novel idea that equity, which is admitted to moderate the law, is to supersede it altogether. It is not necessary to notice the remaining assignments of error in detail; it is sufficient to say, that in none of them do we discover any error.

The judgment is affirmed.

RECENT ENGLISH DECISIONS.

Court of Exchequer Chamber.

LEE AND OTHERS *vs.* JONES.

P., who sold goods on commission for the plaintiffs, being in arrear in his payments to the extent of 1300*l.*, was required by the plaintiffs to give them, in addition to an existing guarantee of 300*l.* from his mother, further security. P. then procured the defendant and others to give a guarantee for three years for the sums set opposite their respective names, in all 300*l.* The agreement recited that P. had for some time past been a salesman for the plaintiffs, he, the said P., giving bills to them for all such coals as were delivered to his order, the bills being floating bills, to be settled for and paid up monthly; there was no recital of P. being then indebted to the plaintiffs, and the present guarantee was expressed to be in addition and supplemental to the former guarantee. To an action against the defendant for his proportion, the defendant pleaded fraudulent concealment of material facts:—Held (affirming the decision of the Court of Common Pleas),

Per CROMPTON, BLACKBURN, and SHEE, JJ., and CHANNELL, B.—That the suppression by the plaintiffs of P.'s indebtedness to them at the time of the agreement entered into, was evidence of fraud to go to a jury.

Per POLLOCK, C. B., and BRAMWELL, B.—That there was no evidence of fraud whatever.

This was an appeal from a judgment of the Court of Common Pleas, discharging a rule to set aside a verdict found for the defendant, and instead thereof to enter a verdict for the plaintiffs.

The declaration stated, that by a certain agreement, after reciting that James Packer had for some time then past been a salesman of coals, upon commission, for the plaintiffs, he, the said James Packer, giving bills of exchange to the plaintiffs for all such coals as might be delivered to his order, such bills being floating bills, to be settled for and paid up at the expiration of the current months during which such bills were respectively running; and after reciting that the plaintiffs requiring security

from the said James Packer, they stipulated among other things, that N. C. Sendall, G. Theobald, J. G. Antrobus, the defendant, and H. W. Ruel, should give them, the plaintiffs, a floating and continuing guarantee, for the term of three years from the date of the said agreement, on behalf of the said James Packer, to secure them, the said plaintiffs, the amount of any balance which might at any time or times be due to them, the plaintiffs, from the said James Packer, upon any such coal account or bills to the amount of 300*l.*, in the appropriations following:—The defendant in the sum of 100*l.*, and each of the other sureties in the sum of 50*l.*—making together the said sum of 300*l.* And in order to induce the plaintiffs to continue the said arrangements with the said James Packer, the said N. C. S., G. T., J. G. A., the defendant, and H. W. R., agreed to enter into the said agreement for guarantee, in manner thereinafter appearing, they, the said N. C. S., G. T., J. G. A., the defendant, and H. W. R., in consideration that the plaintiffs would continue for more than one month then next, to allow the said James Packer a certain commission upon the sale of coals referred to in an agreement between the said James Packer and the plaintiffs, bearing date the 1st November 1856, and would not for the said month terminate and put an end to the agreement, severally and respectively guarantied, promised, and agreed to and with the plaintiffs, that they, the said N. C. S., G. T., J. G. A., the defendant, and H. W. R., should and would severally pay and make good, in the respective portions hereinbefore mentioned, to the plaintiffs or their executors, &c., all such sum and sums of money as might be due and owing to them, the plaintiffs, at any time or times during the said term of three years, from the said James Packer in relation to the said agreement or bills of exchange, not exceeding in the whole the said sum of 300*l.*; such guarantee to be a continuing guarantee, and to be made good at any time by the said N. C. S., G. T., J. G. A., the defendant, and H. W. R., for any balance or amount due to the plaintiffs in respect of the said agreement between the said J. Packer and the plaintiffs during the said term of three years. And by the said agreement it was declared by the said N. C. S., G. T., J. G. A., the defendant, and H. W. R., that giving time to the said James Packer by the plaintiff for the payment of any account or balance at any time should not invalidate the said guarantee, but that they should at all times have it in their full power and discretion so to do, or to make

any compromise or arrangement that they might deem beneficial with the said James Packer; and that they, the said N. C. S., G. T., J. G. A., the defendant, and H. W. R., their executors, &c., should remain liable to make good any balance or sum remaining due from the said James Packer to the said plaintiffs, notwithstanding such time so given, or such compromise or arrangement as aforesaid; and further, that as between them, the said N. C. S., G. T., J. G. A., the defendant, and H. W. R., and the plaintiffs, any account stated between them and the said James Packer, or the account books of the latter used by them in their regular course of business, should be taken as conclusive evidence against the said N. C. S., G. T., J. G. A., the defendant, and H. W. R., their executors, &c., either at law or in equity, of the amount of balance or balances due to them on the said agreement by the said James Packer. And it was by the said agreement further agreed and declared, by and between the said parties thereto, that the said agreement was to be taken and considered as supplemental, and in addition to an agreement bearing date the 1st November 1856, made between Sarah Tinson of the one part, and the plaintiffs and their late partner of the other part. Averment, that the plaintiffs, confiding in the said promise and agreement of the defendant, for more than one calendar month after the making of the said agreement, did continue and agree to allow to the said James Packer the said commission upon the sale of the said coals referred to in the said agreement between the said James Packer and the plaintiffs, and did not during or in the said month terminate or put an end to the last-mentioned agreement as they might have done; and that afterwards, and within the said term of three years, there became due, and payable, and owing, in relation to and in respect of the said agreement, from the said James Packer to the plaintiffs, a large sum of money, such sum being due and payable as aforesaid by the said James Packer in respect of the said coal account; that the defendant's said proportion of the said sum of money amounted to a large sum of money; that before and at the time of the making of the said promise by the defendant, and from thence and during all the time aforesaid, the plaintiffs had the power to terminate and put an end to the said agreement between them, the plaintiffs, and the said James Packer by the said plaintiffs giving one month's notice to the said James Packer of their, the plaintiffs', desire to terminate and put an end to the same;

that before the commencement of this suit all things had happened and occurred, and all times had elapsed which it was necessary should occur, happen, and elapse, to entitle the plaintiff to sue in this action for the defendant's breach hereinafter mentioned of the said promise; and that the plaintiffs had always been ready and willing to do all things which it was necessary they should be ready and willing to do to entitle them to sue the defendant in this action for the said breach of promise; and nothing had happened or occurred to prevent the plaintiffs suing in this action for the said breach of promise; yet that the defendant broke his said promise, and had not paid or made good to the plaintiffs the said proportion of the said sum of money so due and owing as aforesaid from the said James Packer to the plaintiffs, which he, the defendant, agreed to pay and make good by his said promise or any part thereof; whereby the said sum, and every part thereof, became wholly lost to the plaintiffs.

The defendant pleaded—first, that he did not agree as alleged; secondly, that the supposed agreement and promise was obtained from him by the plaintiffs by the fraud of the plaintiffs, and by the *fraudulent concealment of material facts* within their knowledge, respecting the said James Packer—material to be made known by them to the defendant before he entered into the said agreement. Issue thereon.

The action was tried before ERLE, C. J., in 1862, and was brought to recover the sum of 100*l.*, the amount for which the defendant had become surety to the plaintiffs for one James Packer, a person who had been employed by them to sell coals on commission. It appeared that James Packer had been originally employed to sell coals for the plaintiffs under an agreement bearing date November 1856, under which he was to give his acceptances for the amount of all coals sold by him each month, and to account for, and pay over to the plaintiffs or their agent, all the moneys received by him within six days of the receipt of the same. For the due performance of this agreement one Sarah Tinson entered into a guarantee to the extent of 300*l.*, terminable on one month's notice. In September 1861, Packer was in arrear with his payments to the extent of 1272*l.*; and the plaintiffs then required that he should give further security. Packer thereupon procured the persons named in the agreement set out in the declaration, to give their guarantee, each for the amount set opposite to his name. In July 1862, Packer was

dismissed, and the sureties were called upon to pay; the fact of Packer being so largely indebted to the plaintiffs at the time of the giving of the guarantee having then for the first time come to their knowledge.

The learned judge left it to the jury to say whether there was fraud on the plaintiffs' part in keeping from the defendant the knowledge of Packer's liabilities to the plaintiffs at the time the guarantee was given.

The verdict was found for the defendant.

A rule was then obtained, calling upon the defendant to show cause why the verdict should not be entered for the plaintiffs, on the ground that there was no evidence of fraud to go to the jury.

The rule was subsequently discharged.

The Solicitor-General, for the appellants.—In *The North British Insurance Co.* vs. *Lloyd*, 10 Exch. 523, it was held that the rule which prevails in insurances upon ships and lives, that all material circumstances known to the insured must be disclosed, though there be no fraud in the concealment, did not extend to the case of guarantees, and that in the latter case the concealment to vitiate the guarantee must be fraudulent. POLLOCK, C. B., in commenting on *Railton* vs. *Matthews*, 10 Cl. & Fin. 934, observes that "the point thus decided was in effect, that it was not necessary in order to render a concealment by a person fraudulent, that it should be made with a view to the advantage that person was thereby to receive. . . . . But that the mere relationship of creditor and surety requires *in all cases* a full disclosure of all material circumstances, was distinctly denied by the Lords in the case of *Hamilton* vs. *Watson*, 12 Cl. & Fin. 109, relative to an advance by bankers; and particularly by Lord CAMPBELL, who declares that . . . . if such was the rule it would be indispensably necessary for the bankers, to whom the security is to be given, to state how the account has been kept; whether the debtor was in the habit of overdrawing; whether he was punctual in his dealings; whether he performed his promises in an honorable manner; for all these things are extremely material for the surety to know. But unless questions be particularly put by the surety to gain this information, I hold that it is quite unnecessary for the creditor to whom the suretyship is to be given, to make any such disclosure." That is the contention in the present case; the surety was bound to ask for the information

which he might think necessary, and there was no duty cast upon the plaintiffs to disclose the particular fact in question.

Sir *G. Honyman* (*O'Malley* with him), for the respondent.—There was evidence to go to the jury of the fraudulent concealment of a fact material for the plaintiffs to know. In *Railton* vs. *Matthews*, 10 Cl. & Fin. 934, it was held that mere non-communication of circumstances affecting the situation of the parties material for the parties to be acquainted with, and within the knowledge of the persons obtaining a surety bond, was undue concealment, though not wilful or intentional or with a view to any advantage of himself. In the same case Lord CAMPBELL observes, "The liability of a surety must depend upon the situation in which he is placed, upon the knowledge which is communicated to him of the facts of the case, and not upon what was passing in the mind of the other party or the motive of the other party." Lord ELDON, in the case of *Smith* vs. *The Bank of Scotland*, 1 Dow. 292, remarks that "If a man found that his agent had betrayed his trust, *that he owed him a sum of money*, and that it was likely that he was in his debt, if, under such circumstances, he required sureties for his fidelity, holding him out as a trustworthy person, knowing or having ground to believe that he was not so, then it was agreeable to the doctrine of equity, at least in England, that no one should be permitted to take advantage of such conduct, even with a view to security against future transactions of the agent." *Cur. adv. vult.*

Nov. 30.—The court being divided in opinion, their Lordships delivered judgment *seriatim*.

BLACKBURN, J.—I am of opinion that in this case the decision of the court below should be affirmed.

The question is, whether, under the circumstances stated in the case, there was evidence to go to the jury in support of the averment of fraud; for I think that the averments of undue concealment carry the case no further, and that unless actual fraud was proved, that the substance of the issue was not proved. It was decided in *The North British Insurance Co.* vs. *Lloyd*, that the rule that all material circumstances known to the insured must be disclosed, is peculiar to contracts of insurance, and that it does not extend to contracts of guarantee. I concur in this, which I think founded on principle as well as authority. It was pointed

out by the Chief Baron in the argument of the present case, that a surety is in general a friend of the principal debtor, acting at his request and not at that of the creditor; and in ordinary cases it may be assumed that the surety obtains from the principal all the information he requires; and I think that great practical mischief would ensue if the creditor were by law required to disclose everything material known to him, as in a case of insurance. If it were so, no creditor could rely upon a contract of guarantee, unless he communicated to the proposed sureties everything relating to his dealings with the principal to an extent which would, in the ordinary course of things, be so vexatious and annoying to the principal and his friends, the intended sureties, that such a rule would practically prohibit the obtaining of contracts of suretyship in matters of business. This is well pointed out by Lord CAMPBELL in his judgment in *Hamilton* vs. *Watson.*

But I think, on authority and on principle, that where the creditor describes to the proposed sureties the transaction proposed to be guarantied (as in general a creditor does), that description amounts to a representation, or at least is evidence of a representation, that there is nothing in the transaction that might not naturally be expected to take place between the parties to a transaction such as that described; and if a representation to this effect is made to the intended surety by one who knows that there is something not naturally to be expected to take place between the parties to the transaction, and that this is unknown to the person to whom he makes the representation, and that if it were known to him he would not enter into the contract of suretyship, I think it is evidence of a fraudulent representation on his part.

I think that it appears in *Hamilton* vs. *Watson*, that such was the opinion of Lord CAMPBELL, and I think that on this principle are founded the judgments of Lord ELDON in *Smith* vs. *The Bank of Scotland*, and of the Court of King's Bench in *Pidcock* vs. *Bishop*, 3 B. & Cr. 605.

In the present case the plaintiffs had no personal communication with the defendant, the surety, and when they sent the agreement to him for execution, they sent it by an agent who had no authority from the plaintiffs to make any statement whatever, or to do any more than obtain the defendant's signature to the agreement thus sent.

The argument for the plaintiffs before us was, in substance, that under such circumstances, though there might be a concealment or non-disclosure of material facts, there was not, and could not be, any misrepresentation on the plaintiffs' part, and that without it there could be no fraud; and during the argument I was inclined to be of that opinion, but on consideration have come to the conclusion that in this case there was evidence of intentional deceit by a false representation of the kind I have above referred to, amounting to actual fraud.

The written agreement, which before it was executed the plaintiffs sent to the defendant, recites that Packer the principal had been for some time salesman to the plaintiffs on terms, by which he was, in substance, to be a *del credere* agent, selling and paying for what he had sold monthly; and that they had required from him security to induce them to continue him in the employment, and stipulated that the defendant and others should give them a floating and continuing guarantee for the term of three years from the date thereof, to secure the amount of any balance which might at any time be due on the coal account. I think this was evidence of, or rather, if not qualified by other matters, amounted to a representation, that there was nothing in the transaction between the plaintiffs and Packer which might not, in the ordinary course of affairs, be expected to have taken place between them, as parties to such a transaction. It is stated in the case, that at the time when this agreement was sent to the defendant, a balance of 1332*l.* was actually then due from Packer, he not having for a very considerable time settled for, and paid up, at the expiration of the current months, as stipulated by the agreement; it is, however (in favor of the plaintiffs), further stated, that there was no evidence that the plaintiffs were aware that Packer had actually received the money from the customers.

Now, whether the handing the agreement by the plaintiffs to the defendant amounted to an inaccurate representation or not, depends, as I think, on the question whether, in such a transaction as that described in the agreement, it might, or might not, naturally be expected that the masters might have allowed a balance of this extent to accumulate, and might have allowed the accounts to stand over unsettled for so long a time.

In *Hamilton* vs. *Watson*, the transaction was a security for a banker's cash account, and the decision of the House of Lords was, that in such a case it might be so naturally expected that

the proposed principal had already overdrawn his account, that there was no evidence of a representation that he had not.

In *Smith* vs. *The Bank of Scotland*, where the security was given for the good behavior of a bank agent, it was held, that an allegation that the bank knew that the principal had misconducted himself in his office, and that the fact was concealed from the sureties, ought to have been admitted as proof in the court below.

I think the effect of Lord ELDON'S judgment in that case is, that it was so little to be expected that a bank would continue in their service an agent who had already, by breach of trust, run into their debt, that the application for security amounted, as he says, to "holding him forth to the sureties as a trustworthy person:" 1 Dow 292.

I think it must in every case depend upon the nature of the transaction, whether the fact not disclosed is such, that it is impliedly represented not to exist, and that must generally be a question of fact, proper for a jury. If in this case the amount of the balance already due had been small, or the period during which the accounts were left unsettled short, there would, in my opinion, have been such a mere scintilla of evidence as would not have warranted the jury in finding the verdict of fraud, and the judge would have been justified in withdrawing the question from their consideration. But as it is, the amount of the balance already due being, relatively to the amount of the surety, so large, and the period during which no settlement had taken place being so considerable, I think the judge could not have withdrawn the case from the consideration of the jury, who might well come to the conclusion, that the sending of the agreement in these terms amounted to an inaccurate representation. This would not be enough to support the verdict on the plea of fraud, unless it was further established that the plaintiff made the inaccurate representation, intending to deceive the defendant, and induce him to enter into the contract in the belief, that what was represented did exist, whilst the plaintiff knew it did not exist. But of that also I think there was sufficient evidence.

The improbability, that any one could suppose that sureties would have entered into such an agreement if they had known the truth, is so great, that the jury might well think that the plaintiffs knew that the defendant was in ignorance of it; and if the jury so thought, they might from that alone draw the inference

that the representation was fraudulently intended to deceive. This is strengthened by the facts that the plaintiffs apparently avoided having any personal communication with the proposed sureties, and sent the agreement for execution by an agent who had no authority from them to make any statements, from which the jury might, perhaps, draw the further inference that the plaintiffs took pains to avoid the risk of the sureties asking questions, and being undeceived.

It is not essential to constitute fraud that there should be any misleading by express words; it is sufficient if it appears that the plaintiffs knowingly assisted in inducing the defendant to enter into the contract, by leading him to believe that which the plaintiffs knew to be false, the plaintiffs knowing that if he had not been thus misled, he would not have entered into the contract.

For the reasons above given, I think there was in this case evidence to support the verdict, and consequently the judgment, in my opinion, should be affirmed.

BRAMWELL, B.—I think this judgment should be reversed. It is clear that nothing turns on the defendant being a surety. The question raised, and properly raised, by the pleadings is, was the defendant's engagement, obtained by the plaintiff's fraud, actual, moral fraud? The question argued before us was, was there evidence of such fraud? The court below says there was, but unfortunately does not point out in what it consisted. With very great respect I *see* none, and I think it can be shown there is none. To constitute fraud there must be—first, the assertion of something false, which is not the case here; or secondly, the suppression of something true where there is a duty or profession of stating everything material; and here there is no such duty; or thirdly, what, perhaps, is included in one of the foregoing—a suggestion of falsity, by statement of some facts and suppression of others, which would qualify, as if one should say, A. was seised and died, B. was eldest son, entered and enjoyed, and suppress that A. made a will, and gave B. a life estate. To my mind there is nothing of that here. Perhaps, but most improbably, the defendant inferred or guessed that no arrears were due to the plaintiffs. I should not have so concluded; on the contrary, I should have concluded that there was some change in the circumstances of the parties which induced the plaintiffs to require further security. But supposing the defendant's was a right con-

clusion, and supposing that if he could not inform himself further, he was justified in acting on it, I say that here he was not so justified, because he might, if he cared to know them, have informed himself of the actual facts from the plaintiffs, or if they refused to tell him, he might have refused to be surety. I think a man has a great right to complain of another, who charges him with fraud, because he, the accuser, has not taken the trouble to make a few inquiries. I really can see no evidence of any fraud, of anything dishonest in this case. There is nothing inconsistent with the plaintiffs' honesty. But when the facts are equally consistent with a conclusion one way or the other, they are no evidence either way. I think the opinion there was *evidence* of fraud is founded on a misapprehension. Packer is not a dishonest defaulter to the knowledge of the plaintiffs. He was liable to them to a large amount, every shilling of which might have been due from solvent debtors. The plaintiffs continued him a long time after in their service. They sent the engagement of suretyship to the defendant, and left it with him several days for him to make such inquiries as he thought fit. He makes none. Suppose he had been asked, and been told the truth, could anybody say there had been any fraud, or attempt to fraud? Suppose he had employed an attorney, would any one say there was an attempt to deceive the attorney? The notion of fraud arises from the defendant being likely to behave foolishly, to make no inquiry, making none, and being surety. I think this very mischievous, that a man should have his carelessness rewarded by liberty to call out fraud. Very mischievous that people should be charged with fraud by careless persons, simply on account of their carelessness. No one is safe if this is allowed. No one can ever know that he has sufficiently guarded against the rash conclusions and folly of those he deals with, and save himself from the uncharitable and foolish conclusions a jury may be disposed to come to in favor of a surety.

Judgment affirmed.

POLLOCK, C. B., delivered an opinion in favor of reversing the judgment, and SHEE, J., and CROMPTON, J. (with whom CHANNELL, B., agreed), also delivered opinions for affirmance.

Court of Common Pleas.

EICOLTZ *vs.* BANNISTER.

Where A. in his shop sold goods to B., which afterwards were claimed by a third party as being his property, it was held that there was an implied warranty by A. that he had a good title to the articles sold, and therefore that B. could recover the money which he had paid for them.

This was an action brought by a commission agent against the defendant, a job warehouseman living at Manchester, for money had and received. The case was tried in June last in the Manchester City Court of Record, before the judge and a jury, when a verdict was found for the plaintiff for the amount claimed, leave being reserved to the defendant to move to set this verdict aside, and instead thereof enter it for him, or a nonsuit, on the ground that there was no warranty of the defendant's title upon the sale by him to the plaintiff.

It appeared from the evidence that the plaintiff, on the 18th April, 1864, went to the defendant's warehouse and bought from the defendant seventeen pieces of prints, of which the defendant gave him an invoice, and in which it was stated that the prints were bought of the defendant, job warehouseman and dealer in prints and gray fustians, &c., of 20, Chollton street, Portland street, Manchester, at the price of 5¼*d.* per yard, 1½ per cent. discount for cash. The price of the prints was 19*l.*, which was paid at once, and the goods were sent to the plaintiff's warehouse. On the following day the plaintiff sold the prints to Messrs. Brice, Smith & Co., but they were taken from them a few days afterwards by a policeman, as having been stolen by a person who was subsequently convicted of the theft. Brice & Co. called on the plaintiff to refund the purchase-money, which he did, and brought the present action to recover the price which he had paid to the defendant.

A rule having been obtained pursuant to the leave reserved,

C. Pollock now showed cause.—The goods in this case were sold by the defendant as owner, and, according to the law of the land, there is an implied warranty of title annexed to such sale. It is not necessary, in order to sustain this action, that there should be an express warranty. In 2 Bl. Com. 450, it is stated that "a purchaser of goods and chattels may have a satisfaction

from the seller, if he sells them as his own, and the title proves deficient, without any express warranty for that purpose." He cited *Armstrong* vs. *Percy*, 5 Wend. 535; 2 Kent's Com. 478; *Medina* vs. *Stoughton*, 1 Ld. Raym. 593; *Crosse* vs. *Gardner*, Carth. 90; *Morley* vs. *Attenborough*, 3 Ex. 500; *Simms* vs. *Marryatt*, 17 Q. B. 281; *Chapman* vs. *Speller*, 14 Id. 621.

Holker, in support of the rule.—The defendant is not liable, as the general rule is that there is no implied warranty of title in respect of chattels. In *Ormrod* vs. *Huth*, 14 M. & W. 664, TINDAL, C. J., says: "If, indeed, the representation was false to the knowledge of the party making it, this would in general be conclusive evidence of fraud; but if the representation was honestly made, and believed at the time to be true by the party making it, though not true in point of fact, we think this does not amount to fraud in law, but that the rule of *caveat emptor* applies, and the representation itself does not furnish a ground of action. And although the cases may, in appearance, raise some difference as to the effect of a false assertion or representation of title in the seller, it will be found on examination that in each of those cases there was either an assertion of title embodied in the contract, or a representation of title which was false to the knowledge of the seller." And in *Hall* vs. *Conder*, 2 C. B. N. S. 22, WILLIAMS, J., says that, "With regard to ascertained chattels, there is not any implied warranty of either title or quality, unless there are some circumstances beyond the mere fact of a sale from which it may be implied."

ERLE, C. J.—I am of opinion that this rule should be discharged. The plaintiff has brought an action for money paid to the defendant for drapery goods which he bought in the shop of the defendant, the goods having been claimed after the purchase by the true owner, from whom they had been stolen, and this action is brought for money had and received, on the ground that the consideration for the payment of the price had failed. The jury having found a verdict for the plaintiff, a rule was obtained to set that verdict aside and enter it for the defendant, or a nonsuit, on the ground that, by the common law of England, there was no warranty of title on the sale of chattels, and that the principle of *caveat emptor* applied. After listening carefully to the arguments, I decide, in accordance with the current of authorities, that where a vendor by word or conduct gives a pur-

chaser to understand, at the time of the sale, that he is the owner of the goods he is selling, this is part of the contract; and if it should afterwards turn out that he is not the owner, an action lies to recover the money which he has paid. In *Morley* vs. *Attenborough*, PARKE, B., says: "We do not suppose that there would be any doubt if the articles were bought in a shop professedly carried on for the sale of goods, that the shopkeeper must be considered as warranting that those who purchase will have a good title to keep the goods purchased;" and these remarks of the learned judge I rely on. In this case the party buys certain articles in a shop kept by the defendant, and according to the law as above stated, the seller represents himself to be the owner of the goods which he has sold. In Noy's Maxims (p. 209), it is said, that "if I take a horse of another man, and sell it, and the owner take him again, I may have an action of debt for the money, for the bargain was perfect by the delivery of the horse; and *caveat emptor*." This proposition would rather shock the understanding of ordinary men; but I take the meaning of this to be that, where a person sells a horse in his possession without either affirming or denying that he has a title to it, and the purchaser accepts it on those terms and pays for the horse, he cannot call upon the vendor to restore the price in the event of the horse being claimed by a third person. The case of *Morley* vs. *Attenborough* was decided on this principle; and in *Chapman* vs. *Speller*, which was a case where a person bought the goods of an execution-debtor from another person who had bought them at a sheriff's sale, both parties having been present at that sale, and the goods were taken from the last purchaser, it was held that there was no warranty of title, and that the purchaser took them at his peril. Then in the case of *Hall* vs. *Conder*, which was an assignment of a patent right, there was no implied warranty that the patent was useful or new, the contract between the parties being for the sale of the patent, such as it was. I cannot help remarking that Noy's maxim as to the purchase of a horse is a mere *dictum*, and the same may be said of the remark made by my brother WILLIAMS in *Hall* vs. *Conder;* it is nothing more than a *dictum*, and has never produced the fruit of a judgment, and this shows the wisdom of the remark of Lord CAMPBELL in *Simms* vs. *Marryatt*, where, in commenting upon the decision in *Morley* vs. *Attenborough*, he says, "It may be that the learned baron is correct in saying, that on a sale of personal property,