

the 21st April, 29th April, and 10th May, to none of which was any reply made. In the letter of the 21st April, he again complained of the delay in delivery, and drew attention to the serious loss the plaintiff company would sustain through not being able to fill their customers' orders, for which loss he declared his intention of holding the defendant company liable, and he referred to a statement made by "your Mr. Moyer when selling the mill."

About this time (10th May), the machinery was installed; and, its operation being unsatisfactory, Pearson, on the 27th May, again wrote the defendant company, referring to this and to the damage he asserted that the plaintiffs were sustaining, and adding: "I think your conduct in refusing to send me back one copy of the agreement is reprehensible," etc. This brought from the defendant company a letter of the 25th May (the first communication of any kind from them to the plaintiffs from the 7th April), in which they, in effect, repudiated any liability to the plaintiffs, on the ground that they were working under a contract with Moyer to supply him with cement grinders and separators and had nothing to do with the sale or installation of machinery, and assumed no responsibility for its operation to any one but Moyer.

The offer and acceptance by Pearson were not returned to him until after the 27th May, when they were brought to him by Moyer. The other copies were left with the defendant company by Moyer about the end of December, 1910, and remained in their possession until the time of the trial. The managing director of the company admits that they were left with the company for the purpose of their being confirmed by the company, and that no notice was sent to the plaintiffs of the neglect or refusal to confirm.

The machines which were delivered were second-hand, and not manufactured by the defendants; they were not such as the contract called for, and were unfit for the purposes for which they were intended; they were useless in the plaintiffs' business; and, for that reason, they were discarded after having been subjected to a test of several weeks. . . . The evidence . . . establishes that it was impossible for any one to make them work properly. It became necessary for the plaintiffs to replace them by others. . . .

I am unable to see how the defendant company can escape liability, in view of the combination of circumstances which is found in these dealings. When it is considered that that company from December, 1910, until after the machines were de-