

YORK COUNTY COURT.

JANUARY 17TH, 1913.

HILL v. RICE LEWIS.

Sale of Goods—Action for Breach of Implied Warranty—Defective Cartridge in Box—Box of Well-known Maker Sold Sealed—Guarantee of Maker—No Reliance on Vendor's Skill or Judgment—Review of Authorities—Stay.

Action for damages for breach of implied warranty upon the sale of a box of cartridges. Plaintiff purchased from defendants a box of "38-40 rifle" cartridges sold to him in a sealed box bearing the label and guarantee of well-known makers. One of such cartridges proved not to be a rifle cartridge but a revolver cartridge and when inserted in plaintiff's rifle it exploded, seriously injuring him.

DENTON, Co.J., *held*, that under the facts of the case there was no implied warranty other than that the goods were the goods of the manufacturer in question and that plaintiff did not in any sense rely upon defendants' skill and judgment but upon the reputation and guarantee of the manufacturers.

Judgment for non-suit with costs if demanded. Review of authorities.

J. W. McCullough, for the plaintiff.

J. D. Montgomery, for the defendants.

HIS HONOUR JUDGE DENTON:—Plaintiff is a farmer living near Thornhill in York township, and defendants are hardware merchants in King street, Toronto. In the fall of 1911 plaintiff, in preparation to go hunting went to defendants' store and bought from them a box of cartridges for his Winchester rifle. It is not disputed that (except as to the one single cartridge which caused the trouble), the cartridges sold by defendants to plaintiff were the cartridges which plaintiff desired and which were suitable for his rifle. The plaintiff joined his hunting party and one morning, before daylight, the plaintiff took some cartridges out of his pocket and put them in his rifle. He went out in the course of the morning, saw a deer which he fired at and missed. He then pumped up (to use the huntsman's phrase), another cartridge and fired and missed a second time. He pumped up a third and fired, but there was no discharge. He then pumped up another cartridge and fired, when an explosion took place, powder going into the plaintiff's face, injuring his eyes and causing him very great pain and suffering. The plaintiff was taken by a comrade to the camp and on the same afternoon the rifle was examined. They found in the barrel a revolver cartridge smaller in size than the rifle cartridge. The