

satisfied with it. But if the machine did good work, he could not say, 'I have made a bad bargain; I am not satisfied,' and return the machine. In other words, there must have been a reasonable cause for his dissatisfaction, and the return of the machine must have been in good faith. . . . There is a great disagreement in the testimony of the witnesses for the plaintiff and the defendant, upon this subject, and you will have to determine, from all this evidence, whether the working of the machine was such as to give Mr. Seeley reasonable cause to be dissatisfied with it, or whether it worked well, according to the agreement and warranty, as testified to by the plaintiff and his witnesses. You will now take this case and give it your careful consideration, and render such a verdict as will do justice between the parties."

In this instruction of the court to the jury, we think there was error. If the defendant's theory of the case, on the facts, is accepted, it is plain that although the reaper may have worked well in the opinion of those who saw it, yet, if it did not work to the satisfaction of the defendant, he was not obliged to take it; he testified that he told Espy he would not take the reaper until he tried it, and if it worked to suit him, and his team could handle it on his farm, he would buy it, and that he was to be the judge of this himself. He complains that it was too heavy; that it weighed nearly 200 pounds more than it had been represented to weigh; that his horses could not haul it; and that, in his judgment, it did not do the work well, etc. His objections to the reaper may have been ill founded; indeed, they may have been in some sense unreasonable, in the opinion of others; yet if they were made in good faith, he had a right, if his testimony is believed, to reject it. If he wanted a machine that was satisfactory to himself, not to other people, and contracted in this form, upon what principle shall he be bound to accept one that he expressly disapproved?

What the learned court said to the jury on this point was equivalent to saying that although the reaper may have been wholly unsatisfactory to the defendant, yet if the jury thought that he ought to have been satisfied, he was bound to take it; whereas, if the defendant's testimony is true, he was to judge of the merits of the machine himself, and not the

bystanders nor the jury; and if he exercised his own judgment, in good faith, in the refusal to accept it, he was certainly not bound for the price.

The case is ruled by *Singerly v. Thayer*, 108 Pa. St. 291, where the authorities are collected, and the legal principles involved fully discussed. What has been said is of course applicable to the case only in the event that the jury in the re-trial of this case shall accept the defendant's theory as the correct one; for if the evidence on the part of the plaintiff is believed, the contract was complete. Upon this question, as we have said, the testimony is conflicting. We have purposely refrained from any discussion of the facts, out of which the principles of law governing the case arise, fearing that any reference to the testimony, in detail, might have a misleading effect. It is of the highest importance, in such a case as this, that the jury should be left entirely free to consider and determine the facts upon their own judgment.

The judgment is reversed, and a *venire facias de novo* awarded. — *American Law Register*.

NOTE ON ABOVE CASE BY THE EDITOR OF
THE "AMERICAN LAW REGISTER."

Where a person undertakes to manufacture an article or deliver goods which he guarantees shall be satisfactory to the buyer, the purchaser is sole judge whether the article is satisfactory, and there is no remedy left for the seller, where the purchaser is not satisfied; *McClure v. Briggs*, 58 Vt. 82.

In the case of *Silsby Manuf. Co. v. Chicago*, 24 Fed. Rep. 893, the Circuit Court of the United States (Dist. Cal. Sept. 7, 1885) says: "The authorities are abundant to the effect that upon a contract containing a provision that an article to be made and delivered shall be satisfactory to the purchaser it must be satisfactory to him, or he is not required to take it. It is not enough to be satisfied with the article; he must be satisfied, or he is not bound to accept it. Such a contract may be unwise, but of its wisdom the party so contracting is to be judge; and if he deliberately enters into such an agreement, he must abide by it. To this effect, *Hallidie v. Sutter St. R. R. Co.*, 63 Cal. 575; *Zaleski v. Clark*, 44 Conn. 218; s. c. 26 Am. Rep. 446; *Brown v.*