

in it. If he fails to do so, and the bank is thereby misled to his prejudice, he cannot afterwards dispute the correctness of the balance shewn by the pass-book. The rigour of that pronouncement of the law is, however, most unlikely to find favour in this country. Customers of banks are not all people blest with punctilious business instincts and habits.—*Law Times*.

*Dicta et Promissa in the Civil Law and under
Modern Codes.*

A question that very often is put before the courts for decision is: What are the remedies of a purchaser, when his seller delivers a thing not according to contract? We refer in this to sales of individual things and not to things generic.

The question is complicated and involves a number of others. First there is the question: When is the thing defective? In other words, is the seller liable for so-called defects in abstracto (lack of qualities usual with such things) or for defects in concreto only (lack of qualities guaranteed or assumed to exist in the thing sold)? As a general rule, it may be said that the seller of an individual thing will not incur liability in damages for defects in abstracto; the only consequences of such defective delivery will be that the purchaser can cancel the contract; or demand an abatement in the price; this latter is often called damages, but this appears to be a very loose use of the word.

Then, there is the question: Can the purchaser claim from the seller (as the Germans would say) his positive interest in the contract, that is, can he claim the profits he would have made, or can he claim his negative interest only: to be put in the same position, as if the contract had not been entered into?

But the main question is: Is the seller liable for fraud only (*dolus*) or can he also be held responsible for negligence (*culpa*)?

We generally follow the Civil Law rule, as it has been uniformly interpreted for centuries: That only fraud will make the seller liable in damages. The Civilians found their rule, that