

value of \$774.26, an amount which the defendants do not dispute. But they say they should not be called on to pay, and, on the contrary, are entitled, in addition to a set-off equal to the amount of the plaintiffs' claim, to recover damages from the plaintiffs because the pipes were, as the plaintiffs knew, intended to be used and were used in the construction of the railway, and, after being so used, proved defective and had to be removed and replaced with other pipes, because the pipes supplied by the plaintiffs were not properly vitrified and salt glazed, which were defects not known to the defendants when they accepted and used them and of a nature which could not have been discovered by ordinary inspection.

The defendants succeeded before Falconbridge, C.J., who held that, the plaintiffs being manufacturers and not mere sellers, and knowing that the pipes were required for culverts, the law will imply a warranty that they were fit for the purpose; and that the pipes which broke and had to be replaced did so because of some latent and intrinsic defect, not discoverable by mere inspection.

It is clear, I think, that the sale was one by description. The term that the pipes to be supplied were to be vitrified and salt glazed applied both to the double strength and to the standard pipe. And if, in the case of either, the article tendered did not conform to the description, the purchasers were not bound to accept delivery. But, the goods having been received and used without objection, the defendants must now rely upon their other rights, if any, in the nature of warranties, express or implied.

Meller, J., in the well-known case of *Jones v. Just*, L.R. 3 Q.B. 197, formulated certain classifications of the numerous cases upon the subject of implied warranties which have ever since met with general approval. Those relating to the case of goods supplied by a manufacturer or dealer, such as the plaintiffs in this action, are the third, fourth, and fifth, and are as follows:—

“Thirdly, where a known, described, and defined article is ordered of a manufacturer, although it is stated to be required by the purchaser for a particular purpose, still, if the known, described, and defined thing be actually supplied, there is no warranty that it shall answer the particular purpose intended by the buyer.

“Fourthly, where a manufacturer or a dealer contracts to supply an article which he manufactures or produces, or in which he deals, to be applied to a particular purpose, so that