

difficulty in the matter. But our correspondent is so far right in thinking it would be better if there was some express enactment on the point. By the English County Court Act there is a provision respecting Registrars (officers answering to our clerks) enabling the Judge to appoint a Deputy Registrar in case of the inability of the Registrar himself to do so; and this is further regulated by Rule in these words: "Whenever the Registrar or his lawful Deputy is absent from the Court, the Judge shall appoint a Deputy to act on behalf of the Registrar, and an entry of such appointment, and the cause of such absence (if known) shall be made on the minutes of the Court."

C.—It is not "the proper course, where a Clerk refuses on grounds which seem good to him to issue an execution to apply at once for a mandamus." The application should be first made to the Judge of the County, who will give the Clerk an opportunity of explaining the grounds of his refusal, and then decide upon the application. But if the County Judge refuses to order the Clerk to issue execution, then the party may apply to the Superior Courts for a mandamus against the Clerk. Should a professional man be consulted, there are two cases on the subject to which his attention might be called, viz., *Ex parte Christchurch (overseers)*, 2 Pr. Rep. 660; *Reg. v. Fletcher*, 2 El. & Bl. 379.

A.—The sale of any office connected with the administration of justice is an offence both against the common and statute law.

SUITORS.

Breach of Warranty, (continued from page 63.)

The consideration or promise and warranty.—A warranty is given in consideration of the plaintiff purchasing the article or thing in respect to which it is given, so that the plaintiff must be able to prove the purchase as well as the warranty where he brings a suit. They are necessarily so mixed up that proof of the one requisite generally involves proof of the other.

The general rule is, that although a liberal price be given for goods which the purchaser has an opportunity of inspecting, the law does not imply a warranty as to their goodness or quality, and no liability in general exists in regard to bad qualities or defects, unless there be a *special* warranty or fraud on the part of the seller.

Generally speaking, therefore, a party bringing an action must be able to prove an *express warranty*, but sometimes a warranty may be implied from the nature of the transaction or the position of the contracting parties.

Warranty express or implied.—With a view to prevent fraud and deceit between man and man in

their dealings, the law implies a promise from each of the parties to a contract that he does not practice deceit or fraudulent concealment to benefit himself at the expense of others. Thus in the sale of goods the seller is taken to have promised, although he may not have promised in fact, that he does not at the time of the sale know that his title to the goods is bad, or that he has no right to make the contract of sale he professes to make; and if the seller is aware of any defect materially lowering the value of the goods in the market, the law supposes a promise from him to tell it to the intending purchaser, and the passing over in silence an important fact which ought in good faith to be made known, is equivalent in contemplation of law to an express representation, or even an implied warranty.

If goods are sold for a particular purpose, there is an implied warranty, that they are reasonably fit for such purpose. Thus a rope sold to lift goods by a crane—that it is sound: copper sold for sheathing a vessel—that it is fit for the purpose of sheathing vessels: and indeed the law implies a promise from tradesmen and manufacturers in general that the goods manufactured and sold by them for a specific purpose, and to be used in a particular way, are reasonably fit and proper for the purpose for which they profess to make them, and for which the goods are known to be required; and the law will extend this implied warranty, just so far as may be necessary to do justice and preserve good faith.

And so as to provisions in general there is an implied warranty that they are fit for use, and a man who makes a business of selling provisions and supplying victuals, is held to have warranted them to be good and wholesome, and fit for sustenance of man; but a private person who does not trade in provisions is not responsible for selling an unwholesome article of food, without fraud and in ignorance of its being unfit to eat. In case of sale by sample—wheat for example—there is an implied understanding on the part of the seller, that the sample is fairly taken from the bulk of the commodity; so that if the sample does not agree with the bulk in quality at the time of the sale, the purchaser is not bound by the contract.

The custom also of any particular business may establish an implied warranty. Thus in England, where sheep were sold as *stock*, and evidence was given that by the custom of the trade stock were understood to be sheep that were sound, it was ruled that it was an implied warranty.

An *express warranty* may either be verbal or in writing, and may be proved by a subsequent admission of the defendant: if in writing the plain terms of the written warranty cannot be contradicted or