RESCISSION FOR BREACH OF SELLER'S WARRANTY

In the case of American Sugar Refining Company v. Martin-Nelly Grocery Company\(^1\) 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,\(^2\) 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.

\(^2\) 92 W. Va. 32, 114 S. E. 369 (1922).