

varied by verbal evidence. In giving an express warranty, the word "warrant" is commonly used, as "I warrant these goods to be," so and so; or, "I warrant this horse to be sound in wind and limb," &c., but no particular form of words is necessary to constitute a warranty; and the word "warrant" need not be used. Many representations of the things sold are of such a nature and made under such circumstances that the party making them may be fairly considered to have given a warranty. Thus, if a jeweller represents a piece of crystal to be a diamond, he is responsible: if parties are dealing for a horse and the seller says "you may depend upon it, the horse is perfectly free from vice," that is a very sufficient warranty, though the word warrant has not been used. But a mere statement of the party's own opinion and belief upon a matter, concerning which the other contracting party can exercise his own judgment, is not a warranty, nor is evidence of the ordinary praise or commendation bestowed by a seller on the things he sells, even if he knows his praise not to be strictly true—mere puffs, which men resort to—sufficient to make out a warranty.

Trifling and unimportant representations, not seriously affecting the value of the contract, though untrue, do not make out such a case as a warranty could be implied from.

If goods are expressly sold "with all faults," the seller is not liable to an action in respect of defects, although he was aware of their existence, and did not disclose them to the buyer, unless some artifice or fraud were practiced to prevent the latter from discovering such defects. For an agreement to take a thing with all faults, does not mean it is to be taken with all frauds, and therefore a party is not allowed to use artifice to disguise faults and to prevent their being discovered by the purchaser, and then be permitted to shelter himself from his own fraud by saying "I sold with all faults."

#### MANUAL, ON THE OFFICE AND DUTIES OF BAILIFFS IN THE DIVISION COURTS.

(For the Law Journal.—By V.)

CONTINUED FROM PAGE 43.

#### *Sale and Disposal of Goods taken in Execution.*

(Continued from page 63.)

The Bailiff holds Cheques, Bills of Exchange, &c., seized for the benefit of the plaintiff: as before mentioned, he may have handed them over to the Clerk for safe keeping, but still he is to be considered as the holder of them in trust for the plaintiff, who has a right to sue upon them under the 90th section of the D. C. Act, upon paying or securing all the costs that may attend the proceeding.

It frequently happens that after a seizure is made the defendant proposes terms to the plaintiff which the latter is willing to accept, and the Bailiff is requested to withdraw. There are a few acts within the range of a Bailiff's duties where he requires to exercise more caution than in withdrawing after a seizure. He is directed by the execution to levy the amount, and should an order to withdraw be afterwards denied, (and it often is when a plaintiff is disappointed or outwitted by a defendant,) the whole burden of proof lies upon the bailiff, and he must show distinctly the direction to him; otherwise he will be held liable for acting contrary to the requirements of the execution. To protect himself the Bailiff should insist on obtaining a request in writing to do what he is desired; which may be in the following form, if annexed to the execution.—

#### *Request of Plaintiff to Bailiff to forego Execution and withdraw.*

In the ——— Division Court for the County of ———

Between A. B., plaintiff,

and

C. D., defendant.

I, the above named plaintiff, do hereby request ———, Bailiff of the said Court, to whom the annexed execution is directed, to forego further proceedings thereon, and to withdraw from the levy made by him, and give up possession of the goods seized to the defendant; and I do hereby agree that no action or other proceeding at law shall be commenced against the said ——— for so doing.

As witness my hand this ——— day of ———, 185 .

A. B.

The 90th section of the D. C. Act provides for the mode in which goods taken in execution are to be sold: the first step after seizure is to advertise for sale the goods seized, and this should be done immediately after the seizure, or at least in sufficient time to enable the Bailiff to make a return of the execution to the Clerk within the time allowed by law. In the notice or advertisement of sale, which must be signed by the Bailiff, the goods should be described with reasonable certainty, and the day and hour and place (within the Division) at which they are to be sold should be clearly stated in the notice. It is necessary that advertisements be put up in the three most public places in the Division, at least eight days before the time appointed for the sale—that is eight clear days, neither the day of posting the notice nor the day of sale to be counted. Thus for a sale on the 10th of the month, the advertisement must be posted at latest on the 1st. It is not unusual, however, to