

for damages suffered by them in consequence of the engine being useless for the purpose required, and for the value of a second-hand engine which they had delivered to the plaintiffs in part payment.

The trial judge found in defendants' favour on the merits, and gave them judgment on their counterclaim and ordered the notes given for the engine to be delivered up and cancelled.

Points of law arising at the trial were also decided as follows:—

1. Effect should be given to the provision specially written on the order by the plaintiffs' agent, that the engine should be satisfactory to the purchasers, notwithstanding the printed provision containing the usual warranty and ending with the words, "No agent has any authority to add to, abridge or change this warranty in any manner," for the plaintiffs supplied the engine after seeing the order and must be taken to have ratified the special warranty given by their agent, and, besides, such was not, in strictness, an addition to or an abridgement or change of the printed warranty.

2. Apart from the actual representations of the agent, as the plaintiffs, by their agent, knew the purpose for which the engine was required, and that the buyers were relying on the sellers' skill and judgment, and the engine was something which it was in the course of their business to supply, there was, under s. 16(a) of the Sale of Goods Act, R.S.M. 1902, c. 152, an implied condition that the engine should be reasonably fit for such purpose.

3. The plaintiffs made a prima facie case by putting in an exemplification of the Ontario judgment, without proving that the Ontario Court had jurisdiction, as such will be presumed: *Robertson v. Struth*, 5 A. & E.N.S. 941.

4. The defendants had not pleaded want of jurisdiction in the Ontario Court, but if they had, and if the other facts would have, under *Sirdar v. Rajah* (1894) A.C. 670, entitled them to succeed on such plea, the additional fact that, on the face of each of the notes sued on, was a provision that, in case of default, suit might be "immediately entered, tried and finally disposed of . . . in the Court having jurisdiction where the office of the plaintiffs is located," rendered the success of such a defence doubtful, and, it being unnecessary for the defence, the plea should not be allowed to be added.

*Howell*, K.C., and *Matheson*, for plaintiffs. *Coidwell*, K.C., and *Wilson*, for defendants.