

Apart from capacity, I find that both engine and boiler were well made, of good materials, and durable. It may well be argued, however, that the combined machine could not be said to be well made if one part was not adapted for or so constructed as to reduce the power of the other. But under *Frye v. Milligan*, 10 O. R. 509, and *Tomlinson v. Morris*, 12 O. R. 311, damages cannot be recovered under the warranty, as the property has not passed.

Defendants have not availed themselves of the option of supplying other machines, but refuse to do so. The alternative is not stated in the contract, unless it is the subsequent provision as to refund of notes or money already referred to.

Under the clause as to defects or failures in one part, plaintiffs are, I think, deprived of any right to condemn or return any part of the outfit other than the engine and boiler. Not having the right to return all, they cannot claim a failure of consideration to entitle them to a return of the whole moneys paid and notes outstanding.

As the engine and boiler did not answer the description of the machines purchased, plaintiffs are, I think, entitled to that extent to have a return or reduction of the purchase money. In *Nichol v. Goatz*, 10 Ex. 191, although there was a warranty, and the contract said that was the only warranty, the vendor failed to recover, as the oil did not answer the description. In *Josling v. Kingsford*, 13 C. B. N. S. 447, though the sale was expressly without warranty, the purchaser recovered his money on the like ground. There is an indication in the letters that at least one of the notes was negotiated by defendants.

The evidence does not enable me to say what reduction should be made in the original purchase money on account of the engine and boiler. Unless the parties can agree, it will be referred to the Master at Barrie to fix the sum. Whatever the amount may be, plaintiffs will be entitled to recover it from defendants with costs, except of the reference, but defendants shall be at liberty to pay the amount into Court and have liberty to apply for repayment thereof to them upon proof that they, or other the lawful holders of the four promissory notes for \$500 each, have given credit thereon by indorsement, or in such other way as the Court shall approve, for the amount as fixed or agreed upon, as a