delivered could be properly described as a 5-ton truck—as to which the learned Judge had not been able to come to a definite conclusion—he was of opinion, upon a review of the evidence, that, taking into account the character and requirements of the plaintiffs' business, the specific daily journey to be made, the time reasonably available for making it, and generally the surrounding circumstances, including the object of the purchase, the truck, with careful supervision and efficient operation, was not, at the time of delivery or afterwards at any time, reasonably fit for the purpose for which it was intended.

The contract was for a "Sawyer-Massey" truck, and it appeared, towards the end of the trial, that the truck delivered was a Stegeman truck, built for the defendants by the Stegeman Company, and sold under the defendants' name. Every word of the written contract was in conflict with the proposition that the plaintiffs agreed to purchase the product of a foreign manufacturer. In the absence of specific words in the contract to the contrary, there is an implied warranty, in the nature of a condition or undertaking, where the vendor is a manufacturer, that the goods are of his manufacture: Johnson v. Raylton (1881), 7 Q.B.D. 438.

There had been no change of ownership, the property in the truck had not passed; of the 12 promissory notes given by the plaintiffs on account of the price, 8 were unpaid.

There should be judgment for the plaintiffs declaring that the plaintiffs were entitled to rescind the contract, and for recovery of the several sums of money, both principal and interest, paid by the plaintiffs, with interest on the total of each payment from the date of payment, and for delivery up of the promissory notes in the defendants' hands for cancellation, with the costs of the action, and dismissing the counterclaim with costs.