

the 26th April and the 21st May, and then unloading it; Sparks to have credit for the net amount realised from the sale of the hay that was stored; the company not to be allowed anything for charges on the hay sold from the cars beyond the amount realised from the sale.

Further directions and costs, including the costs of the trial and reference, should be reserved until after the report.

Sparks should have the costs of this appeal.

*Appeal in first action dismissed, in second allowed.*

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FIRST DIVISIONAL COURT.

JUNE 11TH, 1920.

RICHARDSON v. HIBBERT.

*Sale of Goods—Milking Machine—Representation—Condition for Return if not as Represented—Action for Price—Verdict of Jury—Evidence—Rejection of—Judge's Charge.*

Appeal by the plaintiffs from the judgment of the Judge of the County Court of the County of Perth, upon the verdict of a jury, dismissing an action for the price of a milking machine alleged to have been sold and delivered by the plaintiffs to the defendant.

The appeal was heard by MEREDITH, C.J.O., MACLAREN, MAGEE, and FERGUSON, J.J.A.

J. C. Makins, K.C., for the appellants.

W. R. Meredith, for the defendant, respondent.

FERGUSON, J.A., reading the judgment of the Court, said that the plaintiffs' agent in his evidence admitted that the sale of the milking machine was subject to a condition that the machine would do "what was claimed for it" and if it did not that it might be returned. The machine was in the defendant's possession for 3 months and 10 days, during which period he used it 12 times. His evidence was that the machine was unsatisfactory, particularly in that the cups dropped off the teats of the cows. The plaintiffs' evidence was directed to shewing that this was the result of the unsatisfactory working of the gasoline engine used by the defendant; that the defendant did not give the machine a fair test, in that he did not persist in the use of the machine long enough to accustom his cattle to the use of it. The plaintiffs did not