

Bell had complained within two weeks of the beginning of the work for which it was purchased, and again on 11th September, 1905, and on 16th October had written for either a return of his money or a proper boiler. It was by request of defendants themselves that he continued to work the outfit that threshing season, and with their consent that he retained it to work it during the winter. When it was sent back, it was left to defendants to do what might be necessary to comply with the contract. They were then fully aware that it was alleged to be of insufficient capacity. Nothing whatever was done by them to remedy that initial defect, and it was returned in August to Bell without any increased power. . . . Defendants wrote that the machine was sufficient, and they would send men to prove it, and that is still their attitude.

The contract is under plaintiffs' seals. By it the property in the machines was not to pass until full payment, but plaintiffs were to have the right to use them until default, but at their own risk as to damage. It further provides that if it should be found that the machines could not be made to do good work, defendants should have the option of supplying other machines. Another provision is that if "the said machine" (which may mean the original or substituted machines) should not work according to warranty, the notes or money should be refunded, and the purchasers should have no claim for damages sustained by reason of the failure of the machines to satisfy the warranty. The contract also provides that defects or failures in one part or attachment shall not condemn or be ground for claiming renewal or for the return of any other part. The only warranty expressed is as follows: "Said machines are warranted to be well made, of good materials, durable, and, with good care, proper usage, and skilful management, to do as good work as any other of the same size manufactured in Canada." The word "machine" is declared to include every part, fitting, and appliance thereto appertaining.

Some evidence was offered by plaintiffs as to the capabilities of other engines and boilers about the same size, but it was too uncertain both as to their size and performance to prove a breach of the warranty in that respect; and, for the same reason, the express provision as to refund of notes and money in case the machines should not work according to warranty, does not apply.