

with the Fairbanks machine, and I find was of good workmanship, although some slight defects were found when hoisting was first commenced. . . .

[The learned Judge proceeded to summarize the evidence of some of the witnesses, and concluded.]

Having regard to the whole evidence, I reach the conclusion that the engine was capable of performing and did perform the work in a satisfactory manner.

Plaintiffs are entitled to recover the \$350, the balance due under the contract, and the \$8 for the mixer gear, with interest from the time of the shipment of the engine. They are not entitled to be paid for the clutch, as it was not ordered. While the clutch may have advantages, the engine is frequently kept running without the use of one.

Defendants must pay the costs of the action.

The counterclaim will be dismissed with costs.

BOYD, C.

OCTOBER 30TH, 1906.

TRIAL.

McINTOSH v. LECKIE.

Contract—Exclusive Right for Term of Years to Enter on Land and Drift for Oil or Gas—Forfeiture Clause—Construction—Penalty—Payment—Time—Lease or License—Profit a Prendre—Specific Performance—Injunction—Subsequent Lease—Registry Laws—Improvements—Reference.

Action for a declaration that a certain lease or license to plaintiff to prospect for oil and gas upon certain land has not been forfeited, and to be admitted into possession, and to restrain the defendants from operating under a subsequent lease during plaintiff's term.

BOYD, C.:—Under the terms of the document called a lease, which is signed and sealed by defendant, plaintiff had the exclusive right to drift for petroleum and natural gas by entering upon the lands described for the term