

WARRANTIES BY AGENTS IN SALES.

it is fire or burglar proof; * nor has a broker implied authority to warrant bank stocks sold by him; † nor has a servant in a sale of liquors, the power to warrant that they are not subject to seizure for prior violation of the revenue laws. ‡ Nor can a commission merchant warrant that flour shall remain sweet during a sea voyage; his power, at the most, is to warrant its sweetness at the time of sale. § Nor has an agent to sell a note authority to warrant that it shall be paid at maturity. ||

But an agent employed to sell a note may warrant it to be business paper. ¶ So, an agent engaged in selling harvesters has authority to warrant them. ** And it is safe to state that a manufacturer of machines is bound by the warranties of his selling agents, even though he forbade them to warrant them. And when an agent is entrusted with a sample, no other inference can be drawn except that he has authority to warrant the bulk to be equal to the sample. †† So one having authority to sell and convey land to another may warrant against the lawful claims of all persons claiming under his principal. ‡‡ But an agent with a mere power to sell land can bind his principal by no representations as to the quality or quantity of the land. §§

Where there is such implied authority, it makes no difference that there was a custom for agents not to warrant goods of the same character unless knowledge of the custom is brought home to the purchaser. |||| And *vice versa* it has been held that a broker of merchandise has no authority to warrant and that a general custom of brokers to warrant all their sales can-

not be recognized.* But custom may regulate the character of the warranty. Thus, in *Dingle v. Hare*, † a warranty in a sale of guano, that it contained 30 per cent. of phosphate of best quality was binding upon the principal, it being found by the jury that it was customary to make such a warranty in the sale of these manures.

Auctioneers cannot warrant the quality of goods sold by them without special authority. ‡ They are only special agents and have only authority to sell. Auction sales in the usual mode are never understood to be accompanied by a warranty and, therefore, they have no power to give any unless specially instructed to do so. § And it is well to remember that a warranty by an agent is never binding upon his principal, unless it be made at the time of the sale as an inducement thereto. Therefore if the servant after the sale gives the purchaser a receipt for the price and therein the first mention is made of the warranty, the principal can not be held thereon. ||

Whether if a principal receiving the proceeds of a sale without knowledge of the warranty, thereby ratifies the warranty, and, if he does not return the proceeds upon becoming cognizant of the fact, does thereby assume the same liability as if authority had been originally given, has been a question much controverted. On the one hand, it is asserted that the agent having no authority by law to make the warranty, it was the purchaser's duty to inquire of the principal, and having failed to do that he must retain what the law gives him; that if he believed that the agent had authority to warrant, it was either a mistake of law, or a mistake of fact, brought about by his own neglect, from the effects of either of which the law can not relieve him; that he has received all that the principal contemplated, and what he should have known was all the law guaranteed him; and that he cannot

* *Herring v. Skaggs*, 62 Ala. 180.

† *Smith v. Tracy*, 36 N. Y. 79, 82.

‡ *Palmer v. Hatch*, 46 Mo. 585.

§ *Upton v. Suffolk County Mills*, 11 Cush. 586.

The latter part of this proposition is maintained in *Randall v. Kehlror*, 60 Me. 47.

¶ *Graul v. Strutzel*, 53 Iowa, 712. Examine *Anderson v. Bruner*, 112 Mass. 14.

‡‡ *Ahern v. Goodspeed*, 72 N. Y. 108, 114.

** *McCormick v. Kelly*, 28 Minn. 135; *Murray v. Brooks*, 41 Iowa, 45.

†† *Boothby v. Scales*, 27 Wis. 626.

‡‡ *Schuchardt v. Allens*, 1 Wall. 359, 369; *Andrews v. Kneeland*, 6 Conn. 355; *Monte Allegro*, 9 Wheat. 616, 644; *Murray v. Smith*, 4 Daly, 277.

§§ *Ward v. Bartholemew*, 6 Pick. 409; *Backman v. Charlestown*, 42 N. H. 131, 132.

|||| *National Iron Co. v. Baxter*, 4 C. E. Green (N. J.) 331.

* *Murray v. Brooks*, 41 Iowa, 45 in which there was a sale of a reaping machine, and such a custom existed.

† *Dodd v. Farlow*, 11 Allen, 426.

‡ *C. B. N. S.* 145; 29 L. J. C. P. 223.

§ *Monte Allegro*, 9 Wheat. 616, 647, *Blood v. French*, 9 Gray, 197.

|| *See Skrine v. Elmore*, 2 Camp. 407; *Woodin v. Burford*, 2 C. & M. 391.