

the contract, there seems no reason to doubt that the vendor would also be liable for unliquidated damages for breach of warranty." In the fourth edition of Judge Chalmers' work on the Bills of Sale Act, 1893, it is pointed out that this suggestion has been adopted in that Act. In the most recent edition of Mayne on Damages (1899), the subject is not noticed. In America there is much diversity of opinion, both in the text writers and decisions. In Sedgewick on Damages, 8th ed. (1891), vol. 2, p. 492, the general rule is said to be that "the measure of damages for breach of warranty of title to a chattel is the value of the chattel at the time of the purchase, with interest and the necessary costs of defending a suit brought against a vendee to test the title, with interest from the time of payment. But the vendee may disaffirm the contract and recover the consideration paid, though that is greater than the value of the property." It is remarkable that the editors do not discuss or even refer to *Eichholz v. Bannister*, one of the two leading English cases on the question of an implied warranty of title, and cite only *Morley v. Attenborough* (1849), 3 Ex. 500, 154 E.R. 943, for the English law on the subject. In *Sutherland on Damages* (1882), vol. 2, pp. 418, 419, it is said: "The value of the property at the time the vendee is dispossessed has been held to be the measure of damages. Generally, however, the measure has been stated to be the purchase money and interest: thus adopting the same rule that is applied generally in estimating the damages for breach of covenants for title to real estate. . . . Where the vendee is dispossessed by suit, and has, in good faith, incurred expenses in defending it, he is entitled to recover these also from the vendor as an additional item of damages." It appears to me that the law is accurately stated in the passage quoted from Mr. Benjamin's learned work, and that the vendee, going upon a breach of the implied warranty, is entitled to recover the value of the thing he has lost in consequence of the failure of the vendor's title. Can less be supposed to have been in the contemplation of the parties when the sale was made? Why should a loss by failure of title be less fully compensated than a loss by breach of warranty of quality? The case appears to fall fairly within the general rule of the common law, as stated by Parke, B., in *Robinson v. Harman* (1848), 1 Ex. 850, at 855, 154 E.R. 363, at 365, that "where a party sustains a loss by reason of a breach of contract, he is, so far as money can do it, to be placed in the same situation, with respect to damages, as if the contract had been performed."

Conditional sale. Evidence may be given of non-compliance with warranty to reduce damages. In *Cull v. Roberts* (1897), 28 O.R. 591, an agreement was made for the sale of machinery, a note being taken for the price, or, rather, an agreement called a note, by which it was stipulated that if the note was not paid, or if the purchaser should dispose of his land or personal property, etc., the vendor might retake the property and sell the same, possession to be kept in the meantime by the purchaser. The defendant set up the defective character of the machinery as a breach of warranty, but was not allowed, at the trial by the County Court Judge, to give evidence of it. It was sought in the argument to distinguish between this case of a conditional sale and the case of *Abell v. Church* (1875), 26 U.C.C.P. 338, which was a straight sale. Per Boyd, C., *Tomlinson v. Morris* (1886), 12 O.R. 311, "is not opposed, but rather favourable to the view that in case of conditional sale of a machine, if