

Book IV.
Title LVIII.¹

Concerning actions given by edicts of the aediles.
(De aediliciis actionibus.)

Headnote.

Warranties in sales. 1. For warranty against eviction , see C. 8.44.8 note. And there was an ancient action for deficiency in acreage. Paul 2. 17. 4. Aside from that, the rule of caveat emptor applied in classical law, and there was no regress as to secret defects, except: (1) when there was an express warranty; (2) if the vendor was guilty of fraud, resulting in damage. Failure to disclose material defects, known to the vendor, or knowingly to keep the vendee in an error, as to quantity, quality or condition (including burdens), early gave rise to an action on the contract. Cic., De off. 3.58-60; D. 4.3.37), and, in later law, (instead of that action), in an action on the contract (exempto). Paul 2.17.6; Vat. 13.

2. A markedly different rule was made by the aedile, market supervisor, under edicts issued by him, as to property sold in the public market, and at first applied as to slaves. He required certain defects to be disclosed, and a stipulation warranting against them (and against eviction) to be given, and gave actions for a limited time, designed to enforce the giving of the stipulation. D. 21.1.28. Later all corporeal defects of animals sold in the public market, not minor in character, were required to be disclosed. D. 21.1.38 pr. Furthermore, the aedile came to imply a warranty against such defects, and gave an action for rescission (redhibitio) for 6 months, and an action for the difference in value and price (quanti minoris) in 12 months, if such defects appeared in the meantime. Like actions applied to enforce express warranties or other agreements. Law 4 h.t. D. 21.1.38 pr; D. 21.1.1.1. It made no difference whether the vendor knew of the defects or not, but if they were known to vendee or apparent, the actions were excluded. D. 21.1.1.6; D. 21.1.1.14.10. If rescission was had, the vendor, of course, had to return the price, and the vendee the property, with the right of equitable adjustment of expenses and reciprocal damages, so as to put the parties back, as nearly as possible, to where they were before the sale. D. 21.1.60.

3. The rules of the aedile were, in post-classical law, extended to apply to all other property, not minor in character, and to all defects, unless they were small. D. 21.1.1 pr; 63 (itp); D. 21.1.48.8; C. 58.4. This meant the virtual abolition of the rule of caveat emptor as applied to quality of property sold, except where the defect was known or should have been known. Furthermore any informal statement of the vendor, as to quality, unless clearly merely puffing, was treated as an express warranty, though made in good faith. D. 19.2.19.1 (itp); D. 18.1.43 pr. So that a vendor became liable, if he carelessly made a statement which was not true—a rule wholly different from classical law, in which only fraud, and not negligence, in making the contract, gave rise to liability. D. 21.1.4.4; D. 19.4.1 pr. The rules could be varied by contract, except that a person could not contract against liability for fraud. D. 19.1.6.9; D. 2.14.31.

4. The aediles disappeared in the second century A.D. and the law made by them was administered by the praetors or other judicial officers. By what action that law, and the extension thereof, was enforced, is not altogether clear. It is generally assumed that it

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was by the contract action (ex empto). Mitteis, PR 55. Where the rules of the aediles had applied, the actions given by them continued, at least so far as limitation of time was concerned. Law 3 h.t. It is stated in one text that whenever an action lay on the contract, the actions of the aedile lay. D. 21.1.19.2. But that is denied in another. D. 19.1.11.5. The contract action, primarily designed to enforce a contract, came to be used also to dissolve it, and if it appeared in an action for damages that a vendee could best be made whole by rescission, that relief was granted. D. 19.1.11.3; D. 19.1.13.5; Vat. 14. In Justinian law, damages were not limited to difference in price and value if the vendor was not in good faith, but covered all damages sustained. D. 19.1.13 pr-1 (itp). For rescission generally see C. 4.44.

4.58.1. Emperor Antoninus to Decentius Veromilius.

If anyone had, not innocently, but fraudulently, and without your knowledge, sold you a slave inclined to run away, or who possesses some other defect, and the slave has run away, the seller may not only be sued for the price of the slave, but a competent judge, as was decided long ago, will also order the damage accruing to you to be paid to you.

Promulgated May 30 (214).

4.58.2. Emperor Gordian to Petilius Maximus.

Since you state that the slave, whom you formerly bought, fled when more than a year after your purchase of him had expired, I am unable to understand for what reason you ask to be able to sue the seller; for the law is clear that an action to cancel the sale (redhibitorian actionem) is barred in six months, and an action for the reduction in the price (action quanto minoris) in a year.

Promulgated December 1 (239).

4.58.3. Emperors Diocletian and Maximian to Aurelius Mucianus.

If it is shown that a slave had fled from the previous owner, his flight occurring after the sale is at the risk of the purchaser. But if the seller rashly warranted that the slave will not become vicious in the future, then, although such fact seems to be unlikely, suit may, without a doubt, be brought on the pack which precedes or accompanies the sale; subsequent misfortunes are not at the risk of the seller but of the purchaser. But since you state that the slave whom you bought has returned to the seller, a competent judge will consider all the facts and will take care to give a decision accordingly.

Promulgated April 17 (286).

4.58.4. The same Emperors.

If anyone shall have bought land upon condition that if it should displease him it should be considered as though not sold, it is plain that the sale, so made on condition, is dissolved, and an action for cancellation of the sale lies against the vendor. 1. The same rule applies when a pestilential farm, that is a farm that has pestilential and death-bearing herbs, was sold without the purchaser's knowledge thereof; for in such cases, too, the sale will be cancelled in the same kind of action.

C. Th. 3.4.1.

4.58.5. Emperors Gratian, Valentinian and Theodosius to Nebridius, City Prefect.

If a sale of a slave is made in good faith, and such slave has been delivered, and the price has been paid, the power to recover the purchase price can be given the purchaser only if he can restore the slave whom he claims to have fled. This law applied not only to barbarian but also to provincial slaves.

Given at Constantinople June 30 (386).