

ff. de req. jur. l. 27. §. 3 & 4. ff. de pact. Persons obliged in Warrant
to the Buyer, as the Seller's Heirs cannot disturb him in his Possession,
whatever Right they may have to the Thing sold l. i. pr. ff. de except.
rei vend. l. 14. C. de rei vind. If the Purchaser who was molested suffers
himself to be condemned by Default, if he defends himself ill, if he
not give Notice to the Seller of the Action brought against him, if
he consents to a Reference or Transaction without the Seller's Know-
ledge and consent, he cannot Demand ^{Warrant} against an Eviction,
which he has no Body to blame for but himself l. 55. l. 53. §. 1. C. 56.
§. 1. ff. de evict. The common Law of England does not give a Man to
warrant the Thing he sells, unless there be an express Warranty, or
Warranty by Law take Inst. 52. 2.

Some accidental Accessories, not essential to this Contract may
be to it.
Earnest (which we call ^{or Arles-penny} is frequently given by the Buyer
to the Seller, as a Symbol of the Bargain, to signify more certainly that
the Sale is perfected, which is a Piece of Money or other Thing. Such
Earnest Money was anciently called Penonius des God's penny, Cant.
Eng. Because in former Times the Piece of Money so given to him
the Contract, was given to God, that it to the Church or to the Poor.
The Effect of Earnest, is sometimes regulated by Agreement, in
which Nothing is expressed about it, the Earnest, if it be a Species,
ought to be returned after the Price, if it be Money, it is reckoned
a Part of the Price, except where it is expressly given to be imputed
in the Price, which is called dead Earnest. Some Lawyers (Lomat.
L. 3. Loix Civiles de. Tom. 1. Part. 1. Liv. 1. Tit. 2. Sect. 6. Art. 5. An.
Gomas. 2. var. Resol. cap. 2. n. 18) are of Opinion, that where Earnest
is given in a Contract of Sale either Party may refuse, after it is pe-
fected with Consent of both, viz. the Buyer with the Loss of his Earn-
-nest, and the Seller if he return and give back the Earnest and as
-much more. And in France the Buyer may by losing his Earnest
depart from the Contract, Groenweg. de Legib. abrog. no l. 17. C. de
-fide instrum. But other great Lawyers (Carpou. Juris prud. forens. Part
-2. Const. 33. Def. 14. Stair Lib. 1. Tit. 14. §. 3.) think more probably,
that the Buyer cannot refuse with the Loss of his Earnest, nor the Seller
-by doubling the Value of it. Because 1. Earnest is ordinarily too in-
-considerable, that the standing of a Bargain should depend upon it, 2.
It is frequently considered as a Part of the Price, so that the Mat-
-ter is not entire after the Intervention of Earnest. 3. Earnest is given
to insure and confirm the Contract, not to loose it, whence 'tis call'd in
Some northern parts of England The fastening penny, &c. The Fastening penny.

It is an usual Paction in Sales, that if the Price be not paid at
the Time appointed the Sale shall be void, which is lawful and effect-
-ual in Sales for a competent Price (Craig Feud. Lib. 2. Tit. 6. §. 15. Stair
-Lib. 1. Tit. 13. §. 14. Lib. 2. Tit. 10. §. 6. Lib. 4. Tit. 5. §. 7. Tit. 18. §. 4. 5. Tho'
such Provisions in the Reversions of Pledges and Wadsets, and also in
Sales where the Price is not adequate and just, be disallowed, ^{ff. de rei vend. l. 14. C. de rei vind. l. 14.}
-^{Supra} pag. 533-534. It is questioned if such Provisions be effectual against sin-
-gular Successors and do render the Bargain null in itself; or if it be
-only a personal Obligation affecting the grantor, rendering it while it
-remains in his Hand? For having said Donit it is answered 1. If the
-Clause concerning Payment of the Price is suspensive and stops
-Transmission of the Property, the Bargain continues perfect and the
-Property in the Seller, so as no singular Successor to him can be in it
-for safe than his Author. But if it be only resolutive, so as the Property
-once vested in the Buyer shall cease to be his in such an Event, that
-is only a personal Obligation affecting him and the Subject which is
-his Property, which is otherwise ordered by Law as in Reversions of
-Lands, prolonced by the limitation of future Rights or by the not pay-
-ment of Penonius. 2. Where such personal Clauses resolutive are in
-the Body of the Buyer's Right, so that the singular Successor cannot
-be ignorant of the Seller's Interest, it is to be considered whether it
-is necessary by Apprehension or legal Diligence for Satisfaction of Debt, or
-if not supposed to know personal Limitations affecting his Author,
-and a Creditor purchasing for his Payment, who has no other possible
-Way to know it, is also understood to act necessarily. Now a voluntary
-Acquirer of such Rights stipulated with personal restriction, Clauses,
-showing that his Author had no reservation in it, but only as a re-
-tort the property effectually transmitted to him, for the Fraud of his
-immediate Author operating may an Obligation of Reparation to the
-Party damaged by such Transmission of the Right, both not insecure,
-the Person to whom it is bona fide acquired, but if one do acquire after
-he is put in mala fide to do it, by Intimation or Citation given him,
-or by Arrestment laid in his Hand by another having a prior Disposi-
-tion or Assignment to the Right, the Conveyance to him is reducible
-ex capite doli, he being Partaker of the Fraud of his Author who is a
-grantor of double Rights. However a Person's Knowledge of an Impe-
--ete or incomplete Right in Favour of another, doth not hinder legal
-Diligence to proceed effectually at his Instance, Stair Lib. 1. Tit. 14. §. 5.
It is sometimes agreed that the Seller shall be allowed to take back the goods
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