

brought under the consideration of the jury, and agreed with the ruling of the learned judge at the trial.

In *Ward v. Hobbs* the arguments were heard by the Lord Chancellor and Lords O'Hagan and Selborne, who were unanimous in dismissing the appeal with costs. "I apprehend," said Lord Cairns, "there can be no doubt of this proposition, that if a man expressly states upon a sale that he gives no warranty, and that the goods sold must be taken with all their faults, but goes on to say in addition to that, that so far as he knows or believes, or has reason to believe, the goods are free from any particular fault, and that the animals, if it be animals that are sold, are free from any disease, if he expressly states that, and if it can afterwards be proved that the animals were tainted with the disease to which he referred, then there can be no doubt that, notwithstanding the negation of the warranty, an action would lie for deceit for the false representation." The alleged representation in this case was implied by the plaintiff from the provisions of the Contagious Diseases (Animals) Act, s. 57 (32 & 33 Vict., c. 70), which provides that any person who sends an animal having at the time upon it an infectious or contagious disease to any public place, shall be guilty of an offence unless he proves that he was not aware that the animal was so tainted. Their Lordships, however, held that such an inference could not countervail the express terms of the conditions of sale. Lord O'Hagan quoted and approved of the ruling of Lord Ellenborough in *Baglehole v. Wallers* (*sup.*). None of their Lordships made any reference whatever to the previous decision of Lord Kenyon, which was practically overruled by Lord Ellenborough's ruling, so far as a conflict existed, the latter having been accepted ever since as embodying the law. With respect to the duty of a purchaser to test the value of an alleged representation which is merely implied by the buyer, the case of *Ward v. Hobbs* is a distinct authority for the proposition that where a vendor, not being guilty of any contrivance to conceal or to deceive, sells upon the express understanding that no warranty of quality or condition is given, inspection by the buyer is challenged, and he has notice of the probable necessity of making inspection: whether he fails to do so or not he has no cause to com-

plain. Lord Selborne was impressed for some time with the argument that it is actionable for A. to sell to B., without disclosing the fact, an article which A. knows to be positively noxious, and B. does not know to be so, even though A. expressly negative warranty, and says that B. must take his bargain with all faults. The authorities not supporting this argument, his Lordship ultimately agreed entirely with the Lords Cairns and O'Hagan.—*Law Times.*

NOTES OF CASES.

SUPERIOR COURT.

MONTREAL, July 19, 1879.

THE HOCHELAGA BANK V. GOLDRING.

Bail—Justification of sureties.

By the judgment in appeal, noted *ante*, p. 230, the judgment of MAOKAY, J., fixing the bail at \$36,800, was confirmed. Bail was offered for this amount before Mr. Prothonotary Honey.

Beique, for the plaintiffs, asked if the sureties were ready to justify on real estate. He cited from C.C. 1939, that "the solvency of a surety is estimated only with regard to his real property." He contended that the sureties should justify to twice the amount of the bail fixed. He also objected to one of the sureties, who was a resident of Ontario:—C.C.1938.

Carter, Q.C., for defendant, petitioner, said the special law of *capias* applied, and the sureties need not justify on real estate:—C.C.P. 827; nor to more than the amount fixed by the Court.

Mr. Prothonotary HONEY held that it was not necessary that the sureties should justify on real estate; nor to twice the amount, if the security appeared satisfactory.

The objection to the surety resident in Ontario was maintained, but afterwards, by consent, he was accepted. The bail fixed amounted in the aggregate to \$41,800, and five sureties were given.

THE HOCHELAGA BANK V. GOLDRING.

MONTREAL, Aug. 15, 1879.

Bail—Insolvency of a Surety—Justification.

JOHNSON, J. The plaintiff was arrested on a *capias*, and gave bail under the law and practice of the Court, according to Article 827, C. P.