

36. The seller is obliged to make restitution of the whole price of the thing sold, although, at the time of eviction, it be found to be diminished in value, or deteriorated, either by the neglect of the buyer, or by a fortuitous event; unless the buyer have derived a profit from the deterioration caused by him, in which case the seller may deduct from the price a sum equal to such profit.

ff. L. 43, De act. empti.—Dumoulin, *Tractatus, De eo quod interest*, nos. 68, 69.—Pothier, *Vente*, 69, 118.—1 Troplong, *Vente*, no. 488.—C. N. 1631, 1632.

Contra Domat, *loc. cit.* no. 14. See citations of Roman Law by him and by Pothier, no. 69.

37. If the thing sold be found, at the time of eviction, to have increased in value, either by or without the act of the buyer, the seller is obliged to pay him such increased value over the price at which the sale was made.

ff. L. 66, § 3, De evict.—Cod. L. 9; L. 16; L. 45, *De evict.*—Domat, *loc. cit.* nos. 15, 16.—Pothier, *Vente*, 71, 132.—C. N. 1633.

38. The seller is obliged to indemnify the buyer, or to cause him to be indemnified, for all repairs and useful expenditures made by him upon the property sold, according to their value.

Pothier, *Vente*, 134.—Troplong, *Vente*, 510.—C. N. 1634.

See *contra* Domat, *loc. cit.* nos. 17, 18.

39. If the seller have sold the property of another, in bad faith, he is obliged to reimburse the buyer for all expenditures laid out by him upon it.

ff. L. 45, § 1, in fine. De act. empti.—Domat, *loc. cit.* no. 19.—Pothier, *Vente*, 137.—C. N. 1635.—C. liv. 2, tit. 2, *Of Property*, art. 12.

40. If the buyer suffer eviction of a part only of the thing, or of two or more things sold as a whole, which part is nevertheless of such importance in relation to the whole that he would not have bought without it, he may vacate the sale.

ff. L. 1, De evict.—Pothier, *Vente*, 144.—C. L. 2487.—C. N. 1636.

41. If in the case of eviction of a part of the thing, or things sold as a whole, the sale be not vacated, the buyer has a right to claim from the seller the value of such part, to be estimated proportionally upon the whole price, and also damages to be estimated according the increased value of the thing at the time of eviction.

ff. L. 13, De evict.—Dumoulin, *Tract. de eo quod interest*, nos. 67, 8-9.—Pothier, *Vente*, 142, 143.—1 Troplong, *Vente*, no. 517.—16 Duranton, no. 300.—3 Delvincourt, p. 149, *note*.—C. N. 1637.

42. If the property sold be charged with a servitude not apparent and not declared, of such importance that it may be presumed the buyer would not have bought if he had been informed of it, he may vacate the sale or claim indemnity, at his option.

ff. L. 1, § 2, De ædil. edicto.—Pothier, *Vente*, 239.—C. N. 1638.

(Suggested amendment.)

If the property sold be charged with a servitude not apparent and not declared, of such importance that it may be presumed the buyer would not have bought, if he had been informed of it, he may vacate the sale or claim indemnity, at his option, and in either case may bring his action so soon as he is informed of the existence of the servitude.