

implied by law from the sale of such an article as to its fitness for any particular purpose. Secondly: On the ground that assuming that it was not sold under its patent or other trade name, the purchaser did not rely on the sellers' skill or judgment, but relied upon the name and reputation of the makers and their guarantee stamped upon the box. Thirdly: If there be no warranty implied by law then the only warranty that can be implied in fact, in my opinion, is that the goods sold by the defendants to the plaintiff were the goods manufactured by the Union Metallic Cartridge Company, and sold by them to the defendants as 38 Winchester rifle cartridges.

The following additional cases have been consulted, but while they all have a bearing upon the general subject they are not authorities upon which a decision in this case can be founded.

*Brown v. Edgington*, 2 M. & G. 279; *Wallis v. Russell*, [1902] 2 Ir. L. R. 585; *Emmerton v. Mathews*, 7 H. & N. 586; *Bristol v. Tramways*, [1910] 2 K. B. 831; *Bostock v. Nicols*, [1904] 1 K. B. 725; *Wren v. Holt*, [1903] 1 K. B. 610; *George v. Skivington*, L. R. 5 Ex. 1; *Blood Balm Co. v. Cooper*, 20 Am. St. R. 324; *Chapronnier v. Mason*, 21 T. L. R. 633; *Frost v. Aylesbury*, [1905] 1 K. B. 608; *Cramb v. Caledonia Railway Co.*, 19 Rettie 1054.

While the plaintiff is nonsuited it does not follow that he is without a remedy. He may not be able to sue the Union Metallic Cartridge Company in this province (see *Anderson v. Nobells*, 12 O. L. R. 644), but he probably has a right of action against them in the States. *Thomas v. Winchester*, 6 N. Y. 397 (a decision generally followed in the States—see Pollock on Torts, 8th Ed., p. 505). *Blood Balm Company v. Cooper*, 20 Amer. State Reports 324; *Dixon v. Bell*, 5 M. & S. 198; *Kerry v. England*, [1898] A. C. 742, all incline in that direction. Although the point would not be clear if the defendants were sued here (see *Winterbottom v. Wright*, 10 M. & W. 109; *Earl v. Lubbock*, [1905] 1 K. B. 253).

I hope the defendants will not ask for costs. There will be a stay for 60 days to allow an appeal to be taken.