

1810.

Johnston
vs
Cope

tiff is entitled to recover on the ground of such implied warranty. This direction the court, [*Nicholson*, Ch. J. and *Hollingsworth*, A. J.] refused to give, being of opinion that the bare circumstance of selling goods and chattels for a full price, does not of itself raise a warranty, and that the seller is not responsible for the unsoundness of such goods and chattels; unless he warranted them to be sound, or knew of their unsoundness at the time of sale, in which latter case he would be liable for the fraud. The plaintiff excepted; and the verdict and judgment being against him, he appealed to this court.

The cause was argued before CHASE, Ch. J. and BUCHANAN, GANTT, and EARLE, J.

Nisbet, for the Appellant. The common law maxim of *caveat emptor* is now exploded, and the more reasonable principle of the civil law, "that a fair price implies a warranty," has been adopted. 2 *Wood. Lect.* 415, & 1 *Pow. on Cont.* 150. The plaintiff is not bound to show that the defendant knew of the defect or damage in the things sold; for a man ought to have skill in the way of his business, and ignorance is considered as a deceit upon those with whom he deals. 3 *Wood.* 199. *Bevingsay vs. Ralston*, *Skin.* 66; & *Denison vs. Ralphson*, 1 *Vent.* 366. The court below grounded their opinion principally on a case of *Parkinson vs. Lee*, 2 *East*, 314, and the case of *Stuart vs. Wilkins*, 1 *Doug.* 20. The first of these cases was a sale by sample, and the commodity was proved to be the same as the sample. That is a very different case from the one before this court, where the sale was of linens in bales, without opening them, and without the exhibition of a sample. The court below go farther in their decision than the case required; and so far as they appear to decide the case before the court, it is a mere *obiter* opinion, and that founded on another *obiter* opinion of Lord Mansfield; for the case *Stuart vs. Wilkins* was merely as to the form of the declaration. The common understanding of mankind, and the general usage of merchants, is in favour of the implied warranty. An instance has rarely occurred where, on a sale of goods by invoice or in bales, a concealed damage has been discovered, in which the vendor has refused to refund the money, and take back the goods, or compensate for the injury sustained. Upon this principle substantial