

Full Court.]

JONES v. GREEN.

[May 31.

*Contract—Evidence—Signature of agreement procured by misstatement of the contents—Consensus ad idem.*

Appeal from the decision of a County Court in favour of defendant in an action for the price of a stacking machine supplied by plaintiffs under the following circumstances :—Defendant negotiated with one Pryde, plaintiffs' agent at Boissevain, for the purchase of the machine and was asked by Pryde to sign an order for it on a form partly printed and partly written. Being in a hurry to catch a train, he asked Pryde if there was anything in the order that would compel him to keep and pay for the machine if it did not work satisfactorily, saying if there was he would not sign it, when Pryde told him he could have ten days' trial of it and could return it to the warehouse in Boissevain within that time if he was not satisfied with it without incurring any liability.

Defendant then signed the order, which was forwarded by plaintiffs, who accepted it and shipped the machine from Carberry, where their head office was situated. The order provided for only one day's trial, and required the defendant to return the machine at his own expense to Carberry if it would not work properly.

There was a printed direction at the top of the order to give the purchaser a duplicate, but none was given to him, and the order was not read over by or to the defendant before it was sent to the plaintiffs. The agent admitted at the trial that he thought at the time that the order provided for a ten days' trial.

Defendant tried the machine several times, and not getting it to work satisfactorily, returned it to the warehouse at Boissevain within ten days, and notified the plaintiffs' agent there.

*Held*, following *Foster v. Mackinnon*, L.R. 4 C.P. 704, and *Murray v. Jenkins*, 28 S.C.R. 565, that upon these facts there was no consensus ad idem between the parties and no binding contract entered into between them, and defendant was not estopped by any negligence on his part from setting up this defence.

*Held*, also, that the evidence to shew that defendant had not intended to sign such a contract as the one he did sign turned out to be was not inadmissible on the ground that it tended to vary a written contract by oral evidence. *Saults v. Eaket*, 11 M.R. 597, distinguished.

*Pitblado*, for plaintiffs. *Munson*, K.C., for defendant.

Full Court.]

WHITLA v. ROYAL INSURANCE CO.

[May 31.

*Fire insurance—Condition as to other insurance without consent—Interim receipt—Estoppel.*

Appeal by the Manitoba Assurance Co. against the decision in the case against them, noted ante p. 174, and appeal by Whitla against the