

question, and not relying on any implied warranty on the defendants' part, is also made clear by the circumstance that he manifested no desire to have the box opened in order that he might inspect the contents. Doubtless, if he had so wished, he might have been afforded such an opportunity; and, if not, then he could have declined to purchase. The natural inference is, that the outside appearance of the box identified it to his satisfaction as being the goods of the Union Metallic Company, which had, theretofore, proved entirely satisfactory to him; and thus he was content to rely on his own judgment as to the merits of the cartridges contained in the box in question.

That he was relying on the manufacturers, not the defendants, also appears from his evidence where he explained that the purchase of the box of cartridges differed from the purchase of a can of peas, in that the box of cartridges bore on it the guarantee of the manufacturers; and it is significant that, in his examination, this reference to the manufacturers' guarantee originated with himself, and not with the examining counsel, shewing that when making the purchase the manufacturers' guarantee was present to his mind: thus he got the specific article which he bought. . . .

[Reference to Benjamin on Sale, 5th ed., p. 21; Mitchell v. Newhall, 15 M. & W. 308; Lamont v. Heath, 15 M. & W. 486; Brown v. Edgington (1841), 2 M. & G. 290.]

The defendant company had no knowledge of the defective cartridge, and the plaintiff chose to buy the sealed box of cartridges, relying on his own judgment. This was the case in Chanter v. Hopkins (1838), 4 M. & W. 405. . . .

[Reference also to Prideaux v. Burnett, 1 C.B.N.S. 613; Benjamin on Sale, 5th ed., p. 625; Jones v. Just, L.R. 3 Q.B. 197; Robertson v. Amazon Tug and Lighterage Co. (1881), 7 Q.B.D. 598.]

For the foregoing reasons, I am of opinion that the plaintiff, relying on his own judgment as to the quality of the cartridges put on the market by the Union Metallic Company, in sealed boxes like the one purchased, went to the defendant company's store for the purpose of purchasing one of such sealed boxes, and obtained the specific article that he desired, and that in making such purchase he did not rely on the sellers' judgment; and that, therefore, there was no implied warranty on the part of the defendants; and that this appeal should be dismissed with costs.

CLUTE and SUTHERLAND, JJ., agreed with MULOCK, C.J.; CLUTE, J., giving brief reasons in writing.