1810.

Wilson vs Mitchell

justice is done, for the loss will ultimately fall upon the person who knew of the damage, and fraudulently packed up the goods as merchantable.

T. B. Dorsey, for the Appellees. The common law principle of *caveat emptor* never has been exploded as to the quality of goods sold, but only as to the title. 2 *Blk. Com.* 451, (and *Christian's* notes.) That there is no implied warranty as to the quality, is evident from 3 *Blk. Com.* 164. *Parkinson vs. Lee*, 2 *East*, 314. *Williamson vs. Allison*, *Ibid* 446. If a sound price implies a warranty, why are express warranties ever made, or why are actions of deceit ever brought? The universal understanding of every man buying and selling is against implied warranties. The authorities of 2 *Wood. Lect.* 415, 3 *Wood. Lect.* 199, and 1 *Pow. on Contracts*, 150, are the incautious *dicta* of commentators, unsupported by the decision in *Denison vs. Ralphson*, 1 *Vent.* 366, and *Bevingsay vs. Ralson*, *Skin.* 66, on which they profess to be founded; these cases were on express warranties, and it was therefore properly decided that the *scienter* need not be proved.

JUDGMENT AFFIRMED.

WILSON VS. MITCHELL.

JUNE.

Where, in the return of a commission issued to a foreign country to take testimony, the commissioners oath appears to have been taken, and is certified by the commissioners to have been duly taken, it is sufficient, without other proof, that the persons administering the oath had authority for that purpose

In slander, one of the counts in the declaration charged the defendant with having made a voluntary affidavit, and caused certain false and malicious lies to be written therein, and among others, that "there was a certain quantity of *American* soap, which to his certain knowledge was sold at *Curacoa* by the said A M," (the plaintiff,) "at six dollars current money," and the affidavit, as offered in evidence by the plaintiff, stated the same words, except that the words "*per box*" were added after the words "six dollars."—*Held* to be a fatal variance

The plaintiff cannot under the act of 1809, *ch* 153, take a judgment on a count in his declaration upon which he had given no evidence although there is a general verdict in his favour

APPEAL from *Baltimore* County Court. This was an action of *slander*, brought by *Alexander Mitchell*, the appellee. The declaration contained four counts. After stating that the appellee had been, and continued to be, a merchant, and commission merchant, and a faithful buyer and seller of merchandize, &c. the *first* count of the declaration charged *David Wilson*, the appellant, with speaking the following false and scandalous words of the appellee, "that he sold goods and merchandizes on commission for a higher sum than he returned an account of sales for; and that he cheated his employer, by putting part of the money for which the goods sold, in his (the appellee's) pocket." The *second* count, after stating that