In Benjamin on Sale, 5th ed., p. 1018, following a quotation of the subsection corresponding to said 51 (3), it is stated:—

> At common law the value of the goods as warranted is their intrinsic value, and not any special value which they may have to the buyer. To apply the latter standard would enable the buyer to recover special damages without having brought to the seller's knowledge the particular circumstances which may give to the goods their special value. There is nothing in the Code to alter this rule. Any case, however, where a buyer is enabled to recover special damages—*i.e.*, damages calculated according to the difference between the value of the goods actually delivered and their special value if they had answered to the warranty—is governed by sec. 54, and not by sec. 53 (2) or (3) that is by sec. 52 of our Act and not by 51 (2) or (3).

From the foregoing it is clear that there are cases of breach of warranty of quality where the damages are not to be measured under sec. 51 (3). In fact, the use of the expression "*primâ facie*" in said sub-section indicates that said sub-section raises merely a presumption, not an irrebuttable one. "Quality of goods" includes their state or condition: Sec. 2, sub-sec. 11.

In *Randall et al.* v. *Raper* (1858), El. Bl. & El. 84, 120 E.R. 438, the plaintiffs, being corn factors, bought a quantity of barley, which was warranted to be seed barley of a particular quality, and in the course of their trade resold it, with a like warranty, to certain persons who sowed it on their land believing that it was of the stated quality. The crop which came up was of an inferior kind of barley, and claims were made upon the plaintiffs by the sub-purchasers for compensation in respect of the damage which they had suffered, and the plaintiffs agreed to satisfy them; but no sum was fixed. In an action by the plaintiffs against the defendant it was held (Wightman, J., *hæsitante*) that they might recover the amount of damages which the sub-purchasers had suffered, as they were liable to pay it to them, though they had not in reality paid anything. Wightman, J's. hesitation was due to the fact that the plaintiffs had not paid the claims; he stated that he entertained no doubt that if the claims had been paid, the plaintiffs could recover the amount thereof.

In *Smith* v. *Green* (1875), 1 C.P.D. 92, the defendant sold a cow to the plaintiff with a warranty that the cow was free from the foot and mouth disease. The cow in fact had that disease, and the plaintiff, who was a farmer, put the cow with other cows of his, and she communicated the disease to them, and they died