

THE WORDING OF A HORSE WARRANTY.

From the London Field, Dec. 8.

The decision of the court in the case of "Anthony vs. Halsted" deserves the attention of horse owners, as teaching a practical lesson in the construction of written warranties.

The plaintiff bought a horse of the defendant, and on payment of the price obtained a receipt and warranty in this form: "Received, from C. Anthony, Esq., the sum of £00 for a black horse, rising five years. Quiet to ride and drive, and warranted up to this date, or subject to the opinion of a veterinary surgeon." The horse was not quiet, so Mr. Anthony brought his action for breach of warranty in the Hereford County Court. The judge ruled that the warranty extended to quietness as well as soundness and the jury found a verdict for the plaintiff. Last week the Common Pleas Division ordered a new trial, the judges holding that the County Court judge had misconstrued the receipt, and that the absence of the words showed the warranty to apply only to soundness. This construction of the receipt in question is the same as that given in the case of "Budd vs. Lammeter" at Ch. Ch. in 1821, in which the plaintiff proved that the horse was really a colt. The receipt at Ch. Ch. in Dallas held that the warranty was confined to soundness and acquitted the plaintiff. In "Budd vs. Lammeter" the receipt on the sale of a colt, contained the following words: "For a gray 4 year old colt warranted sound in every respect." The colt turned out to be only three years old, but it was held that the soundness only was warranted, and the plaintiff was nonsuited. These decisions show clearly how written documents of the above kind will be construed in courts of law, and it cannot be contended that any violence is done to the language in which they are expressed. If the words mean anything, they mean just what the courts held them to mean, and nothing else. It may be urged that the three plaintiffs in the above actions would not have bought if the horses had not been stated respectively to be quiet, by a particular sire, and of a certain age.

The maxim, *expressum facit cessare tacitum*, will explain why these statements were disregarded. Whatever conditions the word "warranted" did not apply to could not be reckoned as integral parts of the contract of sale. In the above cases the sellers represented that the horses were quiet, of a certain breed, and of a particular age, but they warranted they were sound. In order to hold a man liable if his representation turn out incorrect, it is necessary to show that he knew it was false at the time he made it. In selling horses it often happens that the owner has no personal knowledge of certain facts beyond what he was told when he bought; and if he sells on the same representation as he received, he is not liable, provided, of course, he has not discovered the truth in the meantime. On the other hand, a seller is liable, if any part of a warranty turn out to be untrue, whether he know of the defect or not, or even if he had no means of knowing. If a man choose to warrant quiet in harness a horse he has never driven, he must take the consequences of his imprudence. It is at times difficult to distinguish warranty from representation. The rule of law is that every affirmation at the time of sale is a warranty, if it appears to be so intended, but in the cases we have noticed this intention has been plainly omitted. And if he sells on the same representation as he received, he is not liable, provided, of course, he has not discovered the truth in the meantime. On the other hand, if any part of a warranty turn out to be false, the horse is returnable to the vendor.

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