boilers were in a bad condition, in consequence of what had happened to the tug before she became the property of the defendants. The defendants were not aware of these defects, and the plaintiffs cannot recover on the ground of false representations. He must recover, if at all, on the ground of breach of warranty. The contract does not contain in express terms any warranty, and there is some uncertainty as to the form of the warranty on which the plaintiff relies. It must be either, as urged in argument and held by Lord Coleridge, that the Villa Bella was a vessel reasonably fit for the service to be performed, or, as I understand Bramwell, L. J., to hold, the Villa Bella and her engines were in a reasonable state of repair and otherwise in a condition fit for the service, so far as that vessel and her engines could be so. The plaintiff tendered evidence to show that there was such a contract between the parties. But parol evidence is not admissible to construe the contract; and even if in such action it would be open to the plaintiff to reform the contract, the evidence would not establish what is essential for such a case, viz.: that both parties agreed to a contract not expressed in the written document. But evidence is admissible to show what the facts were with reference to which the parties contracted, and thus enable the court to apply the contract. The evidence showed that at the time of the contract the defendants were proposing to send out the Villa Bella and that this was known to the plaintiff. The contract must therefore be dealt with as one made with reference to an ascertained steam vessel. Though the contract contains no warranty in terms, the question remains whether there are in it expressions from which, as a matter of construction, any such warranty as that relied on by the plaintiff can be inferred. In my opinion this is not the case. The question remains, does the contract put the plaintiff and defendants into any relation from the existence of which the law, in the absence of any actual contract, implies such a warranty as is relied on by the plaintiff? In my opinion it does not. The plaintiff was to be master of the Villa Bella, but the law does not, as against the owner, imply in favour of a captain or master any warranty of the seaworthiness or efficiency of the vessel. *Couch* v. *Steel*, 3 E. & B. 402. Here, however, the plaintiff is more than master. It has been suggested that plaintiff is in the same position as the hirer of an ascertained chattel, and the defendants in the same position as the person who lets the chattel for hire. There is at least a doubt what warranty the law implies from the relation of hirer and letter to hire of an ascertained chattel. But, however this may be, in my opinion the relation of the parties here is different. The plaintiff here contracts with the defendants for a sum to be paid by them to take a vessel and barges to South America, with liberty to use the vessel as a tug. I say with liberty, for it can hardly be said that it would have been a breach of contract on his part not to use the motive power of the tug, but to tow both the Villa Bella and the barges to their destination. If the vessel was not at the time of the contract ascertained and known to both parties, probably the contract would imply such a warranty as is relied on by the plaintiff. But a contract made with reference to a known vessel in my opinion stands in a very different position. In such a case in the absence of actual stipulation, the contractor must in my opinion be considered as having agreed to take the risk of the greater or less efficiency of the chattel about which he contracts. He has to determine what price he will ask for the service or work which he contracts to render or to do. He may examine the chattel and satisfy himself of its condition and efficiency. If he does not, and suffers from his neglect to take this precaution, he cannot in my opinion make the owner liable. He must in my opinion be taken to have fixed the price so as to cover the risk arising from the condition of the instrument which he might have examined if he had thought fit so to do. It may well be that where parties enter into such a contract as that which exists in the present case, there is an implied contract that the owner of the chattel will not after the agreement, and while the chattel remains in his possession, use or treat it in any way which will render it unfit for the service which has to be performed, and that he will take such care of it as is reasonable, having regard to the purpose for which it is under the contract to be used. But in the present case the inefficiency of the Villa Bella arose not from any improper use of the vessel by the defendants, or any neglect on their part to take care of it after this contract, but from defects which, though unknown to the plaintiff and defendants, existed at the date of the contract. The cases of *Smith* v. *Marable* (*ubi sup.*) and *Wilson* v. *Finch Hatton* (*ubi sup.*), or at least the judgments in those cases, have been relied on in support of the plaintiff's case. Each of those cases arose on a contract of hiring, and in each the hirer was defending himself against a claim for damages in respect of a refusal on his part to perform his contract of hiring, while in this case the plaintiff who is (in my opinion erroneously) said to be in the position of hirer, is suing for damages. In those cases if there was an implied condition that the thing, a furnished house, was fit for the purpose for which it was let by reading into the contract to take the house "if fit for habitation," the defendant was excused. Here the plaintiff must establish that there was a warranty to that effect. In my opinion the plaintiff cannot establish that there was such a warranty as that on which he must rely, and the defendants are, as regards this part of the claim, entitled to have the judgment reversed.

Judgment reversed.