

attempt to prove that it was a part of the agreement or understanding between the parties that the machine would not work satisfactorily until after the cows had been made accustomed to it—the defendant testified that there was no such term in the agreement.

The plaintiffs sought to adduce the testimony of users of other machines made by the plaintiffs that these had worked satisfactorily; that it was necessary to persist in the use of the machine until the cows were accustomed to its use; and that, unless this was done, the machine could not be said to have had a fair trial. This evidence was rejected. The learned trial Judge did not instruct the jury that, if the defendant's dissatisfaction was real and unfeigned, honest and not pretended, it would be a sufficient answer to the plaintiffs' claim. On the contrary, he instructed the jury as if the sale had been made on a warranty by the plaintiffs that the machine would do what it was represented to do.

The jury at first found "that Richardson & Co. take back the Omega Milking Machine which they installed owing to the unsatisfactory way in which it was working."

The jury were asked by the Judge to reconsider their answer, and he redirected them, whereupon they retired and came back with a verdict for the defendant.

The plaintiffs were not in any way prejudiced by the refusal of the trial Judge to admit the evidence which was tendered and rejected.

The defence might have been presented to the jury in a more favourable light than it was. If believed, the witnesses for the defendant made out a case on which the jury might have found that though the machine was capable of doing what it was intended to do, and what the plaintiffs represented that it would do, yet, as it did not work to the satisfaction of the defendant, and his dissatisfaction was honest and bona fide, the defendant was entitled to a verdict.

*Appeal dismissed with costs.*

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FIRST DIVISIONAL COURT.

JUNE 11TH, 1920.

JACOB v. MUSHOL.

*Evidence—Action against Administrator of Estate of Deceased Person—Money Transactions between Plaintiff and Deceased—Counterclaim for Money Received by Plaintiff for Deceased—Defence that Plaintiff Received it in Payment of a Debt—Testimony of Plaintiff—Corroboration by Facts and Circumstances Disclosed—Evidence Act, R.S.O. 1914 ch. 76, sec. 12—Finding of Trial Judge—Appeal.*