

1911

*Nov. 20.

*Dec. 22.

CANADIAN GAS POWER AND LAUNCHES v.
ORR BROTHERS.

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO.

Sale of goods—Express or implied warranty—Evidence.

APPEAL from a decision of the Court of Appeal for Ontario(1), affirming the judgment at the trial in favour of the respondents (defendants).

The plaintiffs brought action for the balance of the price of an engine and dynamo sold to the defendants, who pleaded that they were sold under an express, or, if not, an implied, warranty that they would "run properly" and be fit for the special purpose for which they were intended and alleged a breach of such warranty. The plaintiffs contended that all necessary conditions were fulfilled to entitle them to payment and that defendants knowing the capabilities of the articles sold deliberately accepted them, taking the risk of failure.

The trial judge held that there was a warranty as alleged and that the plaintiff had not fulfilled their part of the contract. He, therefore, dismissed their action and gave judgment for the defendants on a counterclaim demanding a return of the money paid on account with interest. This judgment was affirmed by the Court of Appeal.

The plaintiffs appealed to the Supreme Court of

*PRESENT:—Sir Charles Fitzpatrick C.J. and Davies, Idington, Duff, Anglin and Brodeur JJ.

(1) 23 Ont. L.R. 616.

Canada which, after hearing counsel for the respective parties, reserved judgment and, on a subsequent day, dismissed the appeal with costs.

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Appeal dismissed with costs.

G. H. Watson K.C. for the appellants.

E. F. B. Johnston K.C. for the respondents.