

1892

ESSON v. MCGREGOR.

*Feb. 22. *Promissory note—Failure of consideration—Delay in objecting—New trial.*

APPEAL from a decision of the Supreme Court of New Brunswick refusing a new trial to the defendant (respondent).

The action was on a promissory note and the defence that the note was given in payment of a machine for polishing wood which machine did not do the work it was represented to do. The evidence at the trial showed that the machine had been used for some time in connection with building cars, and evidence for defendant went to prove that the work was under the control of a contractor with defendant; that before the machine could be used a fan had to be attached to keep off the dust; that it spoiled the boards on which it was used; and that the contractor did not inform the defendant as to the defects and he knew nothing of them until the case came on for trial. It appeared, however, that the general superintendent of defendant's business watched the progress of the work in which the machine was used and inspected all the cars before they were delivered. The jury found a verdict for the plaintiffs and a new trial was refused, the court holding that the defendant must be held to be affected with the contractor's knowledge or, at all events, that the superintendent was in a position to know if the machine did not work properly.

The Supreme Court held, after hearing counsel for the appellant and without calling upon respondent's counsel, that the new trial was properly refused.

Appeal dismissed with costs.

McLeod Q.C. for the appellant.

Alward Q.C. for the respondent.

*PRESENT:—Sir W. J. Ritchie C.J., and Strong, Taschereau, Gwynne and Patterson JJ.