

CUSHMAN MOTOR WORKS OF CANADA  
v. LAING.1920  
•Feb. 10.  
•Mar. 8.  

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ON APPEAL FROM THE APPELLATE DIVISION OF THE  
SUPREME COURT OF ALBERTA.*Sale—Farm machinery—Conditions—Misrepresentation—Use of machine—Right to rescission.*

APPEAL from the judgment of the Supreme Court of Alberta, Appellate Division (1), affirming the judgment of Stuart J. at the trial (2) and dismissing the appellant's, plaintiff's, action. The action is for the recovery of a lien note given by the respondent as part of the purchase price of a combination threshing outfit. The respondent pleaded that the machine did not fulfil the conditions and the warranties contracted for.

The trial judge and the Appellate Division found as a fact that the respondent never got the article he bargained for and also found, in the circumstances of this case, a sufficient explanation of the retention by the respondent of the machine for a long period.

On the appeal by the plaintiff to the Supreme Court of Canada, the court, after hearing counsel for both parties, reserved judgment, and, at a subsequent date, dismissed the appeal with costs.

*Appeal dismissed with costs.*

*A. H. Clarke K.C.* for the appellant.

*J. W. McDonald K.C.* for the respondent.

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

(1) 15 Alta. L.R. 53; [1919] 3  
W.W.R. 494; 49 D.L.R. 1.

(2) [1919] 2 W.W.R. 311.