sale of goods is made, the property does not pass until appropriation of specific goods by the vendor in completion of the contract; (5) where the vendor reserves to himself the *jus disponendi* or future power of dealing with the goods, as by making a bill of lading deliverable to his order, the property does not pass until the jus *disponendi* is exercised in favour of the purchaser; (6) where there is fraud on the part of the vendor or purchaser, the sale is voidable, not void; it may be affirmed and enforced or rescinded. In sales of personalty, unlike sales of real estate, time is usually of the essence of the contract. A sale of goods may be accompanied by an express warranty or collateral contract as to the title to or quality of the goods. No special form of words is necessary to create a warranty, nor need it be in writing. An implied warranty of title—that is, an affirmation that the vendor has a right to sell—exists certainly in executory contracts of sale. It most probably exists in executed contracts, @@1 the exceptions to the rule having in recent times become by judicial decision more numerous than the cases falling under the old rule, that there was no such warranty. Warranty of quality exists either by statute or at common law. The Merchandise Marks Act, 1862, implies a warranty from the existence of trade-marks on chattels that the trade­mark is genuine, and from the existence of any statement respecting number, quantity, weight, place, or country that such statement is not in any material respect false. The rules as to warranty of quality at common law cannot be better stated than in the language of the clear and full judgment of the Court of Queen’s Bench in Jones *v.* Just *(Law Reports,* 3 Queen’s Bench, 197).

“First, where goods are *in esse* and may be inspected by the buyer, and there is no fraud on the part of the seller, the maxim *caveat emptor* applies, even though the defect which exists in them is latent and not discoverable on examination, at least where the seller is neither the grower nor the manufacturer. The buyer in such case has the opportunity of exercising his judgment upon the matter, and if the result of the inspection be unsatisfactory, or if he distrusts his own judgment, he may if he chooses require a warranty. In such a case it is not an implied term of the contract of sale that the goods are of any particular quality or are merchant­able. So in the case of the sate in a market of meat which the buyer had inspected, but which was in fact diseased and unfit for food, although that fact was not apparent on examination and the seller was not aware of it, it was held that there was no implied warranty that it was fit for food, and that the maxim *caveat emptor* applied. Secondly, where there is a sale of a definite existing chattel specifically described, the actual condition of which is capable of being ascertained by either party, there is no implied warranty. Thirdly, where a known described and defined article is ordered of a manufacturer, although it is stated to be required by the purchaser for a particular purpose, still if the known described and defined thing he actually supplied there is no warranty that it shall answer for the particular purpose intended by the buyer. Fourthly, where a manufacturer or dealer contracts to supply au article which he manufactures or produces, or in which he deals, to be applied to a particular purpose, so that the buyer necessarily trusts to the judgment or skill of the manufacturer or dealer, there is in that case an implied warranty that it shall be reasonably fit for the purpose to which it is to be applied. In such a case the buyer trusts to the manufacturer or dealer, and relies upon his judgment and not upon his own. Fifthly, where a manufacturer undertakes to supply goods manufactured by him­self or in which he deals, but which the vendee has not had the opportunity of inspecting, it is an implied term in the contract that he shall supply a merchantable article. And this doctrine has been held to apply to the sale of an existing barge by the dealer which was afloat but not completely rigged and furnished ; there, inasmuch as the buyer had only seen it when built and not during the course of the building, he was considered as having re­lied on the judgment and skill of the builder that the barge was reasonably fit for use.”

The case of sale by sample is peculiar to personalty.

In such a sale the vendor warrants the quality of the bulk to be equal to that of the sample. There are certain kinds of sale which are governed by special legislation, chiefly on grounds of public policy. A sale contrary to the pro­visions of any of the Acts is generally void in the same way as though it were illegal at common law, on the principle of the maxim *Ex turpi causa non oritur actio.* The sale of certain public offices is forbidden by 5 and 6 Edw. VI. c. 16, 49 Geo. III. c. 126, and other Acts dealing with special offices. A sale by a tradesman in the way of his ordinary business upon Sunday is illegal under 29 Car. II. c. 7. The same is the case with the sale of intoxicating liquors during prohibited hours, whether on Sundays or week days (31 and 38 Vict. c. 49, s. 6). No action can be brought to recover any debt alleged to be due in respect of the sale of any ale, &c., consumed on the premises where sold (30 and 31 Vict. c. 142). The sale of game in the close season or by an unlicensed person is forbidden by 1 and 2 Will. IV. c. 32. The sale of spirits to a person apparently under the age of sixteen is made penal by 35 and 36 Vict. c. 94, s. 7. These cases are only given as examples; there are numerous other enactments dealing with, *inter alia,* sales of anchors and chain cables, adulterated food and drugs, explosives, and poisons. Every sale by weight or measure must be accord­ing to one of the imperial weights or measures ascertained by the Weights and Measures Act, 1878; if not so made, the sale is void (41 and 42 Vict. c. 49, s. 19).

The remedies of the vendor are of two kinds, judicial against the purchaser, extra-judicial against the goods. Judicial remedies are either by action for non-acceptance where the property has not passed or by action for the price where it has passed. The extra-judicial are (1) a lien for the price, so that, in the absence of agreement to the contrary or assent to a sub-sale, the vendor need not deliver the goods until the price is paid; (2) the right of stoppage *in transitu.* This right is universally acknow­ledged by the commercial law of civilized nations. It arises on the insolvency of the purchaser before the goods have reached his possession, and is defeasible only by transfer, whether by way of sale or pledge, of the bill of lading or other document of title to a *bona fide* indorsee for value. The protection afforded at common law to the *bona fide* transferee has been extended by the Bills of Lading Act, 1855, and by the Factors Act, 1877. There is no general right of resale by the vendor on default of the purchaser. The remedies of the buyer are an action for damages for non-delivery, for conversion, for breach of warranty, for misrepresentation, &c., according to cir­cumstances. He has also a remedy analogous to specific performance under the Mercantile Law Amendment Act, 1856. The Act gives power to the court or a judge, in an action for breach of contract to deliver specific goods, to order execution to issue for the delivery of the goods with­out giving the defendant the option of retaining them upon paying the damages assessed. The buyer has further a right to reject goods where they are different in kind or quality from those which he had a right to expect. He is entitled to keep them for a sufficient time to give them a fair trial. It should be noticed that the effect of mis­representation in the sale of real and personal property is not the same. As a rule innocent misrepresentation of facts does not give a right to rescind the sale, since a representation is, like an express warranty, not an integral part of the contract. A representation may, however, if so intended by the parties, become a condition a breach of which will avoid the sale. See Story’s, Blackburn’s, and Benjamin’s treatises on the sale of personal property, especially Benjamin’s, which is now the recognized text­book on the subject.

@@@1 An executed contract passes title, an executory gives a right. A purchase for ready money in a shop is an executed contract, an order for a certain chattel to be made is an executory contract. The con­sideration for such a contract is the express or implied promise to pay for the chattel on completion.