

me that, whatever may be the legal difficulties in the way of plaintiffs to prevent recovery from defendants, if there are such, plaintiffs have acted in good faith in complaining, and have been put to considerable loss by reason of defendants not supplying plaintiffs with an engine, as part of a threshing and separating and cleaning outfit, which would do good work, according to the defendants' warranty.

The original agreement between the parties is dated 28th February, 1905, and is one of the very full, fine print agreements, framed as much in the interest of defendants as manufacturers as it could be. I do not think plaintiffs fully understood the full effect of the agreement as protecting them as limiting the liability of defendants; but plaintiffs did sign, and so defendants have, as they are entitled to have, the advantage of this instrument.

This action is not upon the warranty in the original agreement, but upon a distinctly new agreement, which it is alleged was subsequently made, and made by reason of the Goodison traction engine supplied under the original agreement failing to do good work.

Plaintiffs had certain rights under the original agreement; so of course had defendants. Defendants could have said they would leave plaintiffs to enforce their rights, and that they (defendants) would be liable only so far as they were made liable, if at all, by the original agreement. Defendants did, as I view the evidence, make a subsequent agreement.

The original purchase by plaintiffs was of a rebuilt McCloskey thresher, a Goodison traction 17 h.p. engine, and a Goodison side fan stacker, all fitted up, mounted, and thoroughly equipped, as particularly set out, and at the price of \$2,000; and if a Goodison "wind-stacker" was included, \$250 additional was to be paid therefor.

These machines were warranted by defendants to be well made, of good materials, durable, and with good care, proper usage, and skilful management to do as good work as any other of the same size manufactured in Canada. The case of the purchaser having trouble with the machine is provided for, at length and specifically. Then there is the proviso: "If the said machines do not work according to warranty, the said notes or moneys are to be refunded, and the purchasers shall have no claim for damages sustained by reason of the failure of the machine to satisfy this warranty."