

*emptor* too far for the law to be as Sir Wm. Anson tells us it is in his *Law of Contract*, 13th ed., 1912, p. 165:—

A. sells X. a piece of china. X. thinks it is Dresden china. A. knows that X. thinks so and knows it is not. The contract holds. A. must do nothing to deceive X., but he is not bound to prevent X. from deceiving himself, as to the quality of the article sold.

Is not this, I would ask, plainly condoning downright dishonesty? It requires a far greater capacity for drawing subtle distinctions than I possess to see that A. in such a case is any better than a common thief.

I hesitate to suggest that it is a flaw in the common law, that it repudiates the Roman law doctrine of *læsio enormis* or "gross wrong." That doctrine was that if the seller or purchaser was prejudiced to the extent of more than half the real value the sale could be rescinded, unless the buyer agreed to pay the deficiency in price. Yet this rule of Roman law has descended into modern law in France, Italy and Louisiana, among other places. But in France and Louisiana, at all events, the doctrine is confined to sales of land. The French Civil Code, section 1674, provides:—

'If the vendor of an immovable object has been damaged by receiving seven-twelfths less than its true price he has the right to demand that the sale should be rescinded even though by the terms of the contract itself, he has renounced any right to ask for rescission, and the contract recites that full value has been given.'

And that:—

'An action for rescission must be brought within two years of the sale, counting from the date thereof.'

It is held under these clauses that the action for rescission for undervalue lies although there be no cheating or undue influence proved. The fact of undervalue to the extent of seven-twelfths in the price is held to imply that there is no true consent; and the action for rescission being based on the damage the vendor has suffered, the purchaser can stop the action by indemnifying the vendor for his loss. The true price is held to be that which "*l'opinion publique*" would put upon it, viz., the fair market price, unaffected by any circumstances peculiar to either vendor