

that Dr. Hastings was not even asked as to the working of his car, and that upon the argument it was not even suggested that the Hastings car was not efficient and satisfactory in every respect.

Again, the vendor, as I said, is a dealer in motor cars. This transaction was in a sense a sale by sample—the Hastings car. It is not enough, even if the defendant had been able to do this, to shew that the car furnished was a copy or duplicate of the car sold to Hastings. The defendant was bound to supply a car reasonably fit for the purposes for which it was intended. *Drummond v. Van Ingen* (1887), 12 A. C. 284; *Mody v. Gregson*, L. R. 4 Ex. 49; *Randall v. Newson*, 2 Q. B. D. 102.

What was the cause of this car not running properly, does not clearly appear. The defendant, who was, I think, more competent to speak as an expert than any other witness, said he could not even hazard a guess as to the cause. William Burke, called by the defence to give expert testimony as well as evidence of fact, said that a car of this class should run in cold weather sixty or eighty miles without being re-charged, that such a car, even if half-charged should climb any hill in or about Toronto, and that if the car shewed the lack of power and other deficiencies complained of, there must be something radically wrong.

A good deal of evidence was directed to shewing that the battery was the cause of the trouble, and to controverting this. It does not greatly matter what was the cause. The case is not the weaker for the plaintiff, if the battery were not the cause. But a point developed by the defendant himself, late in the trial, is important: viz., that the car probably never had a proper primary charge—that to properly saturate the cell plates of the battery, would take at least from eighteen to twenty or twenty-four hours, and that without this it could not be expected that the car would work properly. Who should have seen to this? The plaintiff was not even advised of the need of it. The excuse for not properly charging it is that the plaintiff was in a hurry to have possession of the car. How could this be an answer in any case? The time when the plaintiff is said to have been in a hurry was many weeks after the time stipulated for delivery.

There will be a stay of execution for thirty days.