

AULTMAN AND OTHERS V. THOMPSON.

Circuit Court, D. Minnesota. February 25, 1884.

NEW TRIAL.

New trial ordered, unless defendant should consent to a judgment against him for a certain sum.

Motion for a New Trial.

S. L. Pierce, for plaintiffs.

Rogers & Rogers and *Daniel Rohrer*, for defendant.

NELSON, J. On the trial of this case the court decided that the defendant could offer proof tending to show that the harvester and binder and mower sold to Valentine were worthless, or failed to perform work in accordance with the conditions of their sale. Such proof was offered, by depositions, of the character of the harvester and binder, but not in reference to the mower. When the plaintiff's counsel was asked if he had any evidence to meet the proof offered by defendant, he answered "No," and the court said it would be unprofitable to keep the jury, as plaintiff could not recover on the guaranty of the obligations given by Valentine for this implement. It was stated that plaintiffs were entitled to judgment on the notes given for the mower, and guaranteed by defendant, amounting to \$98.75 and interest, as no evidence had been offered of its failure to fulfill the terms of sale, and the court said it would dismiss the case, and, on a motion for a new trial or reinstatement, could protect the plaintiffs if they were entitled to recover this amount. The motion for a new trial has been submitted with briefs from all the counsel, and on a review of the case I think the plaintiff should recover upon the three notes guaranteed for the sum of \$93.70, and interest at 10 per cent, from February 15, 1879, amounting in all to the sum of \$140.90. If the defendant will

not consent that a judgment for this amount may be entered against him a new trial must be granted.

The defendant is given 20 days from this day, February 25, 1884. to determine; and in case his counsel do not indicate within the time his consent to judgment, by filing a request with the clerk of the court, an order for a new trial will then be entered.

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