

in *Gardner v. Gray*, 4 Camp. 144. The defendant sold some bags of waste silk, which on its arrival was found to be of a quality not saleable under the denomination of waste silk. His Lordship, in delivering judgment, said: "The purchaser has a right to expect a saleable article, answering the description in the contract. Without any particular warranty, there is an implied term in every such contract. Where there is no opportunity to inspect the commodity, the maxim of caveat emptor does not apply. He cannot, without a warranty, insist that it shall be of any particular quality or fineness; but the intention of both parties must be taken to be that it shall be saleable in the market under the denomination mentioned in the contract between them."

The following broad principle was laid down by Best, C.J., in *Jones v. Bright*, 5 Bing., p. 533: "If a man sells an article, he thereby warrants that it is merchantable—that it is fit for some purpose. This was established in *Laing v. Fidgeon*. If he sells it for a particular purpose, he thereby warrants it fit for that purpose. . . . The law then resolves itself into this—that if a man sells generally, he undertakes that the article sold is fit for some purpose; if he sells it for a particular purpose, he undertakes that it shall be fit for that particular purpose."

Still another exception to the general rule is: If an article is ordered of a manufacturer for a particular purpose, there is an implied warranty that it shall not only be fit for that purpose, but the implied warranty extends to latent as well as to open defects. This was clearly laid down in the case of *Randall v. Newson* (1877), L.R. 2 Q.B.D. 102.

To render the seller liable in such a case, the particular use intended must be made known to him, so as to put upon him the responsibility of furnishing an article reasonably fit for the purpose to which it is to be applied.

From the authorities, the following distinction seems to be drawn: Where a party orders an ascertained article, there is no implied warranty that it is fit for the purpose for which he ordered it: see *Chanter v. Hopkins*, 4 M. & W. 399. If the order, however, is for an undescribed and unascertained thing, stated for a particular purpose, which a manufacturer supplies, there is an implied warranty that it is fit for that purpose.

A sale by sample is still another exception to the general maxim. Such a sale is a silent, symbolical warranty that the