etc., Mail Co. (1867), L.R. 2 Q.B. 580. Other cases are Mackay v. Dick (1881), 6 App. Cas. 251, at p. 265, per Lord Blackburn; Lagunas Nitrate Co. v. Lagunas Syndicate, [1899] 2 Ch. 392; Seddon v. North Eastern Salt Co., [1905] 1 Ch. 326. This law has never been questioned, and it is quite settled.

Unless we are prepared to overrule the judgment of the very strong Court which decided Northey Manufacturing Co. v. Sanders, 31 O.R. 475, we must hold that such a representation as was made in the present case is not sufficient ground for rescission. . . .

The case in the Court of Appeal of Canadian Gas Power and Launches Limited v. Orr Brothers Limited (1911), 23 O.L.R. 616, is cited as laying down the law differently. . . .

I am unable to distinguish the cases; there are minute differences, but subtle distinctions are not to be drawn in ordinary business transactions. So far as the case differs from the Northey case, it must be taken to have overruled it. Alabastine Co. Paris Limited v. Canada Producer and Gas Engine Co. Limited (1912), 4 O.W.N. 486, and Eisler v. Canadian Fairbanks Co. (1912), 22 W.L.R. 888, are in the same direction.

These cases seem to establish that, if the article supplied will not do what it was bought for, the purchaser may rescind the contract. Granting that the right to rescind did at any time accrue, I think that the plaintiff by his contract has lost it. His claim is that he was induced to believe that the engine would fill a silo. As early as the 29th October, he knew that it would not, and so said. He knew as early as the end of October that the defendants asserted that they had made no guarantee that the engine would do the work required. Then he should have taken his stand: "The contract is void, the engine is yours;" and stuck to it. He does not do that. He first claims his notes or a new engine, i.e., under the contract; and then, when that is not acceded to, he treats the engine as his own by having it tested, i.e., worked sufficiently to shew its horse power, by an outsider. He had no right to do this unless the contract was in force; and he thereby asserted the existence of the contract; in other words, he dealt with the engine in a manner inconsistent with the rescission of the contract.

The letter of the 11th January is consistent with this view, rather than with the view that he considered the contract at an end. When he discovered (if he did discover) by the expert's test that the engine was not 12 H.P., this did not give a new right to rescind: Campbell v. Fleming (1834), 1 A. & E. 40, at