

There was an implied, if not an express, warranty that it should be fit for the purpose of making web similar to a piece furnished to plaintiffs by defendants. When a plaintiff sues for the price of a machine, a defendant may rely upon a breach of warranty to reduce the claim, even although the property has not passed to him: *Cull v. Roberts*, 28 O. R. 591. The plaintiffs cannot say that, although the machine sent by them was a defective one, yet a competent mechanic could have set it right in a few days, the fact being that a competent mechanic was not to be found in the country, and one had to be imported from Buffalo for the purpose. Defendants used their best endeavours, in good faith, from the time the loom reached them, to make it work; it would not work owing to inherent faults which they used every reasonable means to discover and correct. It was plaintiffs' fault that defendants did not, for a considerable time, earn the profits from the use of the machine which plaintiffs knew when it was ordered they expected to earn, and they are liable to make these profits good: *Waters v. Towers*, 8 Ex. 401; *Cory v. Thames Iron Works*, L. R. 3 Q. B. 181; *Hydraulic Engineering Co. v. McHaffie*, 4 Q. B. D. 670. Defendants were justified for at least six weeks in waiting for the parts which plaintiffs had not sent, and in looking about them for the proper means of setting the defects right, and should be allowed \$180 for loss of profits, in addition to the \$69 allowed them by the judgment appealed against. Judgment reduced from \$495.63 to \$315.63, and the latter sum to bear interest from 1st October, 1900, and defendants to have the costs of this appeal set off against plaintiffs' debt and costs.

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MARCH 28TH, 1903.

DIVISIONAL COURT.

RUTHERFORD v. WARBRICK.

*Deed—Conveyance of Land—Cutting down to Mortgage—Redemption—Condition—Revival of Debt Thrown off—Costs.*

Appeal by plaintiff, Mary A. R. Rutherford, wife of Henry A. Rutherford, from judgment of BOYD, C., in a redemption action, allowing plaintiff to redeem, but directing that she should be charged in taking the accounts with a certain sum of \$627.05 beyond the amount she contended she ought to pay. The Chancellor held that the conveyance from plaintiff to defendant, though in form absolute, was intended to operate only as a security, and that defendant was subject to be redeemed.