

either given or taken. The plaintiffs were precluded by that section from recovering against the association: see *Fitzgerald v. London Co-operative Association*, 27 U. C. R. 605. No express representation or warranty of the authority of the association to purchase on credit was ever made or given by defendants. The plaintiffs contended that there was an implied representation or warranty of such authority on the part of the defendants, or some of them. Held, that no action can be maintained upon an implied representation or warrant of authority in law to do an act, but only upon an implied representation or warranty of authority in fact to do it; and in this case the implied representation was one of the law only. *Beattie v. Lord Ebury*, L. R. 7, Ch. 777, Chitty on Contracts, 13th ed., p. 275, referred to. Held, also, that, as the plaintiffs were selling their goods to Wyoming Co-operative Association, Limited, they must be taken to have known that it was a co-operative Association, and that it was incorporated, and to have known the public statute R. S. O. c. 166, and the provisions of that Act, and that it forbade buying on credit. The plaintiffs and defendants having thus equal knowledge of the provisions of the law, no implication of a representation or warranty of authority could arise. Held, also, that the defendants, having obtained no personal benefit from the purchase of the goods sold by plaintiffs, were not liable to account for the value of them. Motion dismissed with costs. Gibbons, Q.C., for plaintiffs. Hanna (Sarnia), for defendants.

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ELMSLEY v. HARRISON.

[12TH MARCH, 1897.

*Recovery of leasehold premises—  
Forfeiture and cancellation of*

*lease—Amendment of pleadings at trial—Defendant entitled to set up Statute of Frauds at the trial although not pleaded in answer to new case made by plaintiff.*

Judgment on appeal by defendant from judgment of Meredith, C.J., in favour of plaintiffs in an action to recover possession of certain premises on Yonge Street, in the City of Toronto, and to declare a lease thereof, of which the appellant is the assignee, forfeited, or for other relief in respect of an alleged contract for renewal. The learned Chief Justice declined to allow the appellant at the trial to amend by setting up the Statute of Frauds as against a contract for renewal partly in writing and partly verbal, alleged by plaintiffs to have been made by the parties. Appeal allowed with costs and action dismissed with costs, Falconbridge, J., dissenting. Per Armour, C.J.:—If plaintiffs had been held to the proof of the alleged contract set out in the replication, they could not have succeeded, and, having been allowed to give evidence of an alleged contract not set out in the replication, the trial Judge was bound to allow defendant Harrison to plead to such last-mentioned contract, and to set up the Statute of Frauds—this was but common justice. Per Street, J.:—The defendant Harrison should have been allowed to set up the Statute of Frauds in answer to the new case made by plaintiff at the trial, and, being now allowed to do so, is entitled to succeed. *Oldham v. Brunning*, 12 Times L. R. 303, relied on by Meredith, C.J., has been reversed by the House of Lords, 13 Times L. R. 69, since the judgment of Meredith, C.J. And, further, no agreement, either parol or otherwise, has