4. Nothing need be said in regard to cancellation, because, upon the defendant's testimony, the policy never was cancelled, even under the usages of insurance companies and agents in the city of New York.

The motion for a new trial is denied, and stay of execution is removed.

WEST, BRADLEY & CARY MANUF'G CO. *v.* ANSONIA BRASS & COPPER CO.

(*Circuit Court, D. Connecticut.* ——, 1880.)

1. CONTRACT—WARRANTY OF QUALITY.

Assumpsit.

Charles R. Ingersoll, for plaintiff.

Wooster & Torrance, for defendant.

SHIPMAN, D. J. This is an action of general *assumpsit* which was tried by the court, the parties having by agreement waived a trial by jury. The plaintiff's account, upon which the suit was brought, is for clock springs of various kinds which were furnished by the plaintiff to the defendant between July 8, 1875, and February 23, 1876, upon the defendant's orders. The principal of the account was $1,552. It is not denied by the defendant that it received the goods which were thus furnished, and that they have not been paid for. The defence is the recoupment of damages resulting from the breach of the plaintiff's warranty of the quality of the clock spring which it sold to the defendant.

In the summer of 1874 the plaintiff, through Mr. Alanson Cary, its authorized agent, solicited from the defendant orders for clock springs. The defendant was largely engaged in the manufacture of clocks. The plaintiff was an extensive steel-spring manufacturer, and had just commenced to make polished clock springs. The defendant had been buying its springs from Edward E. Dunbar, of Bristol. The Dunbar spring was of excellent quality and had a good reputation. Mr. Carey, before any orders were given, showed the defendant

his samples of springs and received specimens of the Dunbar spring, and had two interviews with the defendant's superintendent and the foreman of the movement department at Ansonia, and one interview with the superintendent and the New York agent at New York. At Ansonia, Mr. Cary said that he (meaning the plaintiff) would guaranty his springs to be equal to the Dunbar spring, and that they would run more evenly than those which the defendant was using. It was understood that plaintiff's springs would be but seven and a half feet in length, while the Dunbar spring was nine feet long. The representation and the guaranty of Cary were that his seven-and-a-half-foot spring would be equal in efficiency to the nine-foot spring of Dunbar. The eight-day spring of Dunbar ran with uniformity at least eight days. This guaranty was given as an inducement to the defendant to become the plaintiff's customer. The additional inducements were a lower price than that of the Dunbar spring and an exchange trade.

While these negotiations were going on, and before any orders had been given to the defendant, Mr. Cary sent defendant, on September 24, 1874, one of the plaintiff's clock springs, and wrote the defendant, among other things, as follows: "One thing we can guaranty, that they [the springs] will run more uniform than anything you have ever used, and will, also, guaranty them equal to any French spring made."

Samples were sent by the plaintiff and tested to a certain extent. These negotiations finally culminated in an experimental order for 500 springs, about November 1, 1874, which were sent November 12, 1874, and the defendant replied that he would have them thoroughly tested and give a decision. The test was apparently satisfactory, for orders followed and continued to be given until February 23, 1876, at which date goods to the amount of about $14,450 had been furnished and had been paid for, with the exception of the bill of $1,552, now in suit. During the first part of the time, modifications in thickness and in minor particulars were suggested or directed by the defendant, which suggestions were complied with.