

29. If two immoveable properties be sold by the same contract, at a single price for the whole, with a declaration of the contents of each, and in one the quantity be less than stated and in the other greater, the deficiency of the one is compensated by the excess of the other so far as it goes, and the action of the buyer or seller is modified accordingly.

ff. L. 42, De contr. empt.—Pothier, *Vente*, 256.—C. N. 1623.

SECTION III.

OF WARRANTY.

GENERAL PROVISIONS.

30. The warranty to which the seller is obliged in favor of the buyer is either legal or conventional. It has two objects :

1. Eviction of the whole or any part of the thing ;
2. The latent defects of the thing.

ff. L. 3, De act. empt.—L. 21 ; L. 38, *De ædilitio edicto.*—Pothier, *Vente*, 81, 82, 181, 202.—C. L. 2450, 2451.—C. N. 1625.

31. Legal warranty is implied by law in the contract of sale without stipulation. Nevertheless the parties may, by special agreement, add to the obligations of legal warranty, or diminish its effect, or exclude it altogether.

ff. L. 21, De ædil. edicto.—Pothier, *Vente*, nos. 202, 210, 229, 230.—Domat, *liv. 1, tit. 2, sec. 10, nos. 6, 7*—C. N. 1627.

§ 1. Of warranty against eviction.

32. The seller is obliged by law to warrant the buyer against eviction of the whole or any part of the thing sold, by reason of the act of the former, or of any right existing at the time of the sale, and against incumbrances not declared and not apparent at the time of the sale.

ff. L. 1. De evictione.—L. 11, § 8, 11, *De act. empti.*—Cod. L. 6, *De eviction* :—Pothier, *Vente*, nos. 86, 200.—Domat, *loc. cit. nos. 2, 3, 5.*—Guyot, *Rep. Vo. Garantie*, 726.—6 Marcadé, p. 252, sec. 2.—C. N. 1626.

33. Although it be stipulated that the seller is not obliged to any warranty, he is nevertheless obliged to a warranty against his personal acts. Every agreement to the contrary is null.

Pothier, *Vente*, 183-4.—Domat, *loc. cit. no. 8.*—C. N. 1628.

34. In like manner, when there is a stipulation excluding warranty, the seller in case of eviction is obliged to return the price of the thing sold, unless the buyer knew at the time of the sale the danger of eviction or had bought at his own risk.

ff. L. 11, § 18, De action. empti.—Pothier, *Vente*, 185-6.—C. N. 1629.

35. Whether the warranty be legal or conventional, the buyer, in case of eviction, has a right to claim from the seller :

1. Restitution of the price ;
2. Restitution of the fruits in case he be obliged to pay them to the party who evicts him ;
3. The expenses incurred, as well in his action of warranty against the seller as in the original action ;
4. Damages, interest and all expenses of the contract ;

Subject nevertheless to the provision contained in the article next following.

ff. L. 60 ; L. 70, De evict.—Pothier, *Vente*, 118, 123, 128, 130.—Domat, *loc. cit. nos. 12, 13.*—C. N. 1630.

35a. If in the case of warranty the causes of eviction were known to the buyer at the time of the sale, and there be no special agreement, the buyer has a right to recover only the price of the thing sold.

Pothier, *Vente*, nos. 187-8-9, 190 and the authorities cited by him. Also 2 Delvincourt, p. 154.