

At the trial, no defect was alleged as to any of the machines or attachments save the separator. This was stated to be defective by reason of its swaying while in operation and choking.

The whole outfit was apparently treated as an entirety at the trial, the provisions of the contract above referred to being ignored; but from the plaintiffs' own evidence it is clear that the only defects charged were those indicated in the separator itself.

We are not altogether satisfied with the findings of the jury; but do not see our way clear to disregard them or to direct a third trial; and probably, in view of the conclusion at which we have arrived, the plaintiffs would not desire to have a new trial ordered.

The result is, that the plaintiffs should recover the amount due upon the two promissory notes sued upon; and, upon the defendant returning the separator, he should be allowed \$425 upon his counterclaim, which may be set off against the plaintiffs' recovery; the plaintiffs recovering for the balance. This will leave the defendant with the traction engine and the remaining machinery, and will leave him liable to pay the four remaining notes as and when they mature.

The situation will probably be most unsatisfactory to the defendant, because he will be left in the possession not only of the traction-engine but of the other separate articles, which are probably more or less adapted for use with the plaintiffs' separator; but he has chosen to sign a contract in which the articles are separated, and which treats each article as sold for the price placed opposite to it. With this in view, we urged the parties to endeavour to come to some arrangement; but we are now advised that it is impossible to hope for any settlement; and we have, therefore, to do the best we can with this intricate and somewhat one-sided contract.

With reference to costs, the plaintiffs have succeeded in their action upon the notes; the defendant has succeeded in his claim upon the defective character of the machine. We think that the plaintiffs should have the general costs of the action, and that the defendant should have the costs of his counterclaim, including therein the entire costs of the controversy respecting the non-compliance of the separator with the terms of the warranty; these costs and the plaintiffs' recovery to be set off pro tanto. No costs of appeal.

BOYD, C., and LATCHFORD, J., agreed in the result.