

been rejected by the purchasers as being unmerchantable. The circumstances of the case were that the defendants had contracted to buy from the plaintiffs a quantity of motor horns to be delivered in instalments. The first instalment was received and accepted by the defendants, but subsequent deliveries were refused on the ground that the goods were unmerchantable, it appearing that owing to careless packing about one-half were dented, and they were badly polished. An Official Referee, who tried the action, found that the defects could be made good at a trifling expenditure, and gave judgment for the plaintiff for the price less the estimated cost of putting the horns in proper condition, and this judgment was affirmed by a Divisional Court (Darling and Bucknill, J.J.); but the Court of Appeal (Cozens-Hardy, M.R., and Farwell and Kennedy, L.J.J.) took a different view, and held that the Divisional Court had put an entirely new meaning on the words "merchantable," namely, that defective goods are merchantable if they only want some trifling thing done to make them saleable, for which their Lordships in appeal held there was no authority, and in their judgment the fact that a large part of the goods were not in fact fit for the market, constituted them unmerchantable, and the defendants were entitled to reject them in toto, and were not precluded from so doing by reason of their having accepted a previous instalment, or because some of the goods subsequently tendered were merchantable.

NEGLECT—LESSOR AND LESSEE—CONTRACT BY LESSOR TO MAKE REPAIRS ON DEMISED PROPERTY—ACCIDENT OCCASIONED BY NEGLIGENCE OF LESSOR'S CONTRACTOR—LIABILITY OF LESSEE TO PERSONS INJURED—RIGHT OF LESSEE TO RECOVER AGAINST LESSOR'S CONTRACTOR.

*City of Birmingham Tramways Co. v. Law* (1910) 2 K.B. 965. This was a somewhat unusual case. The plaintiffs were lessees from a municipal corporation of a tramway. The lessors agreed to execute certain repairs thereon, and engaged the defendant to execute them; by his contract to which the lessees were not parties, he bound himself to indemnify the lessors against all claims arising from any negligence on his part in the execution of the repairs, and that he would be responsible for all accidents. During the repairs the tramcars continued to run, and owing to the defendant's negligence a car was derailed and the driver and passengers were injured, to whom the plaintiffs paid compensation for their injuries; this compensation the plaintiffs claimed now to recover from the defendant. The defendant contended