such a defence, as he had refused to accept the transfer. *Phillips* v. *Merritt* (1853), 2 U.C.C.P. 513.

A few additional cases where the subject of acceptance and rejection of goods sold has been considered may be noted.

Jacobsen v. *Peltier*, 3 D.L.R. 132, held that a rehibitory action (or action in cancellation of sale for latent defects) must be brought with reasonable diligence according to the nature of the defect and the usage of the place where the sale is made; and where there is no usage, the old French law prescription of six months from the date of the sale will be applied; also that use of the thing sold as the buyer's property, the making of extensive repairs, alterations and improvements thereto, are acts of acquiescence to the sale and will bar a resolutory action, more especially when the defendant was never notified thereof.

Ironsides v. *Vancouver Machinery Depot*, 20 D.L.R. 195, 20 B.C.R. 427, was an action for the price of railway construction dump cars and equipment, the defence being shortage and unfitness. The defendants did not advance the contention put forward at the trial for a year or more after they took delivery, the British Columbia Court of Appeal affirming the judgment of Gregory, J., held that the lapse of time before making the complaint of alleged shortage of or unfitness were elements to be considered as adversely affecting the credit to be given the evidence adduced for the buyer to sustain a defence based on such complaint.

Alabastine Company, Paris v. *Canada Producer and Gas Engine Co., Ltd.*, 17 D.L.R. 813, was an appeal from the judgment of Clute, J., in favour of the plaintiff in an action to recover $5,500 paid by the plaintiff on account of purchase-money for an engine (to be built according to specifications) bought from the defendant and alleged to be useless for the purpose intended, and for damages and for rescission. The engine was being "tried out" from September, when it was set up in respondent's factory, until the time of the breakdown in the following March. The Ontario Supreme Court (Appellate Division), affirming the judgment of Clute, J., held that when a sale of personalty not yet in existence or ascertained is made with a condition that it shall, when existing or ascertained, possess certain qualities, the "trying out" of the thing sold after delivery covering a protracted period does not constitute an acceptance against the buyer where such "trying out" was, as understood by both parties, to be for the purpose of discovering whether or not it answered the conditions of the contract.

In *Duncan & Buchanan* v. *Pryce Jones Ltd.*, 22 D.L.R. 45, McCarthy, J., of the Alberta Supreme Court, held that the buyer of goods is liable, because of his acceptance of same, if he retained them after actual receipt of same for such a time as to lead to the presumption that he intended to take possession thereof as owner.

Haug Bros. v. *Murdock*, 25 D.L.R. 666: Elwood, J., of Saskatchewan, held that where, in the sale of a traction engine, a purchaser accepts the engine and continues to use it after discovery of the defects, he is thereby precluded from later returning the engine. This case was reversed in 26 D.L.R. 200, but on the ground that as the engine was not constructed in accordance with the Steam Boilers Act (R.S.S. 1911, c. 22, sec. 19), the regu-