There was nothing to prevent defendants making a new contract with plaintiffs, ancillary to the original, or a new contract altogether, in reference to the existing engine, in the terms as to that engine, as to its fitness, and the work it would do, according to what was represented in the original contract. The engine had been manufactured by defendants or sold by them to plaintiffs, returned by plaintiffs to defendants pursuant to an engagement, to have work done upon it; work was done upon it, all in the ordinary course of defendants' business. Such a contract need not be under seal of defendants. That new contract was in the terms of the old to this extent, that the engine with the outfit that plaintiffs bought would do good work as described or as in the warranty incorporated in the former agreement. Surely, after all that has taken place in reference to this engine, plaintiffs ought not to be told that, although the engine did not do good work, and could not be made to do good work with the thresher, separator, etc., purchased from defendants, they cannot succeed because the engine was made of good materials and was of 17 horse power. I am satisfied from the evidence that this engine did get reasonably "good care," reasonably "proper usage," and that with reasonably skillful management, it did not do good work—not as good work as the ordinary machine of same size made in Canada, not as good work as plaintiffs expected and had a right to expect from it.

This is not the case of merely buying a well known and defined article. It is the case of an arrangement of a dispute after it had arisen—a new agreement in reference to the taking—buying—of an article manufactured by defendants, supplied to plaintiffs, found by plaintiffs not fit, subsequently admitted by defendants to be unfit, and which defendants, upon the consideration that plaintiffs would accept it, undertook to make fit for a particular purpose. In this case there was complete knowledge by defendants, as to what the engine was for, even apart from the letter of plaintiffs' solicitor of 11th May, 1906. That letter puts it as plainly as language can that plaintiffs relied upon defendants' judgment, knowledge, and skill in the matter as manufacturers, and so there was the implied warranty that the engine when returned to defendants on 31st July, 1906, was fit for the use to which it was to be applied. I am unable to conclude that any express warranty in the original agreement can be invoked to exclude an implied warranty in what