the solicitors or agents who appeared, I find the following as facts: (1) The garnishees are a foreign corporation doing business in Ontario, and are properly before the court; (2) They issued a policy of $400, insuring the primary debtor against loss by fire—$200 on her house, and $200 upon its contents; (3) That the primary debtor had no insurable interest in the house; (4) That during the currency of the policy, and before these proceedings, a fire occurred, by which the subject matters of the insurance policy were destroyed; and that the company's inspector made an estimate of the loss at $270, and informed the primary debtor that she would receive a cheque for the amount within a few days; (5) That after knowledge and notice of these proceedings, and of a direction by the court not to pay without further order, the garnishees paid over to the primary debtor the sum of $125, in full satisfaction of their claim.

The garnishees allege, but did not prove, that they paid the latter sum *ex gratiâ*, and not *ex delictò*, to compromise and get rid of a doubtful claim, and not because there was any debt due and owing at the time of garnishment, which could be made the subject of garnishment.

I think this objection must prevail. The policy is a mere contract of indemnity. At the date of the service of the garnishee summons there was no "debt due and owing" by them to the primary debtor. She had a cause of action against them for unliquidated damages, and no more. Even if her damages had been assessed by a jury, the amount of the verdict would not become a "debt" until judgment be entered. The payment subsequently by the garnishees does not, to my mind, affect the case. The company had a right to resist the claim, or to compromise it for a small sum, rather than risk litigation with a person of no means, and incur costs to a greater amount than the sum she was willing to accept. I refer to *Boyd* v. *Haynes* (*British North American Insurance Company, Garnishees*), 5 P. R. 15, and the cases there cited, as being conclusive on this point.

I dismiss the action as against the garnishees. I make no order as to costs.

Evans (Orillia), for Macdonald.

McCarthy, Osler & Co. (Toronto), for the garnishees.

UNITED STATES REPORTS.

SUPREME COURT OF PENNSYLVANIA.

SEELEY *v.* WELLES.

Contract.

Where a person agrees to take a machine and try it, and, if it works to suit him, to buy it, he may reject it, though his objections may seem unreasonable to others, if his objection is made in good faith, and is not merely capricious.

Error to Common Pleas of Bradford County.

Hall and *McPherson*, for plaintiff in error.
Califf and *Williams*, for defendant in error.

CLARK, J.—This suit was brought to recover the first instalment on an alleged contract for the sale of an Osborne reaper and binder. The principal controversy arises out of a disagreement as to the nature and terms of the contract. The plaintiff, on the one hand, alleges that the sale was absolute; that the machine was to be set up and tried, and was to work well, that it was put up on trial, and was accepted by Seeley; that the terms of the contract were fixed, and the time and manner of payment fully agreed upon. The defendant, on the other hand, maintains that he was to try the machine, and if it worked to suit him, and he could use it satisfactorily on his land, of which he was to be the judge, he was to take it upon the terms agreed upon; that upon trial it was not satisfactory, and he returned it to Welles. Both parties were to some extent corroborated by other witnesses, but the testimony was contradictory and conflicting; and it was for the jury to determine the true state of the facts.

In the general charge the learned judge of the court below instructed the jury as follows: "If you believe the evidence on the part of the plaintiff, particularly of Espy and Bradley, as to what occurred at the hammock, then there was a complete contract, and the plaintiff would be entitled to recover. If, on the other hand, you believe the evidence on the part of the defendant, that he was to take the machine and try it, and that he was not to keep it unless it worked to his satisfaction, then the plaintiff cannot recover, provided you find that the machine did not work well, and that he had reasonable cause to be dis-