

February 1937

## Masthead Volume 43, Issue 2

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### Recommended Citation

*Masthead Volume 43, Issue 2*, 43 W. Va. L. Rev. (1937).

Available at: <https://researchrepository.wvu.edu/wvlr/vol43/iss2/1>

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# West Virginia Law Quarterly and The Bar

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Published by the Faculty of the College of Law of West Virginia University, and issued in December, February, April and June of each academic year. Official publication of The West Virginia Bar Association.

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Subscription price to individuals, not members of The West Virginia Bar Association, \$2.00 per year. To those who are members of the Association the price is \$1.00 per year and is included in their annual dues. Single copies, 50 cents.

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## RESCISSION FOR BREACH OF SELLER'S WARRANTY

In the case of *American Sugar Refining Company v. Martin-Nelly Grocery Company*<sup>1</sup> it was held that the buyer of goods could not rescind an executed sale for breach of the seller's warranty. Approximately eight months later the same court rendered a contrary decision in the case of *Kemble v. Wiltison*,<sup>2</sup> without overruling, distinguishing or even mentioning the first case. The present status of the West Virginia law on this point is therefore doubtful. It is the purpose of this note to discuss these and other cases in an effort to reconcile them and to state the correct governing principles.

Sales cases commonly fall into two broad classes: (1) contracts for the sale of unascertained goods and (2) sales of specific goods.

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<sup>1</sup> 90 W. Va. 730, 111 S. E. 759 (1922). See Comment (1931) 29 MICH. L. REV. 794.

<sup>2</sup> 92 W. Va. 32, 114 S. E. 369 (1922).