

Thomas, 36 L. T. N. S. 22; May v. McDougall, 18 S. C. R. 700. The contract, as we construe it, was for new dynamos, and it was not satisfied by the delivery of the old ones repainted. The right to recover damages for a difference of this kind is something entirely distinct from the right of action upon the guarantee, that being accepted upon the fundamental understanding that the thing contracted for should be supplied: Bowes v. Shand, 2 App. Cas., per Lord Blackburn at p. 480. The plaintiff, upon the weight of evidence, is entitled to the \$50 assessed at the trial, for, though the articles not supplied were in question in the Division Court action, they were never supplied pursuant to the settlement. That settlement might have been an answer to the whole cause of action, if it had gone to trial or judgment: Wright v. London Omnibus Co., 2 Q. B. D. 271; Brunsden v. Humphrey, 14 Q. B. D. 141; Nelson v. Couch, 15 C. B. N. S. 99; but it did not, and the question as to what was covered by the settlement is one of fact, and we find on the evidence that no right of action for damages for breach of the contract to deliver new dynamos, that breach not being in fact known to plaintiff, or for warranty as to their working, was included in that settlement: Lee v. Lancashire R. W. Co., L. R. 6 Ch. 527.

Appeal dismissed with costs, BRITTON, J., dissenting.

Proudfoot & Hayes, Goderich, solicitors for plaintiff.

Garrow & Garrow, Goderich, solicitors for defendant.

FERGUSON, J.

FEBRUARY 18TH, 1902.

TRIAL.

SHARKEY v. WILLIAMS.

Sale of Goods—Conditional Sale—Hire Receipt—Removal for Non-payment.

Action, tried at Ottawa, brought to recover damages for illegal seizure and removal of a piano, which plaintiff had purchased from defendants on the usual hire receipt plan, and which, upon three payments of \$5 each becoming in arrear, they removed from her premises, on 7th July, 1901. The contract provided that the purchase money was to become due on default of any payment, and defendants' agent demanded \$115 balance due, and, not receiving it, removed the piano. Subsequently the defendants gave back to plaintiff's agent the piano and received the payments in arrear and \$5 costs of removal, the latter under protest.

P. H. Bartlett, London, and R. M. C. Toothe, London, for plaintiff.

E. Meredith, K.C., and J. O. Dromgole, London, for defendant.