

The statement of claim alleged that plaintiffs entered into an agreement in writing with defendants, dated 22nd June, 1905, to buy certain machinery, for which they gave 7 promissory notes and a chattel mortgage; that the machinery was furnished a month later than the contract provided; and that when furnished it was entirely useless. The claim was to have the agreement, notes, and chattel mortgage delivered up and cancelled. Defendants' head office was situated at St. Catharines.

A. C. McMaster, for defendants

R. U. McPherson, for plaintiffs.

THE MASTER:—The agreement in question is under seal, and contains the following provision: "In case any litigation in any court shall arise out of this transaction, or on any of the securities relating thereto, it is agreed that the trial shall take place in the county where the head office of the company (defendants) is located, or elsewhere as may be determined by the company." . . .

It is argued that these words do not apply, because this action is not based on the agreement, but on the assertion that no agreement was ever entered into binding upon plaintiffs, who are therefore entitled to ask for rescission.

To this view I am unable to accede. The action here must be said "to arise out of this transaction," for the whole of the facts leading up to it must be gone into at the trial.

Unless plaintiffs were asking cancellation on the ground of never having signed the agreement, or of their signature having been obtained in some way by fraud or under duress, &c., I think the clause would govern, and oblige the venue to be laid at St. Catharines. . . .

[Reference to Greer v. Sawyer-Massey Co., 6 O. W. R. 594; Goodison v. Thresher, ib. 20; and Printing Co. v. Sampson, L. R. 19 Eq. at p. 495.]

There is no allegation here of any other reason for the action than the failure of the machinery to satisfy plaintiffs, and they must be held to their solemn covenant.

The order will issue as asked. Costs in the cause. . . .