

Province of Ontario.

COURT OF APPEAL.

Moss, C.J.O., Maclellan, Garrow, JJ.A.]

[Nov. 16, 1903.]

CENTAUR CYCLE CO. v. HILL.

Sale of goods—Action for contract price—Defence and set off—Substitution of castings for forgings in manufacture—Condition precedent—Warranty—Resale with similar warranty—Right of vendee complete without resale—Measure of damage—Delay.

In an action for the contract price for goods sold and delivered in which it was shewn that the goods delivered were not manufactured as agreed upon, the vendors having substituted castings for forgings.

Held, 1. The defendants were entitled to have their damages applied in reduction of the plaintiff's claim.

2. As soon as the vendee discovers the defect he may bring an action on the warranty and recover the value of the article he should have received, and that the right of action is complete without a resale and that the measure of damages is the same whether the goods are in his warehouse or in the hands of persons to whom he may afterwards have pledged or sold them.

3. Where credit is given or where the goods have been paid for, the vendee may sue at once, or in the case of credit, if vendee so elects, he may await an action for the price and set off or counterclaim for his damages by reason of the defective material or other breach of warranty.

4. Where there had been delay in the delivery of the samples as well as the bulk of the goods ordered for a particular season which arrived late for the season, and, in consequence, were sold at a loss, the measure of the damages is the difference between the value of the goods at the time at which they were to have been delivered according to the contract and their value for the purpose of resale, as the plaintiffs well knew, at the time when they were actually delivered. *Wilson v. Lancashire and Yorkshire R. W. Co.* (1861) 9 C.B.N.S. 632, and *Schulze v. Great Eastern R. W. Co.* (1887) 19 Q.B.D. 30, followed.

Pyckman and *C. W. Kerr*, for the defendants *E. C. Hill* and *E. C. Hill & Co.*, on appeal and cross-appeal. *Rowell*, K.C., and *Casey Wood*, for the plaintiffs' contra and on cross appeal.

Police Magistrate, Hamilton.]

[Jan. 5.]

REX v. WALSH.

Criminal law—Summary trial—Police Magistrate—Neglect to inform prisoner of next Court for jury trial—Election—Adding to indictment.

The prisoner was charged with an offence which was not triable summarily by the Police Magistrate, except upon consent. The Magi-