

1905, the plaintiff paid \$84 "to apply on first payment of engine," so says the receipt, and in the fall some time he told the agent of the defendants that he would not accept the engine—that he was not going to take it.

In January, 1906, the plaintiff, in company with one Tripp, an agent for the Sawyer-Massey Company, examined the engine in Norwood. I have no doubt that this examination was not with a view of seeing whether the engine should be accepted, but for the purpose of finding a pretext to justify, if possible, the refusal already made. After this, and on 20th January, 1906, one of the plaintiffs, with a full knowledge of all the alleged defects, paid the remainder (\$16) of the first payment of \$100. This was done admittedly that the old notes might be received back, as they were, and this sum was so paid after the plaintiffs' solicitor had written the defendants threatening action (15th January, 1906).

On 9th February, 1907, the present defendants issued a writ against the present plaintiffs for the sum of \$50 and interest and for the amount of the promissory notes and interest. No appearance being entered (I am told by counsel that the solicitor received his instructions too late), judgment was entered for the now defendants on 27th February, 1907, for \$640.16 and \$32.58 costs. Subsequently a writ of *fi. fa.* was placed in the hands of the sheriff of the county of Hastings, and under that writ goods of the plaintiffs were sold, the proceeds of which, a sum of \$294, remain still in the hands of the sheriff.

On 15th May, 1907, this action was begun, the sheriff being added as a party defendant.

The action is framed substantially as an action in deceit, the plaintiffs alleging that the engine was fraudulently misdescribed, and relief is asked for also on the ground of alleged fraud practised upon the Court in the action already spoken of.

If I could find fraud in the conduct of the agent of the defendants, the clauses in the contract apparently introduced to avoid, as against the defendants, the consequences of that fraud, would be ineffective. . . .

[Reference to *Pearson v. London*, [1907] A. C. 351.]

This most salutary rule must be given full effect to in cases to which it applies, but here I find no fraud, no mis-