AN IMPORTANT LAW CASE.

New-York, 28th June, 1803.

Circuit Court—held before the honorable Judge Livingston.

SCHEIFFELIN *vs.* ADAMS.

Deceit in sale of goods.

The case, on the evidence, appeared in substance as follows: Mr. Samuel Adams, a drug broker, about the 3d of December last, came to the plaintiff and offered him a sample of a certain drug, called *gum tragacanth*, at a low price, viz. at 6s. while the usual price of the genuine and good gum of this description was from 9 to 12s. that the plaintiff enquired particularly as to the quality of this article, and was assured that it was "*good*"—that he did not try the sample, though he might have done it satisfactorily in 10 minutes, but relying on the assurances of the defendant, he purchased of him a box containing 408lbs. for which he paid him the sum of 306 dollars—that some time after this he sold to sundry persons small quantities of this gum, but that invariably they brought it back, declaring that it was not the gum for which it had been sold. On this several experiments of it were made, and it was found not to possess the qualities of good and genuine gum tragacanth. The plaintiff finding it wholly an unsaleable article, and of little value to him, sent word to the defendant that he might send for it again, and that he must repay the consideration money. On his refusal of this demand the present action was brought.

The plaintiff in his declaration laid five special counts, the substance of which were, that the defendant had *fraudulently* and *deceitfully* sold him 408lbs. of a certain gum, called *gum tragacanth*, as *true and genuine*, which in fact was spurious, common, and of inferior value, and not worth more than 10 dollars. The damages laid were 600 dollars. There were also general counts for money had and received, &c.

In support of this declaration, five witnesses were called: of these, three conceived themselves to be competent judges of the article, and declared that from actual experiment they could confidently say, this was *not* true & genuine gum tragacanth, they described the real gum of this name to be in smaller lumps; that its qualities were to be known only from experiment; that the only true gum of this species, they had since used, had been imported from the Levant, (but the gum now in question, it seems had been imported from the East-Indies, by Willings and Francis, of Philadelphia, from whom a quantity had been purchased by the Messrs. Posts, druggists, of this city, on whose account the present gum had been sold, though without any authority to represent it as "good")—that they had but thirty cents per lb. for it, and had sold it exactly as they received it; that the principal quality of genuine *gum trag.* was its *adhesiveness*, and its readily forming a mucilage, but that the drug in question would neither *dissolve* nor *adhere*. One witness said he tried it in boiling water for two hours without effect, and had it been genuine and good, it would have mixed in ten minutes. It was admitted that a sample of this gum had been left with the plaintiff at least a day before the money was paid, and that the mass of the drug sold agreed with the sample. *On the part of the defendant*, six witnesses were called who all had examined, or tried parcels of this gum who were positive that it was *real* and *genuine*, but of an inferior quality. Some of the witnesses being confectioners had been in the use of this drug for 12 or 14, and one for 40 years; they agreed that they had never before seen gum exactly corresponding with the gum in question, nor had they met with any before imported from the East-Indies. One had tried this gum and had found that it would answer, but with three times the labor necessary with good gum; they admitted that it was too weak to form a mucilage, that it would swell and appear white, but would not *adhere*. One witness stated that he had applied a piece to his tongue, that it tasted of salt, and hence supposes it to have been damaged by salt water at sea. The plaintiff, it appeared, had purchased some at auction, but without trying it, had said "at that price (2/6 to 3/) it would do."

General Hamilton, for the defendant, observed that the real question in this case had been totally varied by the evidence since the commencement of the trial; that he expected, from the pleadings in the cause, the question would have been whether this was "genuine and true gum tragacanth, or not," but that the question now in fact was, not whether it was the *gum*, but whether its *quality* was agreeable to the representation of the defendant.—He remarked that where a seller sold by sample, and the mass of the article really agreed with the sample, there could be no *deceit in the sale*. Where there is a fair reference to the buyer's own skill and judgment, if he were deceived he must impute it to his own negligence and want of common prudence. In the present instance we find the plantiff a respectable, experienced, judicious druggist, a sample is exhibited and left with him. He had ample time and opportunity to make the most satisfactory experiment to ascertain the qualities of the drug; yet with all his skill and knowledge, after having had the sample about thirty hours in his possession, he purchases the article, nay more, he purchases at an *inferior price*. He well knew that this drug when good, usually sold by wholesale from 9 to 12s. per lb. yet in the present case it is offered to him at only 6s. Ought not this circumstance alone to have rendered him cautious, and led him to make an experiment for himself to determine its quality. As to the first question, viz. whether this be the genuine gum or not, for which it was sold, I think there can be no doubt, the whole weight of the testimony is in our favor. Six respectable witnesses who have been in the habit of using this drug; one for 40, others for 12 or 14 years, and who have tried samples of the same in question; all concur in stating this to be *true and genuine*. Whether it be such or not, is assuredly to be determined by its *qualities*. The predominant and appropriate quality of this gum, it seem generally admitted, is its *adhesiveness*; some of the witnesses indeed speak of its *swelling* into a *pulp*; some of its easily dissolving with water, and forming a mucilage; but it seems agreed that its *adhesive* property is that which chiefly distinguishes and gives it value.

Gen. H. pretended to no great knowledge of chemistry, but he knew enough to explain why certain bodies possessed certain essential qualities, which were materially changed or destroyed by the addition of a foreign substance. Thus in the instance of quick lime, if exposed to the air, or immersed in water, the phlogiston was discharged and it lost its adhesive property; if, however, sand were added, and the water suffered to evaporate, it resumed this property. Now the muriatic acid of sea water we know is of a decomposing quality, and gum in the question having perhaps been accidentally exposed to salt water, may thus have lost in a great degree its *adhesive* property. This conjecture is supported by the evidence of a respectable witness, who, on applying a piece to his tongue, perceived that it tasted of salt, and by the testimony of several skilful and experienced witnesses, who unite in pronouncing this to be genuine, though of an inferior quality, confirm the belief that this was "true and genuine gum tragacanth."

As to the second point, whether it was *good* or not, a remark or two must be made. It is admitted that it was bad. It was not sold for a *good price*; it was sold at half the current value of this drug, when of the first quality: although at that time scarce, it was sold at 6s. when the Levant gum was selling at 12s.

Without imputing to the plaintiff's witnesses any intention to deceive, general H. could not but pursuade himself that the representation made by the defendant originally was, that the gum he offered for sale was "true and genuine," as had been stated in the plaintiff's declaration, but that these words, by the potent aid of fancy, had been changed into "good gum trag. of an excellent quality." He admitted that if a seller positively represented an article offered for sale as possessing a certain essential quality, which in fact it has not, the buyer purchases on faith of that representation: in such case the law raises an implied warranty of that quality, and the seller becomes liable. But in the present instance, he contended, the plaintiff had purchased by sample, being a skilful judge, having time and means to inform himself correctly respecting the properties of this gum, and more especially having purchased it at a very inferior price, ought to have been on his guard, and had no right to rely on a resort to the representations of the seller.

He cited the case of Parkinson, vs. Lee, to show that where there is a sale by sample, and where the article sold, at the time of sale, perfectly corresponds with the sample, the court will not raise an implied warranty against a *principle of destructability*, nor sanction in its full extent, and where there was no fraud or imposition, the principle that a "sound price, implies a sound article." On these grounds general H. hoped for a verdict for the defendant.

Mr. Colden, for the plaintiff, in reply, observed that the present action was bro't to recover back the amount paid for a commodity represented as "genuine and good," but which in fact was worth little or nothing. He hoped that in regard to the *law* there would have been no dispute; that it was clearly settled that wherever a person makes a purchase, relying only on his own skill and judgment, he must incur every risk, but if on the seller's *judgment or representation*, there the seller without doubt must be liable. It is a settled point, "*that where goods are in any shape different from what they are represented to be by the seller, this artifice is deemed equivalent to an express warranty, and gives the buyer a right to recover back the consideration money.*" If, however, the representation related to a quality that was *apparent*, for instance, that a horse had two eyes, where in fact one was obviously put out, the case would be different, but where the *representation* or *affirmation* respected a quality that was *latent*, that could not be known or observed on *inspection*, the party so representing a quality to a purchaser, would be bound to make good all damages arising from the want or absence of such quality.

The two questions that arise for the determination of the jury in the present cause are: 1. was this the real and genuine gum tragacanth? 2. If so, was there not an affirmation or representation of its quality, viz. that it was *good?* As to the first point, if the *opinions* of the different witnesses be taken, the conclusion would be very doubtful; but if facts be closely attended to, the jury will find great difficulty in saying this was a *true and genuine gum*. On the part of the plaintiff all the witnesses declare in the most express and positive manner that this is not the *species* of drug for which it was sold. They state that whether or not is only to be ascertained from actual experiment. Some of them did try it and found it deficient in its essential, its only valuable quality, viz. that of forming an adhesive mucilage. One of the witnesses tried for two hours to reduce it to a mucilage, but to no purpose; an experienced dyer who was in the *constant* habit of using gum tragacanth tells you this is *not the drug*.

On the part of the defendant it is true several witnesses have been called, who give you a contrary opinion; but on what is that founded? they say that the *adhesive* property of this gum is its characteristic quality, and above all the one which renders it valuable, yet that the drug in question will not adhere. They agree that the genuine gum which for many years they have been in the habit of using, comes only from the Levant; yet that the gum sold to the plaintiff was from the East-Indies. This in truth is giving a name to a thing without any of its appropriate qualities. It is a horse without legs; a carriage without wheels; a body without shape or color From the whole of the evidence then, there is the strongest reason to believe, that the drug sold us was not the true and genuine gum for which it was bought.—The defendant is bound to prove the affirmative; we cannot *prove* or negative.

As to the second point, viz. whether there was not an affirmation of its quality, viz. that it was *good gum trag.* there can be no doubt. (Here Mr. C. being too much exhausted and indisposed was obliged to stop and to leave court.)

Mr. Hoffman on the same side, observed that the present was not a hard suit, that the present defendant, it was well understood, was only the *ostensible* one; the *real* defendants were the Messrs. Posts, on whose account the gum in controversy had been sold; that they had made a large profit by this sale, having purchased for 2s. 6d. and sold for 6s.; that no injury would be done if the verdict was for the plaintiff; that in such case they would have their gum again, and be obliged to refund the money paid for this drug.

Whether this was really the article for which it had been sold, and whether it was of a *good quality*, as had been stated at the time of sale, were indeed the two questions of the cause.

In regard to the law applicable to this case, he considered it as clearly settled, and presumed the court would so charge the jury, that "whenever there is a *latent* defect in an article sold, and at the time of sale represented as *good*, there the seller is bound to compensate the buyer for any damage arising from the existence of such defect: nay, if there be an express affirmation, or warranty against a defect that is *apparent*, and such affirmation proves to be untrue, the buyer may rescind the sale and recover back the money paid."

Mr. H. then proceeded to make sundry remarks on the evidence, to show that the witnesses produced really knew nothing of the gum in question; that they had been accustomed to use the genuine gum imported from the Levant, but that they had never seen or used this from the East-Indies; in fact, it must be another substance resembling gum tragacanth, but without its characteristic properties.

As to the second point, of Mr. Adams having sold this for *gum tragacanth* of a *good* quality, there could be no doubt as to his affirmation of this fact, and to its being untrue, the right of the plaintiff therefore to recover the account paid to the defendant, was clear beyond controversy.

The judge here suggested a doubt, whether, as the plaintiff had not stated this affirmation in the counts of his declaration, he had a right now to rely on it as the ground of recovery.

Mr. H. replied, that as the plaintiff had wholly disaffirmed and rescinded the contract, he had a right to recover under the general money counts in the declaration. He then proceeded to remark to the jury, that however customary it was in brokers, auctioniers and ship owners, to *puff* off their articles, that their practice did not vary the law, or prevent their rendering themselves or their principals liable for every misrepresentation in the article sold; that whether such misrepresentations were fraudulent or not, that is, whether done with a view of *deceiving* or not, did not vary the case; the buyer is imposed on, and has his redress against the seller. He admitted that a purchaser ought to take every precaution in his power, but that in addition to *every other*, he should take care to have the *word of the seller*; the law which he stated in this case, he thought founded on reason and good morals. Its tendency was to make *sellers* cautious and *honest* in their representations, and to prevent imposition, loss and litigation, on the part of purchasers. Upon the whole he trusted the jury under the direction of the court, would do full and satisfactory justice between the parties to this suit; would restore the plaintiff his *money*, and the defendants their *gum*.

The judge, after recapitulating the evidence, observed, "that in this action two questions were raised for the consideration of the court and jury. As to the first, viz. whether this was the genuine gum for which it was sold, I think the weight of testimony is with the defendant. The number and experience of the witnesses who have concurred in declaring this drug (of which they have tried samples) to be really a *species* of gum tragacanth, seems to decide the point of *genuineness*. Nor is there greater reason for doubt on the second point, namely, as to its quality. The *whole* testimony proves that the drug in question actually resembles that brought from the Levant, in *some* of its qualities; but while on the part of the plaintiff the evidence goes to prove the drug in question wholly defective in the characteristic and peculiar property of genuine gum tragacanth, the defendant's own witnesses admit that it was of a very inferior quality.

On this point, it will no doubt appear extraordinary, that a druggist so experienced and judicious as Mr. Scheiffelin, after a sample had been exhibited to him, and at a very inferior price, should enquire of *the defendant* respecting its qualities; it is extraordinary also that he had not preferred relying rather on his own judgment and trial of the article, than on the representation of another; however on the point, so the fact is, as stated by three credible witnesses, to whose testimony on this point we are bound to yield assent.

The doctrine of the law on this subject is clear and settled: if a sample is produced, and the purchaser does not chuse to rely on his own skill or judgment, but requires the word of the seller as a security, and the seller either wilfully or ignorantly misrepresents the article sold, the law raises an *implied warranty* that the article was, as represented, and the seller is liable to the buyer for all the damages sustained from the purchase; or the buyer may rescind the sale, in which case he is entitled to his money again, and the seller to his goods.

It is not necessary in support of this action that *actual fraud* should be proved, however it may be alledged in the pleadings; it is not suggested that any existed in the present case; but the risk of the action lies in the variance between the representation and the *fact*, in regard to the qualities or value of the article sold. If the plaintiff should recover in this suit it must be on the ground of the warranty, viz. that the drug was *good*; but whether this be a warranty or not, is a fact not to be determined by the court.

The jury retired and soon after returned with a written verdict to the following effect: "that if the court was of opinion that the representation by the defendant amounted to a *warranty*, then they found for the plaintiff; if not, then, for the defendant." The judge informed them that they must reconsider this verdict; that whether the word "*good*" amounted to warranty or not, was *a matter of fact* for the *jury* and not a point of law for the court to determine; on this the jury again retired, and shortly after brought in their verdict for the PLAINTIFF.—Damages 306 dollars and 6 cents cost.

From a New-York Paper.

The Reign of Terror.—The federal administration of the government has been denominated by some of the leaders of democracy "*the reign of terror.*" We think with great propriety. A wise and righteous administration must indeed be a "*terror to evil doers*—but a praise to those who do well." We are not astonished, therefore, at the censure of one class of our citizens, or at the praise and commendation of federalists. We are not surprised that democrats should complain of the reign of terror, in a government they have constantly opposed. The formation and adoption of our constitution struck them, to use the words of Tom Paine, as "with a hydrophobia," for in this they saw the commencement of a wise and energetic government. A government opposed to visionary projects and new theories; a government not founded on the Utopian and whimsical doctrines of the infinite perfectibility of man and universal philanthropy, but a government founded in principles that have been sanctioned by the experience of ages; a government which, if adhered to and properly administered, will secure to our citizens all the blessings of society. This federal constitution and government (from their attachment to which federalists derive their name) was opposed in its infancy by the file-leaders of democracy; and with a zeal worthy of a better cause, the factious and disaffected exerted their whole influence to impede every important measure of its administration.

Yet, it is a fact well known, that most of the democratic party who are now in power, and who hold the most important offices in the government, were warmly opposed to the adoption of the constitution. It is known that they perseveringly adhered to a systematic opposition to the measures of government—But success was denied them. The constitution was adopted by federalists—by federalists the government was put into operation, and was wisely administered, to the imparalleled prosperity of our country. Washington governed our councils. The people immediately experienced the beneficial effects of the wisdom and energy of an efficient administration; public and private credit was restored; our commerce flourished beyond all former example, agriculture felt its benign influences, and our farmers were growing rich by the fruit of their labor. Federalists rejoiced in the growing prosperity of their country; the government to them was a praise and a blessing—but to democracy it was emphatically the "*reign of terror.*" Her wayard sons sickened at the trimuph of virtue and principle, and trembled for the cause they had espoused. An energetic government was a *terror* to the dark minds of the restless and ambitious demagogues; it was a death blow to the unhallowed schemes of certain individuals in certain large states in the union, who were opposed to measures which in their operation would abridge them of their consequence and materially retard their personal aggrandizement. The prompt and efficient measures of the federal administration to quell a daring and violent opposition to the execution of the laws, must undoubtedly have struck with *terror* the abettors of an insurrection, which would have prostrated all power, and have led to anarchy "and wild misrule." The flinty heart of Mr. Gallatin himself was struck with dismay, and he no doubt at that period wished to have stopt the *veels* of government, as he would have denied the benefits of social intercourse to all citizens who should not persist in resisting the laws of the U. States. The wise policy of the federal administration, in adopting and adhering to a system of strict neutrality during the late European war, was a *terror* to democracy. The views of the party devoted to the interests of France darkened—the intrigues of French emissaries, supported by the interests of a French faction in this country, failed of success—France and England were left to fight their own battles, and the peace and happiness of our country were eminently secured by the wisdom of our rulers—This was the "reign of terror" to democracy. Alien laws were a *terror* to "fugitives from justice." These worthy pupils of democracy exclaimed against a system wisely adopted by the federal administration in regard to foreigners; a system that afforded them immediate protection, and put them on trial for a title to the confidence of our government. This was a terror to many of this description of democrats. The sedition law was a *terror* to the daily retailers of vile calumnies. The hirelings of the party, who turned their presses into the hot-beds of sedition, and dealt out anathemas against the government and its adherents, with unprecedented boldness, were justly terrified at a law that restrained their publications within the limits of truth. Ambitious and unprincipled demagogues, seeking for power as a mean of personal aggrandizement, saw all their prospects blasted in a moment, when merit was considered the only test for public office—when the only questions that were asked in making appointments were, "is he honest? is he capable? is he a friend to the constitution?"—Well then may democracy "cry aloud and spare not—Well may her deluded sons exclaim against the wise administration of federalists as a "*reign of terror.*"

From the BALANCE.

French method of Stacking Wheat.

A gentleman who had noticed the modes of agriculture, on the banks of the Rhine, in Flanders and in France, has remarked that the people of those countries commonly stack their wheat and leave it in the field. The manner of stacking is as follows: "they set one sheaf upright, with the ears uppermost, and round that place a circle of many other sheaves with the ears uppermost, inclining on the first sheaf; and when so placed, they look like the figure of an extinguisher. Then they lay an horizontal circle of sheaves, with all the ears in the centre, and cover those ears in the middle with a loose sheaf or two. Thus placed they are protected from all wet, and may remain six weeks or two months, as safe as in a barn."

Harvest time is the most busy season with the farmer in the whole year; by stacking his wheat and other grain in the field, he can finish his harvest sooner: he may cart the sheaves in at leisure times; and by reason of their exposure to the air for several weeks, they thresh much easier than sheaves which, immediately after binding, are housed in a tight barn.

The writer remarks, that this French and German method of stacking has been adopted in some of the southern counties of England, to the great benefit of the farmers and the public.

From the BALANCE.

There is no readier way to demoralize mankind, than to weaken and destroy their ideas of accountability to the Supreme Being. When this is done, virtue is withered at the root. The Epicurian philosophy debauched the morals of ancient Greece and Rome; and was more pernicious to the political interests of those nations, than it would have been to have suffered a pestilence, that should have exterminated one half of their inhabitants.

Epicurus himself, it is said, was not a lewd debauched man; but lived in the practice of justice, temperance, chastity, and the various other social virtues; and the speciousness of his character gave a credit to his doctrines and multiplied his disciples and followers. He strictly inculcated virtue, and paid his daily devotions to the gods. At the same time, he denied the immortality of the soul; and he also denied divine providence; and taught that the gods did not concern themselves either with the affairs or with the actions of men. Multitudes were captivated by the plausible appearance of disinterestedness, in the worship and virtue of Epicurus. He professed to worship the gods merely because of their excellence; and without any expectation of favor from them: and he professed to practice virtue, without looking for any reward.

The Epicurians, however, regardless of the example of their founder, soon threw off all appearance of virtue, and greedily wallowed in the mire of moral turpitude; insomuch that the famous Roman poet Horace, speaking of that sect, alludes to its gross immorality, in the following contemptuous language: "De grege Epicuri porcus." A pig from the flye of Epicurus.

The prevalence of the Epicurian philosophy at Rome, was shortly succeeded by the overthrow of the republican form of government.* And there is cause to tremble for our own government, when it is considered that a very large portion of the popular books, which, during the last twenty years, have been spread over this country, as well as over Europe, is but a new edition of the Epicurian philosophy.

* *Epicurus was born within the Athenian territory; and he died ninety-three years before the birth of Christ. His atheistical philosophy had infected the Jews, as well as the Greeks and Romans. The Sadducees and Herodians belonged to the Epicurian sect.—The Roman republic was subverted within less than half a century after the death of Epicurus; and within a few years after his doctrines had been introduced among that nation, and had become popular.*