

43. Warranty against eviction ceases in case the buyer fails to call in the seller within the delay prescribed in the Code of Civil Procedure, if the latter prove that there existed sufficient ground of defence to the action of eviction.

Domat, *liv. 1, tit. 2, sec. 16, nos. 21, 22.*—Pothier, *Vente, nos. 108-9.*—C. N. 1640.

44. The buyer may enforce the obligation of warranty when, without the intervention of a judgment, he abandons the thing sold or admits the incumbrance upon it, if he prove that such abandonment or admission is made by reason of a right which existed at the time of sale.

Pothier, *Vente, 94, 95.*

§ 2.—*Of warranty against latent defects.*

45. The seller is obliged by law to warrant the buyer against such latent defects in the thing sold, and its accessories, as render it unfit for the use for which it was intended, or so diminish its usefulness that the buyer would not have bought it, or would not have given so large a price, if he had known them.

ff. L. 1, § 1, De ædil. edicto.—Domat, *liv. 1, tit. 2, sec. 11, nos. 1, 3.*—Pothier, *Vente, nos. 202, 203, 232.*—Merlin, *Rep. Vo. Garantie, § 8, no. 2.*—C. N. 1641.

46. The seller is not bound for defects which are apparent and which the buyer might have known of himself.

ff. L. 48, § 4, De ædil. edicto.—Domat, *loc. cit. and nos. 10, 11.*—Pothier, *Vente, 207-9.*—C. N. 1642.

47. The seller is bound for latent defects even when they were not known to him, unless it be stipulated that he shall not be obliged to any warranty.

ff. L. 1, § 2, De ædil. edicto.—Domat, *loc. cit. no. 5.*—Pothier, *Vente, no. 210.*—C. N. 1643.

47a. When several principal things are sold together as a whole, so that the buyer would not have bought one of them without the other, the latent defect in one entitles him to vacate the sale for the whole.

ff. L. 34, § 1; L. 35; L. 38, De ædil. edicto.—Pothier, *Vente, 227-8.*—Domat, *loc. cit. no. 16.*—C. L. 2518.

48. The buyer has the option of returning the thing and recovering the price of it, or of keeping the thing and recovering a part of the price according to an estimation of its value.

ff. L. 21; L. 23, § 7, loc. cit.—Domat, *loc. cit. no. 2.*—Pothier, *Vente, 202, 217, 232.*—C. N. 1644.

49. If the seller knew the defect of the thing, he is obliged not only to restore the price of it, but to pay all damages suffered by the buyer.

He is obliged in like manner in all cases in which he is legally presumed to know the defects.

ff. L. 13, De action. empti.—Domat, *loc. cit. no. 7.*—Pothier, *Vente, 212-3.*—*Obl. 163.*—C. N. 1645.

50. If the seller did not know the defects, or is not legally presumed to have known them, he is obliged only to restore the price and to reimburse to the buyer the expenses caused by the sale.

ff. L. 1, § 1, De act. empti.—Domat, *loc. cit. no. 6.*—Pothier, *loc. cit.*—C. N. 1646.

51. If the thing perish by reason of any latent defect which it had at the time of the sale, the loss falls upon the seller, who is obliged to restore the price of it to the buyer, and otherwise to indemnify him, as provided in the two last preceding articles.