

MAGEE, J.

DECEMBER 21ST, 1906.

## TRIAL.

## BELL v. GOODISON THRESHER CO.

*Sale of Goods—Threshing Outfit—Incapacity of Engine and Boiler Forming Part of Outfit—Contract—Warranty—Reduction in Purchase Money—Reference—Payment into Court—Promissory Notes—Damages.*

Action by the purchasers of a threshing outfit for a return of the money paid and promissory notes given and for damages for breach of the agreement of sale.

MAGEE, J.:—It is conceded that the traction 17 horse power engine to be furnished by defendants was to include an engine and boiler, the former being mounted on and affixed to the latter. The whole machinery comprised what is called a threshing outfit, intended to be not only operated but also moved from place to place by the motive power of the engine. It should, therefore, be adapted to run upon ordinary roads, with their unevenness and grades.

It was intended by plaintiffs to be operated by plaintiff Edward Bell with the assistance of his brother Britton Bell, the former generally but not invariably attending to the engine and boiler, and the latter to the threshing machine. Each of them had experience in running portable threshing machines. . . .

By a memorandum indorsed on the agreement, it was not to be binding after 13th March, 1905, if not accepted by defendants in that time. Apparently to conform to that arrangement, defendants on 9th March wrote Edward Bell that they had received the order for the outfit, and that they intended supplying him with the rig, and would get him up a first class one in every respect. The machinery was received by plaintiffs about 18th April, 1905, at Elmvale station. Edward Bell then got steam up and moved it to their farm, and the next day he again worked the engine. . . . On that first trip he says he experienced difficulty in keeping steam up and had to stop several times. . . . He at that time thought there was some merely temporary cause which he would be able to discover with a