The action was tried without a jury at a Toronto sittings.

B. N. Davis, for the plaintiffs.

Frank Denton, K.C., for the defendants.

CLUTE, J., in a written judgment, after setting out the facts, found that the plaintiffs purchased the truck for a 1½ ton truck, manufactured in 1914; that the truck was not what the defendants represented it to be in that regard; that the defendants knew what the truck was required for, and sold it to meet the plaintiffs' requirements of a 1½ truck, 1914, in perfect running order; that the truck was not in perfect running order, and was not fit for the purpose for which it was bought and sold; and that the plaintiffs did not buy the truck upon their own inspection or that made on their behalf by an expert.

The defendants were in possession of the truck, having seized it under their lien.

The learned Judge was unable to find that the defendants were guilty of fraud in the false representations which they made, although they were made carelessly and without knowledge of the facts.

The contract could not be cancelled or set aside, it having been assigned, and the assignees not being parties.

But it was clear upon the facts that, as between the plaintiffs and defendants, there was an implied warranty that the truck was fit for the purpose for which it was sold. It was not fit for that purpose, there was a breach of warranty, and the loss to the plaintiffs (the defendants having repossessed the truck and the property not having passed) was the full amount of the purchase-price, $1,100.

Reference to Bristol Tramways etc. Carriage Co. Limited v. Fiat Motors Limited, [1910] 1 K.B. 831; Canadian Gas Power and Launches Limited v. Orr Brothers Limited (1911), 23 O.L.R. 616; Alabastine Co. of Paris Limited v. Canada Producer and Gas Engine Co. Limited (1914), 30 O.L.R. 394; Randall v. Sawyer-Massey Co. Limited (1918), 43 O.L.R. 602.

The plaintiffs were also entitled to succeed upon the principle recognised in Wallis Sons & Wells v. Pratt & Haynes, [1910] 2 K.B. 1003, [1911] A.C. 394, referred to and applied in the Alabastine case, supra, viz., that, if a man agrees to sell something of a particular description, he cannot require the buyer to take something which is of a different description, and a sale of goods by description implies a condition that the goods shall correspond to it, and the buyer may treat the breach of the condition as if it was a breach of warranty.

The plaintiffs were entitled to recover from the defendants the full purchase-price, $1,100, with interest. If, however, the de-