

County Court of the County of Perth, brought to recover the amount of two promissory notes and interest, and a counterclaim for rescission of the contract in respect of which the notes were given, for the return of the notes, and for other relief. The judgment appealed from was in favour of the defendant, upon the findings of the jury.

The appeal was heard by BOYD, C., LATCHFORD and MIDDLETON, JJ.

R. S. Robertson, for the plaintiffs.

Glyn Osler, for the defendant.

MIDDLETON, J.:—This action comes before us, even after a second trial, in a most unsatisfactory shape.

The plaintiffs' claim is upon two promissory notes: one for \$125, due the 1st January, 1911; the other for \$362, due upon the same date. These notes bear interest at ten per cent. per annum after maturity until paid. The defendant, by his defence and counterclaim, sets up that these notes and other notes were given in payment for a threshing outfit, consisting of a traction-engine, separator, band-cutter, wind-stacker, drive-belt, and straw-cutting attachment; that these were purchased under an agreement of the 17th August, 1910, which contained, among other things, a very narrow and limited warranty; that this machinery was delivered but failed to answer the warranty; and that, nevertheless, the plaintiffs refuse to allow the defendant to return the outfit, and also refuse to return to him the second-hand threshing outfit which was turned over to the plaintiffs at \$1,200, and which sum was allowed as part payment on account of the purchase-price. Upon this statement, the defendant asks rescission of the contract and a return of his notes and the value of the second-hand outfit turned over to the plaintiffs.

Neither party appears to have paid sufficient attention to the terms of the contract. In it is provided, among other things, "that this contract is divisible, and that each article herein ordered is ordered and sold at a separate fixed price." The contract further provides that any credit for machinery taken in exchange is to be apportioned pro rata between the several items.

The individual machines above enumerated have each a separate price attached: the separator being sold at \$425, out of a total of \$3,150. The contract further provides that the warranty "is hereby made to apply separately to each machine or attachment herein ordered."