

experts at London, the said press will for the term of one year from the date of repair do all work in a satisfactory manner, which it was sold to you as being able to do." The defendants did not accept this—but the offer shews good faith on plaintiff's part. The defendants insisted upon getting Parker upon the guaranty, and one was given on the 31st May, 1910, in these words: "We hereby guarantee the press we are selling you to be in first-class order as a second-hand press, and that it will automatically print from zinc plates in a proper manner all commercial work. This guarantee is to extend for a period of one year from this date, it being understood, of course, that the press is reasonably and properly handled,"—signed by the plaintiff, and by Parker.

The defendants having stipulated for and having obtained the express warranty, I am of opinion that they cannot in the absence of fraud rely upon the alleged oral representation in regard to the press. While that is the case the evidence does not support any alleged misrepresentation as to any point not covered by the warranty—allowing the defendants to rely upon the warranty by plaintiff himself and the one signed by plaintiff and by Parker.

As to the warranty—it is alleged that the press was defective—that it was not in first class order—and that it would not do the work as represented. The main defect relied upon, was fully described by the witness William Thompson, whose expert evidence was accepted by plaintiff, and defendants.

The defect was damage to (an indentation in) the main cylinder, apparently made by a small screw, or screwhead which had been allowed to pass between the cylinders when in rapid motion. Mr. Thompson could give no opinion as to when or how this had happened. I think the defect was occasioned as suggested—namely by the screw or screwhead. Had this happened before the sale? Was this defect in the cylinder there at time of sale? It is wholly a question of fact, and one of considerable difficulty upon the evidence given by honest and honourable men.

I have come to the conclusion that Thos. Melvin Knowles was mistaken in thinking that he saw before the sale was completed—any screw or screwhead mark that would indicate the defect in question. Had it been seen—as Mr. Thompson describes it, it was altogether too serious a matter not to have been, then and there, thoroughly investigated.