

operated by competent persons. This warranty does not apply to second-hand machinery. There are no other warranties, guarantees or agreements other than those contained herein."

Held, 1. As there was no complaint respecting anything but the separator, which was admitted to be "second-hand," there was no warranty under the agreement.

2. The agreement and the plaintiff's course is suing only for a breach of warranty excluded the operation of s. 16 of the Sale of Goods Act, R.S.M. 1902, c. 152, which would otherwise import "an implied condition that the goods shall be reasonably fit" for the particular purpose for which they are required.

3. *Quere*, whether the agreement did not in any case exclude the statutory implied condition.

Sawyer-Massey v. Ritchie, 13 W.L.R. 89, reversed in the Supreme Court, not yet reported, referred to.

Curran, K.C., for plaintiff. *G. F. Taylor*, for defendants.

Province of British Columbia.

SUPREME COURT.

Full Court.] *GOODACRE & SONS v. SIMPSON*. [Dec. 21, 1910.

Statute of Limitations—Payment on account—Appropriation of fund—Promise sufficient to take debt out of statute.

A debt collector having accounts placed in his hands by both plaintiffs and defendant for collection, applied to the defendant for payment of his account, which was statute-barred. Defendant stated that plaintiffs would never press him for payment, but on the collector insisting, defendant instructed him to hand over to plaintiffs some of the money collected for defendant. The collector accordingly paid in \$11.65.

Held, affirming the judgment of LAMPMAN, CO. J., at the trial, that from the instructions of defendant to the collector to pay to plaintiffs some of the moneys collected for him (defendant) could be inferred a promise to pay sufficient to take the debt out of the statute, and was not an appropriation of a particular fund.

H. E. B. Robertson, for defendant, appellant. *Aikman*, for plaintiffs, respondents.