

The appeal was heard by MEREDITH, C.J.C.P., RIDDELL, LATCHFORD, MIDDLETON, and LENNOX, JJ.

S. F. Washington, K.C., for the appellants.

W. Morrison, for the plaintiff, respondent.

MEREDITH, C.J.C.P., in a written judgment, said that the amount involved was small; the case was tried by a jury; there was no objection to the charge; and the verdict could not be said to be unreasonable or unfair. Therefore, it ought to stand unless the defendants had shewn that they were entitled to judgment notwithstanding the verdict—that the trial Judge should have withdrawn the case from the jury and dismissed the action. He was not obliged to do so. He could not have rightly done so.

The plaintiff was a labouring man, who had to depend upon the earnings of the truck, not only for the support of himself and family, but also for the means of paying the price of it; and so all representations as to the earning capacity were things of the utmost importance to him in determining whether to buy it or not; and the defendants, being dealers in such cars, were well aware of that fact, and the representations as to it shewed how fully they made use of it to effect the sale. Their representations in this respect induced the contract.

The plaintiff insisted upon having from the defendants something in writing binding them in regard to a contract which one Axford had with certain persons for work to be done with this truck, and which it was promised should be given over to the plaintiff; and so the words, "Mr. Osborne has steady contract with this truck," were inserted in the sale-agreement. It turned out that there was no customer's contract of any kind; and so there was a complete breach of this essential part of the contract of sale; and it was not surprising that the jury found the defendants guilty of fraud in connection with it.

And, quite apart from any question of fraud, there was a breach of the written warranty of the defendants, for which they were answerable in damages to the plaintiff; but, instead of paying damages, they retook and retained the truck.

The plaintiff was not bound to rescind the contract because of the fraud; he would have been quite within his right in retaining it and meeting the defendants' claim for the balance of the price with his claim for damages for the deceit; and the verdict of the jury had the commendable effect of meeting this aspect of the case as well as that of fraud.

The Court should not usurp the rights of jurors and try to determine cases as the Judges might happen to think they should have been determined by the jurors. If the Chief Justice were