

## KING'S BENCH.

Mathers, J.]

ROSS v. MOON.

[May 1.]

*Contract—Sale of several articles together, some only supplied—  
New contract subject to terms of old one—Sale of goods—  
Implied warranty—Interest.*

Action for the price of an engine, and other articles of machinery supplied by plaintiffs to defendants in pursuance of a written contract. This contract called for the furnishing at the same time of a number of articles in addition to those actually supplied.

The statement of claim was founded upon the original contract, but the evidence shewed that the defendants had made a new bargain under which they accepted the machinery actually delivered on the plaintiffs promising to pay the freight and to allow for the articles not delivered.

*Held*, that the plaintiffs should be allowed to amend the statement of claim and should then have judgment for the contract price less the freight and the cost of the articles not delivered.

Defendants contended that the written agreement was superseded by the new arrangement and the plaintiffs could only rely upon an implied agreement to pay what the goods were worth, subject to the implied condition, under sub-s. (a) of s. 16 of R. S.M. 1902, c. 152, and they were reasonably fit for the purposes for which they were sold.

The original agreement, however, contained a proviso that "in the event of changes being made in machinery or terms mentioned in this contract; or any changes whatever, such changes are in no way to supersede or invalidate this contract but it is to remain valid, binding and in full force in all its clauses except in so far as relates to the specific changes.

*Held*, that full effect must be given to this proviso and that all the provisions of the original contract, except those modified by the new bargain, remained in full force.

The contract contained the usual printed warranty followed by the clause: "All warranties are to be inoperative and void in case the machinery is not settled for when delivered." It was not "settled for," and therefore any warranty covered by the expression "all warranties" in that clause became inoperative and void; but it should be held that that expression only referred to the printed warranty immediately preceding, and any im-