

quality of the bulk is equal to the sample. In the case of a sale by sample by a manufacturer, if a latent defect exist in the sample, the manufacturer is liable upon his implied warranty: see *Heilbutt v. Hickson*, L.R. 7 C.P. 438.

The general rule is subject to the still further exception that, where the buyer has no opportunity of examining the goods, there is an implied warranty that they are of a merchantable quality: see *Laing v. Fidgeon*, 6 Taunton 108. See also *Gardner v. Gray*, *supra*.

Further, an implied warranty may be raised on the sale of an article by the custom of a particular trade: *Jones v. Bowden*, 4 Taunton 847.

On the sale of goods for food, there is also an implied warranty that they are fit to be used and consumed.

It will thus be seen that the exceptions, in the case of implied warranties, are so many, as regards quality in the sale of goods and chattels, as to justify the remark of the Judge referred to, that the exceptions have eaten up the rule; and the maxim should be, Let the seller, and not the buyer, beware.

As to title, the general rule is, the purchaser of a chattel takes it, subject to what may turn out to be informalities in the same: *Cundy v. Lindsay* (1878), 3 Appeal Cases 459. This rule is subject to the following exception: In the case of goods sold in an open shop or a warehouse, there is an implied warranty on the part of the seller that he is the owner of the goods; and if it turns out otherwise, as when the goods are claimed by the true owner, from whom they have been stolen, the buyer may recover back the price as money paid upon a consideration which has failed: *Eicholz v. Bannister*, 17 C.B.N.S. 708.

In the sale of a specific chattel, there is no implied warranty of title. The seller, however, is liable in such a case, if he has practised fraud by declaration or conduct: *Morley v. Attenborough*, 3 Ex. 500.

By the provisions of the Sale of Goods Act, 1893, already referred to, these various exceptions have been crystallized into statutory enactment. Sec. 14 of that Act provides:

(1) "Where the buyer, expressly or by implication, makes known to the seller the particular purpose for which the goods are required, so as to show that the buyer relies on the seller's skill or judgment, and the goods are of a description which it is in the