The Court: "You went to Rice Lewis and got this box just before you went north? A. Just a few days before I went north.

Q. What did you say when you went in the store? A. I asked them for a box of 38-40 shells, and that is the shells I got.

Q. A box just like that, Exhibit 47? A. Yes."

Then in cross-examination by Mr. Montgomery:—

"This is the kind of cartridge that you asked for, is it not, when received (shews a box of 38-40 rifle cartridges)? A. Yes, that is the kind of cartridges.

Q. In a sealed box like this? A. Yes.

Q. Trade mark U. M. C. on it? A. Yes.

Q. 38 Winchester centre-fire cartridges? A. This is the same as yours.

Q. That is the same style of box? A. As near as I know.

Q. And this is the sort of package you asked for? A. I asked for 38-40 rifle shells.

Q. And you got it? A. Yes.

Q. And you took this home with you? A. Took it home.

Q. You said before that you asked for 38; it is the same thing? A. It is the same thing; I got the same anyhow.

Q. This is what you asked for, is it not? A. Yes, that is what I asked for.

Q. Union Metallic Company's 38 Winchester? A. Yes.

Q. They are guaranteed? A. Yes.

Q. "We hereby guarantee these cartridges ——"? A. Yes.

Q. Guaranteed by the factory? A. Yes, sir.

Q. You accepted that and took it with you? A. Yes."

The plaintiff does not base his claim on any negligence of the defendants. Indeed, negligence could not even be suggested, as the defendants sold to the plaintiff a sealed package, got by them in the ordinary way from the manufacturers, the Union Metallic Cartridge Company, who are well-known makers. But the plaintiff puts his case on the ground first of all, that apart from any question of warranty there was here a condition attaching to the sale, the condition being that the goods sold to the plaintiff were to be 38 or 38-40 Winchester rifle cartridges, whereas, they were not all rifle cartridges and that as the damages were caused by the fact that they were not all rifle cartridges he is entitled to succeed on the ground of breach of condition, whether or not