

the purchase, the thing sold lacks a certain quality which has been assured, then the purchaser may, in place of abrogation or abatement in the price, demand damages for non-compliance).

The Uniform Scandinavian Laws⁶ have the same rule, except that instead of the words, "eine zugesicherte Eigenschaft," they use the words, "Egenskaber som maa anses tilsikrede" (qualities which must be considered to have been assured).

It is rather difficult to give the exact meaning of these words in English. We call attention to the fact that the words "garantiert" and "garanteret" have not been used, and these words were left out advisedly and replaced by the word "zugesichert" and "tilsikret." Literally, these words mean assured, and that with us practically means the same as guaranteed. Still, by the expressions used, it was, without any doubt whatever, intended to cover such cases, where there was no actual guarantee, nor any actual fraud, but still such action on the part of the seller, that he ought not to be heard with the plea that he had simply been careless.

From the day when the German Civil Code was promulgated, yes, from the time it was under preparation and under debate in the Reichstag, the above cited section has been a battlefield, where one-half of the German law-writers, the Reichsgericht and its various "Senaten," all of the German Superior Courts and a number of non-German writers have waged an endless war. The USLK have not been in operation long enough to bring disputes over their corresponding section to decision before any of the supreme courts, but all of the law-writers of the three countries are constantly trying to find the exact meaning of the section.

No agreement has been reached. Judge Riehl, of Berlin, has even as late as in the Deutsche Juristen Zeitung for March 15, 1913, expressed the opinion that when the thing sold is real estate, not even "Arglist" will justify a judgment for damages. But the tendency seems to be towards the opinion that the

6. "Om Kob" (About Purchases) (USLK) sec. 42-II.