

HON. MR. JUSTICE BRITTON.

JANUARY 10TH, 1913.

## HARRISON v. KNOWLES ET AL.

4 O. W. N. 595.

*Sale of Goods—Express Warranty—Alleged Breach—Evidence—Onus  
—Acceptance—Counterclaim.*

Action upon 12 certain promissory notes for \$100 each, given by defendants to plaintiff in part payment of a second-hand printing press sold by plaintiff to defendants for \$2,900. Defendant alleged that the press when received was in a defective condition and alleged breach of express warranty.

BRITTON, J., found as a fact that the press was in good condition when taken over by defendants and gave judgment for \$1,200 and costs against defendants, but allowed them \$80 and costs on their counterclaim for certain defective and missing equipment of a minor character.

Action upon twelve promissory notes made by defendants, payable to plaintiff, tried at Toronto without a jury.

A. C. McMaster, for the plaintiff.

T. Coleridge, for the defendants.

HON. MR. JUSTICE BRITTON:—The action is brought upon twelve promissory notes all made by the defendants payable to the order of the plaintiff. The notes are for \$100 each with interest at 6 per cent., dated the 7th of June, 1910, and payable one on each of the following days, namely, 7th of February, March, April, May, June, July, August, September, October, November, and December 1911, and January, 1912. These notes were given in part payment for the purchase by the defendants of a "Harris Automatic lithographic off-set press," and attachments, including rollers thereto belonging. The making of the notes was proved. The plaintiff is the owner and holder of the notes. The purchase of the press was really made from the "Parker Process Company," for whom Mr. Parker acted. The plaintiff was the owner of the press, but was interested in that company, and at once conceded that he would be bound by anything Mr. Parker said, or that the company did, in making the sale. This press was a second-hand one, in possession of the Parker Process Co., at the city of New York, and by that company advertised for sale. The defendants either saw the advertisement or in some way heard of the press, and the defendant Thos. Knowles accompanied by his son Thos. Mel-