

LENNOX, J.

OCTOBER 15TH, 1918.

*RANDALL v. SAWYER-MASSEY CO. LIMITED.

Sale of Goods—Contract for Sale of Motor-truck—Knowledge of Vendor of Purpose of Purchaser—Article Delivered not Reasonably Fit for Purpose—Finding of Trial Judge on Evidence—Truck Sold by Manufacturer not of his own Manufacture—Implied Warranty—Property in Truck not Passing to Purchaser until Payment in Full—Right of Purchaser to Rescind—Return of Money Paid and Promissory Notes—Interest.

Action for the rescission of a contract for the purchase by the plaintiffs and sale by the defendants of a motor-truck, for the return of moneys paid by the plaintiffs, and for damages.

The defendants counterclaimed for the amounts due upon promissory notes made by the plaintiffs and for repairs.

The action and counterclaim were tried, without a jury, in Toronto.

R. McKay, K.C., and H. Howard Shaver, for the plaintiffs.

S. F. Washington, K.C., and Kirwan Martin, for the defendants.

LENNOX, J., in a written judgment, said that the plaintiffs were under contract to carry liquid air from Toronto to Hamilton, and required a 5-ton motor-truck to be used in their business as carriers. The defendants were informed of the purposes for which the truck was required and the character of the work it would be put to, and must be taken to have been aware of the character of the highways in 1917. On the 12th April, 1917, the plaintiffs and defendants signed an agreement for the purchase of a truck by the plaintiffs from the defendants for \$5,600. The truck was delivered and put into operation on the 18th April, and was constantly used thereafter, except when it was being repaired, until it was returned to the defendants on the 2nd November, 1917, and in that time it had travelled about 11,000 miles. The plaintiffs complained that the truck was not reasonably fit for the purpose for which both parties intended it to be used; and whether it was so or not was the issue presented.

Reference to Bristol Tramways etc. Carriage Co. v. Fiat Motors Limited, [1910] 2 K.B. 831; Canadian Gas Power and Launches Limited v. Orr Brothers Limited (1911), 23 O.L.R. 616, 621; Albastine Co. of Paris Limited v. Canada Producer and Gas Engine Co. Limited (1914), 30 O.L.R. 394.

Aside altogether from the question whether what the defendants