

Shortly before the 20th of June, 1908, a 50 horse power engine was delivered at the defendants' premises in Queen & Richmond streets, and on the 20th of June a payment of \$500 was made. All this goes to shew, what indeed has never been seriously disputed, that the bargaining was for the supply of an engine and dynamos for use by the defendants at the premises in which they carried on their business as proprietors of the restaurant, bowling-alleys, and billiard and pool-rooms in the different floors and rooms of the building.

The evidence is not clear as to the time when the dynamo was delivered, but it was probably not earlier than the beginning of August, 1908. Various trials were made in order to get the engine and dynamo to run properly, but the result was not satisfactory. In the end the defendants refused to accept or pay for them and this action was commenced on the 2nd of December, 1909.

The plaintiffs' position is that the transaction was the purchase by and sale to the defendants of articles specifically described and selected by them, and that the articles furnished corresponded to the order, and all conditions were fulfilled necessary to entitle them to payment of the price.

The defendants on the other hand set up, among other answers to the plaintiffs' demand, that the articles were required for particular purposes connected with the defendants' business, which especially called for absence of noise in working the machinery, and the production of steady electric light; that the company had knowledge of these facts, and also of the fact that the defendants were relying upon the company's skill and judgment to supply what was intended and required in order to accomplish the purpose, and that the sale and purchase carried or implied a condition or warranty that the articles supplied would answer the particular purpose, which condition or warranty was not fulfilled.

The plaintiffs, while denying the defendants' contention, also set up that if the defendants ever intended the articles for purposes such as they alleged, they had by personal enquiry, observation and inspection obtained a knowledge of the working and capabilities of such articles, and were also specially informed as to what could, and what could not be accomplished by the engine and dynamo in question, and of what further was necessary in order to produce the results they aimed at, and that they deliberately made up their minds to accept the articles as they were and take the risk of their failing to do all that was needed, and in that case providing such supplementary articles as might be needed.