

1920

\*Nov. 4, 5.

\*Nov. 23.

NOLAN

V.

EMERSON-BRANTINGHAM IMPLEMENT CO.

ON APPEAL FROM THE APPELLATE DIVISION OF THE  
SUPREME COURT OF ALBERTA.*Sale—Farm machinery—Statutory warranties—Breach—Quantum of  
of damages—Return of goods.*

APPEAL from the judgment of the Supreme Court of Alberta, Appellate Division, (1) varying the judgment of the trial judge, Stuart J.

The appellant purchased from the respondent farm tractors and the action was brought by him for rescission with damages, or, in the alternative, for damages for breach of warranty.

The trial judge held that a case had not been made out for rescission, but awarded \$5,910.20 as damages, \$4,610.20 as the full purchase price of certain of the machines, \$400 the amount paid for freight, and \$900 part of the purchase price of another machine. The Appellate Division disallowed the claim for freight and reduced the damages to \$1,500; Ives J. dissenting, held that the judgment below should be varied by ordering the return to the respondent of the machines in respect to which the trial judge had awarded the whole purchase price as damages.

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\*PRESENT:—Sir Louis Davies C.J. and Idington, Duff, Anglin and Mignault JJ.

(1) 15 Alta. L.R. 353; [1920] 2 W.W.R. 470.

The Supreme Court of Canada, Sir Louis Davies C.J. dissenting, allowed the appeal taken to this court. It affirmed the judgment of the Appellate Division as to the second and third items of the first judgment but it increased the damages to the sum of \$4,910.20. But the Supreme Court of Canada also held that, inasmuch as the appellant was receiving back the entire purchase price of four tractors, he should allow the respondent to take back such of them as are still under his control and should account for the net proceeds of any of them of which he may have disposed.

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Co.]

*Appeal allowed with costs.*

*A. McL. Sinclair K.C.* for the appellant.

*A. H. Clarke K.C.* and *Edmanson* for the respondent.

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