

were barred, under the terms of the agreement, from claiming that the machinery was not good and that payment therefor should not be enforced.

2. The agreement was not rescinded by plaintiff retaking possession and reselling. *Sawyer v. Pringle*, 18 A.R. 218, distinguished. *Watson Manufacturing Co. v. Sample*, 12 M.R. 373, followed.

3. The plaintiffs had a right, under the circumstances, to charge the cost of the repairs and of resuming possession against the proceeds of the resale, as it was shewn that such repairs had enhanced the value of the machinery in the state in which it was when the plaintiffs retook it, by more than their cost. A vendor retaking possession under the terms of such an agreement and in circumstances like those of this case may be deemed in the position of a mortgagee in possession, and such cases as *Shepard v. Jones*, 21 Ch. D. 469, and *Henderson v. Astwood* (1894) A.C. 150, would apply.

4. The defendants were not entitled to be credited in this action with anything on account of the proceeds of the conditional sale to Weaver as nothing had yet been received by the plaintiffs on that account.

*Quere*, whether, if the sale to Weaver had been an absolute sale on credit, the defendants would not have been so entitled. If the sale to Weaver should be carried out and the money paid to the plaintiffs, defendants would then have their recourse for the amount coming to them out of the proceeds.

5. The plaintiffs were not entitled to charge the cost of the repairs to the machinery as against the defendants in this action or to deduct the amount from certain sums they had collected in cash on collaterals and by the sale of certain parts of the machinery which sums must be credited in this action, but must look to the proceeds of the sale of the remainder of the machinery to recoup themselves for the repairs.

6. The plaintiffs were entitled to collect in this action the amount expended by them in retaking possession of the machinery under the terms of the contract.

*Howell*, K.C., and *Mathers*, for plaintiffs. *Metcalfe*, for defendants.

Bain, J.]

GREEN v. MANITOBA ASSURANCE CO.

[April 29.

*Fire insurance—Conditions—Variations from statutory conditions—“The Fire Insurance Policy Act,” R.S.M. c. 59—Proofs of loss—Interest—Valuation of property.*

Defendants objected to the plaintiff's claim for loss of property insured under a policy of fire insurance issued by the defendants on the ground that at the time of the loss a portion of plaintiff's note given for the premium for the insurance was unpaid, and relied on a condition indorsed on the policy that the company should not be liable for any loss or damage that