IMPLIED WARRANTY OF AUTHORITY.

A STUDY IN COMMON LAW DEVELOPMENT.

"Flexibility and capacity for growth and adaptation is the peculiar boast and excellence of the common law."

"Whatever disadvantages," said Sir A. Cockburn, "attach to a system of unwritten law—and of these we are fully sensible—it has, at least, the advantage that its elasticity enables those who administer it to adapt it to the varying conditions of society, and to the requirements of the age in which we live, so as to avoid the inconveniences and injustice which arise when the law is no longer in harmony with the wants, usages and interests of the generation to which it is immediately applied:" *Mason* v. *Walton* L.R. 4 Q.B. 73.

This elasticity of the common law and its capacity for growth and adaptation, so as to meet various conditions as they arise is, perhaps, nowhere better studied, or more easily seen than in the cases bearing upon the above subject, the fountain head of which is the important decision of *Collen* v. *Wright* (1857) 8 E. & B. 647.

The proposition affirmed in *Collen* v. *Wright* may be summed up in the following words of Cockburn, C.J.:—"By the law of England a party making a contract, as agent, in the name of a principal, impliedly contracts with the other contracting party, that he has authority from the alleged principal to make the contract, and if it turns out that he has not the authority, he is liable in an action on such implied contract."

It was stated by Willes, J., thus:—"A person professing to contract as agent for another, impliedly, if not expressly, undertakes to, or promises the person who enters into such contract, upon the faith of the professed agent being duly authorized, that the authority which he professes to have does, in point of fact, exist."

"Under the Roman law, if a person made a contract, professing to act as agent for another, who was either non-existent, or who had not, in fact, given him authority, the agent was personally liable on the contract. That contract was primarily his own, whatever he might profess; and if there was in fact no person against whom the relaxations of the law could be invoked, the professing agent remained a principal:" 18 L.Q. Rev. 365.

Early cases in England held that an agent professing to make