

vendor is aware of the use for which it is designed will not raise an implied condition, or stipulation, or warranty on his part that it is fit for that purpose.

An example of this class is *Chanter v. Hopkins*, 4 M. & W. 399. But many cases decided in the English Courts both before and since the passing of sec. 14 (1) of the Sale of Goods Act, 1893 (of which it has been said that it only formulates the already existing law on the subject—per Collins M.R. in *Clarke v. Army & Navy Co-operative Society*, [1903] 1 K.B. at p. 163, and in *Preist v. Last*, [1903] 2 K.B. at p. 148), and in our own Courts have clearly affirmed the rule that where a manufacturer or dealer contracts to supply an article which he manufactures or produces, or in which he deals, to be applied to a particular purpose, so that the buyer trusts to the judgment or skill of the manufacturer or dealer, there is in that case an implied term or warranty that it shall be reasonably fit and proper for the purpose for which it was designed: *Brown v. Edgington*, 2 M. & G. 279; *Jones v. Just*, L.R. 3 Q.B. 197; *Bigelow v. Boxall*, 38 U.C.R. 452; *Clarke v. Army & Navy Co-operative Society*, and *Preist v. Last* (supra), and *Ontario Sewer Pipe Co. v. Macdonald*, 17 O.W.R. 1014.

Having regard to the circumstances under which the order was given in this case, as developed by the direct testimony, it is difficult to adopt the plaintiffs' contention. This was not the single isolated transaction of giving a defined order to the plaintiffs for the supply of the articles in question, but was the outcome or result of several communications, chiefly verbal, but some in writing, passing between the parties, with reference to the object and purpose for which the articles were required.

The defendants were apparently first brought into contact with the company through the latter's representative Haggas. The defendants were looking for motive power to be applied in operating a fan or fans in the interior of their establishment, and electric flashlight signs on the exterior, and after conferences and consultations with Haggas, they decided to procure from the company a 35 horse power engine, and an order was given for the supply of such an engine. But during these conferences there was discussion as to the desirability and feasibility of lighting the interior by electricity instead of by means of gas with Auer mantels. Haggas was of the opinion that this could not be effectively accomplished with a 35 horse power engine, and proposed or suggested an engine of greater force, with a dynamo capable of producing the required energy. It