

warranty, that it was what it appears to be,—a thing intended for actual use; and that it has not been so negligently manufactured that by reason of concealed defects its use would be attended with danger of serious injury. And this must be supposed to be understood by the person who disposes of it; and if, knowing the existence of such defects, he neglects to disclose them, so that the other party may be warned of his danger, such neglect amounts to bad faith. Under such circumstances silence would partake of the nature of an assurance that the thing had not any such known but concealed defects."

*Lewis v. Terry* (u) was an action brought by the guest of the purchaser of a folding bed, against the seller thereof, for injuries resulting from the negligent construction of the bed. The defects in the bed rendering it dangerous for use, and being known by the seller at the time of the sale, but undisclosed to the purchaser, it was held that there might be a recovery, the case apparently resting on the fraud of the seller.

Upon this ground, also, the plaintiff was held entitled to recover against a dealer selling a gun to the plaintiff's father, which, from defects therein, known to the dealer but undisclosed, exploded, resulting in injury to the plaintiff (v.)

Numerous other cases, English and American, have been put upon this ground,—of the fraud of the seller, which are cited in the note (w.)

It has been said that in this class of cases it is not necessary that the article in which the defect exists shall be "imminently dangerous," to fasten a liability upon the manufacturer. (x). It is necessary, however, it need hardly be said, that the manufacturer should have knowledge of the defect rendering dangerous the

(u) *Lewis v. Terry*, 111 Cal. 39, 43 Pac. Rep. 398, 52 Am. St. Rep. 146, 31 L.R.A. 220, 42 Cent. L.J. 264.

(v) *Landridge v. Leby*, 2 M. & W. 519, 4 M. & W. 337.

(w) *George v. Skivington*, L.R. 5 Ex. 1; *Longmeid v. Holliday*, 6 Exch. 761; See also *Heiser v. Kingsland, etc., Co.*, 110 Mo. 605, 19 S.W. Rep. 630, 15 L.R.A. 821; *Elkins v. McKean*, 79 Pa. St. 493; *Bank v. Ward*, 100 U.S. 195, 26 L. Ed. 112; *Bradgon v. Perkins-Campbell Co.*, 87 Fed. Rep. 109, 58 U.S. App. 91, 30 C.C.A. 567.

(x) *Bradgon v. Perkins-Campbell Co.*, 87 Fed. Rep. 109, 30 C.C.A. 567.