

as alleged, a distinctly new agreement in reference to an engine which plaintiffs then had in their possession. Such an agreement, if made, would supersede, as to the engine and as to plaintiffs' rights in regard to it, an agreement of 28th February, 1905, made between the parties. According to the new agreement, as set out in the statement of claim, the engine was "to be put in running order, capable of developing 17 horse power under the working and other conditions provided for" in the agreement of 23rd December, 1905, and in all other respects the engine was to fulfil the terms and conditions of the prior agreement.

Plaintiffs, as shewing consideration for this new agreement, state the fact of making the prior agreement, and to ascertain all the terms of the new agreement it will be necessary to look at the former one.

The case is very like *Greer v. Sawyer-Massey Co.*, 6 O. W. R. 594.

The agreement of 28th May, 1905, contains the following clauses:—

(1). "And if any action or actions arise in respect to the said machine or notes or any renewals thereof, the same shall be entered, tried, and finally disposed of in the Court which has its sittings where the head office of the said company (defendants) is located."

This seems to refer to actions of the competency of a Division Court.

It can hardly be said that this action is in reference to a machine sold under this contract.

(2). "Any action brought with respect to this contract or in any way connected therewith, between the parties, shall be tried at the town of Sarnia, and the purchasers consent to have the venue in any such action changed to Sarnia, no matter where the same may be laid."

I do not think the present action is one within the true meaning of that stipulation.

If it can be said that these are terms which must be imported into the agreement of 23rd December, 1905, then they are within and covered by sub-sec. 2 of sec. 22 of 6 Edw. VII. ch. 19.

I think the appeal must be dismissed. Costs to be costs in the cause.