

he asked them to hold the \$125 note for a while, as he had no time to collect. Defendants answered on 24th October that they were glad he was having an exceptionally good season and "would be working nearly all winter," and they would look after his note, and they added, "We will make everything right for you."

Bell continued threshing till 20th November, and during the winter used the engine and boiler in cutting shingles or lumber. Mr. Goodison in his evidence says he does not complain of Bell using it till it was returned. . . .

[The learned Judge then set out negotiations and correspondence, payments made, and an agreement between plaintiffs and defendants as to alterations, etc.]

Finally the engine and boiler were shipped at Elmvale on 21st June, 1906, and arrived at Sarnia about 4th July. . . . Defendants had the boiler cleaned and furbished up and provided with a new smoke-stack, and the valve seat planed, and a rocker valve put in place of the former sliding valve, and the piston rings tightened, but neither a new cylinder nor a new boiler was put on, as had been proposed in December. . . . On 31st July defendants shipped the engine and boiler, and wrote that it was now in first class working order. . . . The engine arrived at Elmvale on Friday 10th August. . . . On Saturday 11th August Bell took the outfit to the farm of Robert Ussher and threshed for an hour. During that time they had to stop twice for steam, and had the same trouble as before. . . .

[The learned Judge referred to repeated trials and attempts to improve the machinery, and correspondence between the parties.]

The main question which arises is whether plaintiffs had any and what reason for complaint about the boiler. The evidence satisfies me that they had. Their contention is that the boiler must have been too small, and this is borne out by the evidence of Mr. St. John, who was called as an expert by the defence to shew that the boiler was well constructed. . . . The engine and boiler did not in fact answer the description of a traction 17 horse power engine, and there is nothing to shew that this was a sale of a known specific article the capabilities of which the purchaser took the risk of.