

Agricultural Implement Contracts

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There has been a growing feeling among the people of the Western provinces that the conditions imposed by the Machine Companies upon the purchaser in their contracts of sale are unfair, misleading and designed, in many cases, with a view to preventing the purchaser from getting his substantial rights. In many cases the farmer does not realize this for if the machine is really what it was represented to be by the agent and does the work, no difficulty arises and there is consequently no law-suit between the parties, but where the machine is made of poor material or does not give satisfaction in any way, the farmer is then thrown back on his rights and he finds suddenly that he had taken it for granted that he has certain rights to which he now finds the courts cannot give effect. As happens in nine cases out of ten he is very much surprised at the conclusion of his case to find that while it is conceded by the court that the machine in question is

not what it was represented to be and consequently not worth the money which he agreed to pay for it, still he cannot get out of paying the money or get any redress because of the terms and conditions of the contract or order, which he signed when purchasing the machine. In other words, his case was lost before he ever got delivery of the machine and at the very time that he signed the order, which the agent told him was necessary before the company would deliver the machine to him.

Sharp Practice

The ordinary form of machine contract in use in this province and in all Western provinces during the last three or four years, bears mark of ingenuity on the part of those who framed it in drawing the attention of the purchaser from the most important term it contains. For instance, in a great many cases it is headed "Order Form" and the farmer thinking he is only signing an order for machinery finds, on getting into court, that he has signed a binding contract. The warranties and conditions are printed in small type and are usually on the back of the contract, and unless a man is more than usually observant, the more important terms are never noticed. Then, again, the contract contains many legal terms and in some cases contradictory terms about which the courts themselves have not been able to agree and which the ordinary farmer could not possibly be expected to thoroughly understand. This state of affairs is largely brought about by the fact that the Machine Companies combine and pay large fees to the best counsel they can employ in drafting a contract that will contain all the conditions safe-guarding their rights and precluding the farmer from his substantial rights in such a way that the design with which it is drafted is not apparent on the face of it; while the farmers on the other hand have never yet taken any concerted action to protect themselves by employing counsel to see that the form of contract used for the purpose is equally fair to themselves as to the Machine Companies.

Legislative Action Necessary

Where such an injustice occurs in the commercial life of a country, those who suffer should at once take steps to find the source of the evil and protect themselves. The Grain Growers' associations are moving in that direction and have adopted a resolution with a view to asking the Legislature to enact such legislation as shall protect them in connection with machine contracts. That the time is ripe for such legislation is apparent from the statements made by two judges of the Supreme Court of Canada in machine contract cases tried before that court during the past two years. The first of these cases is the case of "Sawyer & Massey vs. Thomas G. Ritchie," tried before the Supreme Court during October and November of 1910. Mr. Justice Idington says of the contract which led to the litigation in this case, as follows:—"The ambiguous form of contract used, I think, has led to litigation. Herein I do not agree in the learned trial judge's view of the respondent having been excused from trying to understand the writing. I must say, however, it is one I am quite sure should not be used as to general costs of suit, I would refuse them on that ground alone, where there is reason to believe a frank, clear form of contract might have averted litigation."

Views of Judges

In the case of "Reeves & Co. vs. Ozias" judgment was delivered by the Supreme Court of Canada in the early part of this present year. This was an appeal case from the Alberta courts. The litigation had to do with one of the ordinary forms of machine contract in use in this country at the present time and of the contract Mr. Justice Idington in his judgment says as follows:—

"If one had not the experience to be got in courts of law he would be surprised that any purchaser of ordinary intelligence could be got to sign such a con-



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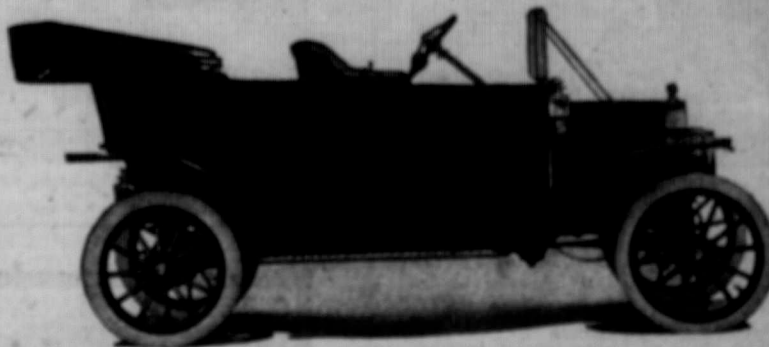
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