STREET, J.—In his statement of claim the plaintiff set out that the defendants had guaranteed the hay press to do good work, and the breach of the guaranty. The defendants denied the breach, and alleged that the breaking of the press was due to unskilful handling. The plaintiff said in one of his letters, which was in evidence, that for 25 days he had tried to make the press work, but that in that time it had only pressed 129 tons of hay, which was only equal to 13 small days' work at 10 tons a day. On cross-examination, it was shewn that plaintiff entered in a book, which he had with him in Court, the quantities of hay he had pressed at each farm he visited. The plaintiff cannot rely on breach of warranty, because the title to the press has never vested in him. He must rely upon the right to rescind the contract after certain trials of the press, and notices given to defendants. This right only arises "if the machine cannot be made to do good work," and the defendants were entitled to have the evidence upon that point submitted to the jury. An important element in determining whether the press could be made to do good work, was the amount of work that it was made to do in the six or seven weeks during which the plaintiff was working it. The plaintiff had written to defendants that the press had been doing good work. The defendants were therefore clearly entitled to the production, by the plaintiff on his cross-examination, of the book containing the entries of amount pressed daily. This, the trial Judge refused to allow. A substantial wrong has been occasioned to the defendants within the meaning of rule 785 by such refusal, the extent and effect of which is unknown, but which might have proved of the highest importance: Bray v. Ford, [1896] A. C. 44. There should be a new trial. Costs of former trial and of the motion must be in the action, because the objection to the evidence seems to have been wholly that of the Judge, and not of the counsel against whose client it was tendered.

FALCONBRIDGE, C.J., after setting out in detail what took place at the trial upon the rejection of the evidence:—I think substantial wrong has been occasioned, and there must be a new trial. Costs of former trial and motion to be in the action, the plaintiff's counsel not appearing to have raised or pressed the objection to the evidence.

BRITTON, J.—It seems to me substantial justice will be done by allowing this verdict to stand, notwithstanding the improper rejection of evidence. The evidence given well warrants the findings (1), that the press was not well made, (2) that it was not in good working order when the plaintiff had it, and (3) that plaintiff tried fairly, and in good faith,