

cut up for meat or immediate domestic consumption. *Howard v. Emerson*, 110 Mass. 320. And in another case, where a drover sold beef cattle to a butcher, it was held that he did not impliedly warrant that they were not bruised. But even the doctrine announced in the two latter illustrations, is not followed by all courts or at least has been somewhat limited. Thus, in the case of *Sinclair v. Hathaway*, 57 Mich. 60, it was held that a baker who sold bread to a peddler, whom he knew was to retail it, impliedly warranted the bread to be wholesome, and while the doctrine of this case seems to be somewhat in the minority, yet it seems to express the true rule which ought to be, if it is not, supported by authority, i.e.: That where a person sells an article to another, which he knows or ought to know is to be used for a particular purpose, he impliedly warrants no matter whether the purchaser is a wholesaler, retailer, or a consumer, that the article is fit for the purpose for which he knows it will be used. Especially is this true where the seller knows or ought to know that the article is not fit for the use intended. If a person sold cattle to a butcher, which were diseased, not knowing that fact, or having no means of knowing such fact, then there might possibly be some excuse for holding that there is no implied warranty, but where the seller prepares the article himself, then he knows or should know, how the article is prepared, and if not properly prepared, there certainly would be no injustice in holding that he is responsible, on an implied warranty. In the Encyclopedia before referred to, page 1238, the doctrine is laid down that in all cases in the sales of food by a retail dealer for domestic use, an implied warranty exists, that they are fit for use and wholesome. However upon this doctrine there is a distinction drawn where the purchaser has no right to assume that the middleman who is acting as seller, knew the quality of the article. *Julian v. Laudenberger*, 16 Misc. (N.Y.) 646. Even in such a case it seems that the retailer ought to be held responsible because if he does not know, he ought to know, whether the article is fit for use."

The second head taken by the writer of the article above referred to deals with the general rule as to contractual liability