the state in which they ought to be accepted. (After discussing this rule he declares it to be firmly established as English law as having been adopted directly from the civil law.)

Il cite nombre de causes au soutien de cette doctrine et entre autres, celle de *Logan* v. *Lemesurier* (2), de Québec, décidée au conseil privé, comme directement applicable. Benjamin (3), approuve la règle définie par Lord Blackburn et cite nombre de décisions qui l'ont confirmée.

Ainsi la vente, telle qu'alléguée n'a pas eu l'effet de transférer la propriété de la chose vendue à l'intimé, ni de la mettre à ses risques et périls jusqu'à ce qu'elle eût été pesée. Avant que cela n'eût été fait et avant même aucune démarche de l'appelant pour mettre l'intimé en demeure de le faire, l'inondation envahit l'entrepôt où était déposé le fromage et l'endommagea.

L'appelant prétend que l'intimé était alors en défaut de ne pas avoir pris livraison du fromage. C'est sur ce fait que le jugement de la cour Supérieur est

(1) 2nd edition, p. 127. (2) On sales, parag. 319.
(3) 6 Moo. P. C. 134.

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fondé, mais la cour du Banc de la Reine déclare que c'est évidemment une erreur de fait. Fuller admet dans son témoignage que l'intimé avait jusqu'au 26 d'avril pour enlever le fromage. L'autre partie à la négociation dit que Hannan avait deux semaines à compter du 9 avril. L'inondation qui a causé le dommage a eu lieu le 17 avril, et ce n'est que le 24 du même mois que l'appelant a sommé l'intimé de prendre le fromage et même une plus grande quantité que celle vendue.

L'appelant prétend faire ressortir la responsabilité de l'intimé des faits que quelques-uns de ses employés ont aidé à *cooper*, réparer les boîtes de fromage, et à les descendre dans le premier étage du magasin. L'appelant prétend au contraire qu'il a été *coopered* par les employés de l'appelant, mais que Wilson, ami intime de Fuller qui était alors malade, a surveillé l'ouvrage pour ce dernier, et lui épargner du trouble.

La circonstance que le fromage a été descendu du premier étage n'a aucune importance; il est prouvé que le fromage était entassé de telle manière qu'il n'était pas possible de l'examiner, ni de réparer les caisses. La chose a été faite sous l'ordre de Wilson qui représentait l'intimé.

L'intimé avait aussi plaidé que c'était un usage bien établi dans le commerce de fromage que la vente n'en était pas complète, et ne transférait pas la propriété avant la vérification de la quantité et la réparation des boîtes; quoique la défense en droit faite à cette partie du plaidoyer ait été renvoyée,—l'enquête ayant eu lieu devant un autre juge,—la permission d'en faire la preuve en a été refusée à l'intimé. Cependant cette question se trouve sans importance maintenant, attendu qu'il n'y a pas eu vente.

Un autre moyen que l'intimé peut invoquer contre l'action de l'appelant c'est la négligence grossière de

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son agent qui était en possession du fromage. Il est prouvé que l'inondation n'est pas venue subitement et qu'il a eu amplement le temps de mettre le fromage en sûreté. Fuller lui-même dit qu'il a eu connaissance du progrès de l'inondation. S'il eût seulement fait remonter le fromage en haut, il eût évité tout dommage. Dans tous les cas, que le fromage appartienne à l'intimé ou à l'appelant, qu'il ait été descendu ou non, par l'ordre de l'intimé à un temps où il n'y avait pas encore apparence d'inondation, il était indubitablement du devoir du vendeur, dont Fuller était l'agent, d'user de la prudence ordinaire pour la conservation du fromage, et le fait qu'étant sur les lieux et à portée de le sauver, il a volontairement refusé de le faire et est demeuré tranquille spectateur du dommage, est suffisant pour justifier l'intimé de refuser d'accepter le fromage endommagé. L'appelant a reconnu dans son action qu'il était obligé de prévenir le dommage s'il était en son pouvoir de le faire. Le témoignage de son agent fait voir qu'il aurait pu l'empêcher, mais qu'il ne l'a pas voulu.

L'appel doit être renvoyé avec dépens.

TASCHEREAU J.—[His Lordship after stating the effect of the pleadings as hereinbefore given proceeds as follows :]

Assuming as the appellant contended that the sale was perfect to the fullest extent, and that the ownership had passed to the defendant, yet I do not see how he can maintain his action. The vendor who agrees to retain the possession of moveable goods till the vendee is ready to take them is a depositary and as such bound to apply in the keeping of the thing deposited the care of a prudent administrator. 1802 C. C. Pardessus (1); Bedarride, Achats & Ventes, (2);

(1) Droit Com. 1 vol. 351. (2) P. 158 et seq.

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Troplong, Vente (1); Que le vendeur jusqu'a livraison doit conserver comme depositaire. Art. 1063 C. C., 1136 C. N.; 1064 C C. 1137 C. N.

Now it is proved clearly here that, if Fuller for the plaintiff had acted as a prudent administrator, to use the terms of the code, this cheese would not have been damaged by the flood. Fuller admits it,

Q. On what day was it that the water rose in your store?

A. It was on Saturday I think.

Q. For a day or two previous this water had been rising towards your store?

A. Of course, it was setting back, some water was coming into the street.

Q. You were aware of that?

A. I could not be otherwise, sir.

Q. And you took no steps to remove the cheese?

A. I had nothing to do with it, I had no right to lay a hand on it.

Q. You took no precautions whatever?

A. I had nothing to do with it, as I said before, Mr. Hannan knew where the cheeses were.

Q. You were in the store, on that flat, on that Saturday?

A. I was, until I had to get a Grand Trunk team to take me out.

He never notified Hannan that the cheese was in danger.

Oliver, in his examination, says :—

Q. Do you recollect the circumstance of that flood occurring?

A. I do, sir.

Q. Did the water rise, or give indication of rising a sufficient time previous to its actually coming into Mr. Fuller's store, to enable him if he had used prudence to remove any goods that were on the lower floor?

A. I think there would have been time for a man to put the pile of cheese up higher, to raise it up to the next flat.

Q. You consider that an ordinarily prudent man would have done that?

A. Well, I think so, yes.

Vaillancourt.

Q. Mr. Vaillancourt, vous êtes marchand de fromage en la cité de Montréal?

(3) 1 vol. 361.

R. Oui, monsieur.

Q. Votre place d'affaire se trouve à coté de celle de Mr. Fuller, je crois?

R. Oui.

Q. Elle se trouvait là le printemps dernier, au mois d'avril, lors de l'inondation qui a eu lieu ?

R. Oui.

Q. Voulez-vous dire si les indications de cette inondation n'était pas telles le Samedi qu'un homme usant de la prudence ordinaire aurait enlevé des marchandises qui se seraient trouvées au premier étage?

R. Pas avant le Samedi.

Q. Mais le Samedi?

R. Oui.

Q. Croyez-vous que si Mr. Fuller avait employé la diligence ordinaire il aurait pu transporté le fromage en question du bas en haut, et le placer de manière à éviter l'inondation ?

(Objecté à cette question comme illégale. Objection maintenue.)

A rather extraordinary ruling.

It does not make the least difference that this cheese was in Fuller's actual possesion and not in appellant's. The case must be determined as if Fuller was out of the question—as if that store where the cheese was had been appellant's own store. So that even if the sale is to be considered perfect on the 16th, the appellant having agreed to keep these goods for the respondent, in law he became a depositary.

Nothing turns on the fact that Hannan or appellant brought them down to the lower flat. It is evident that it was done by both parties, It had to be done for the cooperage and taking of weights, but even if it was Hannan who had brought them down, yet, they remained in appellant's possession, who would not allow Hannan to take possession and remove them till payment.

I am of opinion that this appeal should be dismissed.

PATTERSON J.—I have given to this case a full and careful consideration without being able to feel as

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clear as I should desire upon all the questions that have been raised. This does not arise so much from the uncertainty in which some questions of law which have been debated would seem to be involved as from the difficulty of forming a sufficiently distinct opinion upon the facts. In the result I am unable to say that the judgment of the Court of Appeal is in my opinion erroneous.

The acts done on the part of the purchaser in handling the goods, inspecting them, rejecting some and approving of others, are in themselves strong evidence of acceptance of the goods; but on the other hand there are the facts that there was no delivery to him, and no intention of giving him control of any part of the goods until the price was ascertained and paid, or at least enough paid to recoup the advance for which the goods were held under a warehouse receipt. On this account I hesitate to say that the writing which is required by article 1235 C.C., unless the buyer has accepted or received part of the goods, or given something in earnest to bind the bargain, was dispensed with.

The acts done in the warehouse of Mr. Fuller in the examination of the cheese, whether the removal of the boxes from the upper floor to the lower for the convenience of handling them were done by the servants of the purchaser with the consent of the vendor, or by the vendor for the convenience of the purchaser, do not strike me, having regard to all the circumstances, as proving delivery or acceptance, or as necessarily amounting to more than steps which might reasonably be taken as preliminary to the delivery and acceptance that would change the property from the one man to the other.

The discussion respecting the nature of the sale, whether a sale by weight, number, or measure, or a

sale in the lump, within the meaning of those terms as used in article 1474, is in this view of the question of delivery and acceptance, somewhat irrelevant, or at all events the subject of the necessity for finally ascertaining the price by settling the exact number of pounds of cheese, is not reached. The authority of Pothier (1) and other writers referred to by the respondent would certainly put a sale of an entire lot at so much a pound on the same footing as a sale at so much a pound of so many pounds out of a larger bulk, as opposed to a sale *per aversionem* or *en bloc*. I do not find it easy to grasp the principle on which that doctrine rests, and there may be good ground for the appellant's contention against its being accepted as being now the law, but the present case scarcely calls for a determination of the question.

It has been argued that even if the property passed, yet it remained until the final delivery, which was postponed to a day that had not arrived when the flood occurred, at the risk of the vendor. In the Superior Court where the judgment was in favor of the vendor it was considered that from the 15th, which was before the flood, and which was the day on which, as at first arranged, the goods were to have been paid for and removed, the goods remained in the warehouse at the request and for the convenience of the purchaser, and that the vendor was for that reason relieved from responsibility for the damage caused by the water. I am not able to take that view. I think that the completion which was to have been effected on the 15th was deferred, at the request, no doubt, of the purchaser, but still it was the completion of the sale that was deferred. I notice this topic because I do not assent to the proposition that, assuming the property to have passed, the negligence of the vendor, who had

(1) Vente Nos. 308, 309.

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thus become bailee for the purchaser, would afford an answer to the action. His liability as bailee would be limited to the damage actually sustained by the cheese, which was very trifling, *plus* the cost of drying and re-boxing those that had been wet. The incident would not have justified the purchaser (who *ex hypothesi* had become the owner,) in refusing to take his property. The authorities referred to on the subject, including the passages cited from Pothier, which are found under the heading "*Aux risques de qui est la chose vendue*," are more applicable when the thing sold has been wholly destroyed or lost than when it has only been damaged.

It is manifest that the question on which the case must turn is: Was there a change of property from the vendor to the purchaser? If there was such a change it must have been effected by a delivery and acceptance. If there was not a delivery and acceptance then, inasmuch as there was no payment in earnest, and no writing, there was no contract to support an action for refusing to accept and pay for the goods.

I agree in dismissing the appeal.

Appeal dismissed with costs.

Solicitors for appellant: *Abbotts, Campbell & Meredith*

Solicitors for respondent: *Doherty & Doherty.*