funds with themselves,[22] and exemption from giving bond;[23] hence it does not seem unreasonable to hold them to the higher level of performance.

The courts in the trust field have been slow in holding corporate fiduciaries to greater care than individuals despite the reasonableness of the view that a trustee should be required to conform to the representations he makes. Recent remarks in the cases seem to indicate, however, that this concept of added legal responsibility in the event of special representations may soon become an accepted doctrine of trust law.

BUYER'S LIABILITY AFTER REJECTING "ROLLING ACCEPTANCE FINAL" SHIPMENT

The plaintiff, Joseph Martinelli & Co., contracted to sell to the defendant, L. Gillarde Co., a carload of U.S. No. 1 cantaloupes, f.o.b. shipping point, on a rolling acceptance final basis. The melons were inspected at the point of shipment and were graded U.S. No. 1. On arrival the melons were again inspected by a federal inspector but were found to be infected with Cladosporium Rot, a defect which had been latent at the time of the first inspection. The defendant rejected the goods, and the plaintiff sued for the contract price less the amount received by it as a result of a sale of the goods by the carrier. Although the Circuit Court held that under the Perishable Agricultural Commodites Act[1] the buyer had no right to reject the shipment but could raise the defense of breach of warranty, on rehearing that court decided that the rejection of the goods constituted a waiver of the defense. The buyer accordingly was held liable for the contract price. *J. Martinelli & Co., Inc. v. Gillarde Co.*[2]

The defendant contended that the controversy should be adjudicated under the Uniform Sales Act since the P.A.C.A. was not intended to supersede that act[3] but only to provide additional remedies to the claimant.[4] Section 69 of the

[22] Hayward v. Plant, 98 Conn. 374, 119 Atl. 341 (1923); Trust Companies as Trustees and Depositaries, 23 Col. L. Rev. 465 (1923); 29 Mich. L. Rev. 125 (1930), noting In re Clark's Will, 136 N.Y. Misc. 881, 242 N.Y. Supp. 210, 220 (1930), rev'd on other grounds 257 N.Y. 132, 177 N.E. 397 (1931).

[23] Ala. Code Ann. (Michie, 1923) §§ 6391–96 (corporate trustee exempted from giving bond by depositing with state treasurer certain securities); Conn. Gen. Stat. (1930) § 3885 (no bond required of trust company in absence of court order). For other state statute citations see 1 Bogert, Trusts and Trustees § 151, n. 47, at 457.

[1] Perishable Agricultural Commodities Act of 1930, 46 Stat. 531 (1930), as amended, 7 U.S.C.A. §§ 499 et seq. (1939).

[2] 168 F. 2d 276 (C.C.A. 1st, 1948), rev'd on rehearing 169 F. 2d 60 (C.C.A. 1st, 1948), cert. den. 69 S. Ct. 237 (1948).

[3] The Perishable Agricultural Commodities Act was passed in 1930 to curb unfair and fraudulent practices prevalent in the marketing of perishable products. Dealers would often reject shipments or demand allowances in price on the basis of fabricated claims of unmerchantability. Because of the difficulties of proof and the expenses of long distance suits, sellers often took no action. Congress, by this act, set up the machinery to remedy these abuses. All dealers engaged in the trade were to be licensed by the federal authority, and this license was to be revoked if the dealer was found to have engaged in certain practices. A system of inspec-

Sales Act provides that in the event of a breach of warranty a buyer may elect to reject the goods and rescind the contract or accept the goods and sue for damages. If the Sales Act were controlling here, as was held by the District Court,[5] the defendant would have been justified in rejecting the shipment. But the Circuit Court held that the Sales Act was not applicable since rolling acceptance final, which was a term embodied in the contract,[6] is a trade term, not covered by the Sales Act which has been interpreted by the regulations and adjudications of the board established pursuant to the P.A.C.A.[7] That board has ruled that rejection of a rolling acceptance final shipment is unlawful and constitutes a waiver of the breach of warranty defense.[8] Thus a buyer who re-

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tion of shipments was to be provided whereby the products could be inspected by federal inspectors on payment of a small fee both at the point of destination and of origin. A board to hear claims and issue reparation orders was set up under the jurisdiction of the Secretary of Agriculture. Hearings by this board were less expensive and more efficient than those held under conventional judicial procedure. The Secretary was also permitted to make rules and regulations necessary to enforce the Act as long as these regulations were in line with its purposes. See Le Roy Dyal, Inc. v. Allen, 161 F. 2d 152 (C.C.A. 4th, 1947); Department Interpretation and Construction of Perishable Agricultural Commodities Act, Service and Regulatory Announcements, No. 121 (Nov., 1938); Report of Senate Committee on Agriculture and Forestry accompanying Senate Bill 108, 71st Cong. (filed May 3, 1928), S. Rep. 6, and the Debate in the House of Representatives, 72 Cong. Rec. 4243, 5215, 8537, 8545, 8932, 9990, 10631 (1930).

[4] See 72 Cong. Rec. 8538, 8540 (1930) where Mr. Summers said that the bill does not propose to accomplish anything which might not be accomplished under the existing law, nor does it attempt to remove the protection of existing substantive rights in the transaction.

[5] J. Martinelli & Co., Inc. v. Gillarde Co., 73 F. Supp. 293 (1947).

[6] In connection with the inapplicability of the Sales Act, it should be noted that many cases have held that remedies afforded by that act will be disregarded if the contract provides for an exclusive remedy. See Advance Rumely Thresher Co. v. Wharton, 211 Ia. 264, 233 N.W. 673 (1930), in which the plaintiff contracted with the defendant for the sale of a tractor on the condition that the return of the machine and the recovery of the money paid should constitute the sole and exclusive remedy in case of breach of warranty. Although the Sales Act would permit the buyer to keep the goods and sue for damages or interpose a defense, the court held that the buyer could not keep the tractor and interpose a defense of breach of warranty in an action for the price.

Other cases enunciating the rule as to the exclusiveness of a remedy specified as such in the contract are Berry Asphalt Co. v. Apex Oil Products Co., 215 Minn. 198, 9 N.W. 2d 437 (1943); Black Motor Co. v. Foure, 266 Ky. 431, 99 S.W. 2d 177 (1937); Socony Burner Corp. v. Gold, 227 App. Div. 369, 237 N.Y. Supp. 552 (1929); Renne v. Volk, 188 Wis. 508, 205 N.W. 385 (1925); Pottash v. Reach & Co., 272 Fed. 658 (C.C.A. 3d, 1921).

[7] 7 Code Fed. Reg. § 46.30 (s) (1938) defining rolling acceptance. Rolling acceptance final as such is not defined in the regulations but it has been held to mean the same thing as f.o.b. acceptance final which is defined in the regulations in 7 Code Fed. Reg. § 46.24 (r)(m) (Cum. Supp., 1943).

[8] L. Gillarde Co. v. City Produce Co., 6 A.D. 556 (1947); Joseph Rothenberg v. H. Rothstein and Sons, 6 A.D. 148 (1947); Mexican Produce Co. v. Lewis D. Goldstein Fruit and Produce Corp., 4 A.D. 946 (1945); L. Gillarde Co. v. Ritter and Co. and C. Comella Inc., 4 A.D. 594 (1945); Battistini Brothers v. Senter Brothers, Inc. and/or C. Comella, Inc., 4 A.D. 571 (1945); Nick Argondelis v. Senter Brothers, Inc., 4 A.D. 420 (1945); Mack Owen and Co. v. Joseph Rothenberg and Simon Siegel Co., 3 A.D. 1100 (1944); Puget Sound Vegetable Growers Association v. A. Reich and Sons, Inc., P.A.C.A. docket number 2530 S. 1955 (1938); see Le Roy Dyal Co., Inc. v. Allen, 161 F. 2d 152 (C.C.A. 4th, 1947).

jects a shipment because it is defective will nonetheless be held liable for the full contract price. The buyer may of course recoup if he accepts the goods and pays the contract price.

The thrust of this interpretation can be most readily perceived by example. If the Sales Act applied to a shipment of goods for which the buyer had contracted to pay $100, and the goods on arrival had deteriorated and were worth only $50, by rejecting the goods and rescinding the contract the buyer would be relieved of any obligation to the seller. If, however, a buyer rejects a rolling acceptance final shipment of the same value, he will be held accountable to the seller for $50 damages, or the difference between the contract price and the sum received by the carrier who has disposed of the defective goods.

Recognizing this seeming unfairness, the Circuit Court in its first opinion held that while rejection under such a contract was illegal, the buyer would nevertheless be permitted to assert in defense that the goods were defective. Thus the buyer would be liable for any damages sustained by the seller as a result of rejection. These damages arise from the acknowledged disparity between the selling price of unrejected defective goods and the selling price of rejected defective goods of comparable quality.[9] The obvious difficulties in computing this difference render impractical the rule laid down by the Circuit Court in its first opinion.

The court's ruling on rehearing that the breach of warranty defense is not maintainable gives effect to the terms of the contract and to the purpose of the P.A.C.A. By requiring buyers to accept perishable goods even though defective, the possibility of bad faith rejection and subsequent repurchase from the carrier at a distress price is eliminated. The waste and spoilage incident to rejection and the delay attendant in placing the goods into commercial channels is also avoided. Elimination of the defect as an excuse for rejection, with the intention of speeding the transaction, is analogous to the letter of credit cases in which the issuing bank is precluded from examining the goods as a condition precedent to paying the seller.[10] The effect of both rules is to impose the burden of litigation on the buyer. Since buyers are frequently large middlemen, and sellers small growers, the rule tends to redress unequal bargaining power.

In any event, the construction of an act of Congress by those charged with its execution should not be disregarded unless such construction is clearly wrong.[11] Since the Secretary seems to have construed the Act reasonably, and within the powers granted him by Congress, his interpretation of the Act should be upheld.

[9] See 71 Cong. Rec. 2162–69, 2195–2204 (1929); 72 Cong. Rec. 8537–57 (1930).

[10] See Maurice O'Meara Co. v. National Park Bank, 239 N.Y. 386, 146 N.E. 636 (1925).

[11] Bowles v. Seminole Rock Co., 325 U.S. 410 (1945); Hawley v. Diller, 178 U.S. 476 (1900) (construction of an act long recognized and acted on by the Interior Department should not be overruled unless a different one is plainly required by the words of the act); Heath v. Wallace, 138 U.S. 573 (1891).