The offer and acceptance by Pearson (exhibit 10) were not returned to him until after May 27th, when it was brought to him by Moyer. The other copies (exhibit 13) were left with the defendant company by Moyer about the end of December, 1910, and remained in their possession until the time of the trial. The managing director of the company admits they were left with them for the purpose of their being confirmed by the company, and that no notice was sent to plaintiffs of the neglect or refusal to confirm.

The machines which were delivered were "second-hand" and not manufactured by defendants; they were not such as the contract called for and were unfit for the purposes for which they were intended; they were useless in plaintiffs' business, and for that reason they were discarded after having been subjected to a test of several weeks, during which they were under the control of Fry, who for vendors superintended their installation and their operation for several weeks afterwards. He failed to make them work and the evidence further establishes that it was impossible for anyone to make them work properly. It became necessary for plaintiffs to replace them by others. It is under these circumstances that defendant company now seeks to escape liability to the plaintiffs.

Some evidence of damages was given at the trial, but that branch of the case was not fully gone into until the question of liability should be determined.

I am unable to see how defendant company can escape liability in view of the combination of circumstances which is found in these dealings. When it is considered that that company, from December, 1910, until after the machines were delivered and installed, had in their possession Pearson's acceptances of the proposal to sell which were stated to be subject to confirmation by the company, that the company at the time they received the proposal and acceptances also received Pearson's $1,000 note payable to their order, and bearing on its face the statement that it was on account of machinery agreed to be purchased; that the draft for $1,000 was made upon Pearson by defendant company; that the $1,000 payment made by Pearson was by cheque payable to them; that the $2,000 note also was made payable to them; that the several letters clearly intimated that the plaintiffs believed they were dealing with defendant company; and that there was no repudiation of contractual relationship, or even a reply