

nothing less than *dolus* will sustain an action for damages, upon the sharp distinction made between *venditor sciens* and *venditor ignorans*.¹ Against *venditor ignorans* the purchaser has no other actions than those founded upon the Edict of the Aedils (*actio redhibitoria* and *actio quanti minoris*) while against *venditor sciens* he has *actio epti*, by which he can enforce damages (*quanti emptoris interfuit non decipi*.)²

Of late, however, some of the German civilians have commenced to question this doctrine.³ They call attention to such statements as the following by Ulpian in fr. 13, sec. 3, D. 19-1, "*sed non debuit facile quae ignorabat asseverare*," and again, "*non debuit facilis esse ad temerariam indicationem*."⁴

In addition to fraud, the civil law makes the seller liable in damages for "*dicta et promissa*," and it does not make any difference whether the *dicta et promissa* were made fraudulently or negligently. This is probably what Ulpian meant; he warns the seller that, while ordinarily he is liable for fraud only, he will have to be careful, not to make frivolous assertions, as they may be held against him as *dicta sive promissa*.

We can, then, repeat our former statement that the rule followed by our courts is practically the same as that of the civil law, viz.: The seller becomes liable in damages only, when he has been guilty of fraud, or has guaranteed the thing. This appears so well settled that no citing of authorities is required. But this rule has, never and nowhere, worked quite satisfactorily.

For this there appears to be several reasons, but the principal one seems to spring from the various translations of the Latin words, *dolus* and *culpa*. In civil law the meaning of both of

1. Fr. 13, pr.; fr. 1, sec. 15, D. 19-1.

2. Fr. 13, sec. 1, D. 19-1.

3. See f. inst. F. Leonhard: "Die Haftung des Verkäufers für sein Verschulden beim Vertragsschlusse" (1896) and "Verschulden beim Vertragsschlusse" (1910). Von Bluhme and Krueckman appear to agree, more or less, with Leonhard.

4. See also fr. 45, sec. 4, D. 18-1; fr. 6, sec. 4, D. 19-1; fr. 19, sec. 1, D. 19-2.