

of these sorts of Defects, which being visible his Eye was his Merchant, and he could not be ignorant of, more than of those Defects which the Seller told him of. *l. 48. §. 1. ff. de contrah. empt. l. 1. §. 6. ff. de Edict. l. 14. §. ult. ff. eod.* The Time which the Buyer is allowed for bringing an Action of Redhibition commences only after he has been able to discover the Defects of the Thing sold; unless this Time were regulated by some custom, or that it has been agreed that the Buyer should not bring his Complaint except within a certain Time. But even in the case of a delay that is regulated, the Buyer may be received to make his Complaint after that Time is expired and the Judge will decide in the Matter according to Circumstances *l. 31. §. 22. ff. de edict. l. 18. ff. de rei vindic. l. 18. ff. de rei vindic.* as if the goods were carried abroad before their Insufficiency appeared, so as the Buyer could not immediately restore them. But his Retention of them after discovery of their Defect, when it was in his Power to restore them, accounts Negligence and Homologation of the Contract. *January 1629 Brown contra. Nicolson Stair Lib. 1. Tit. 10. §. 15.* If the Seller declares the Thing sold to have some other Quality besides those which is found to warrant naturally, and that Quality engage the Buyer who would not otherwise have concluded the Sale, where that Quality happens to be wanting, or even the Thing sold happens to have the contrary Defects, according to Circumstances, either the Sale should be dissolved, or the Price diminished, and the Seller liable to Damages if there is ground for it. *l. 1. §. 2. ff. de rei vindic. l. 21. §. 1. ff. de act. empt.* But if the Seller has only made Use of those Expressions, which are usual to Sellers, who praise at Random their Goods which they have a Mind to sell, the Buyer, who ought not to have taken his Measures upon Expressions of that Kind, cannot procure the Sale to be dissolved upon any such Protest *l. 1. §. 1. ff. de rei vindic. l. 21. §. 1. ff. de act. empt.* Where one is obliged for Things whose Value may reach to more or less according to the Difference of their Qualities, the Obligation is not extended to that which is best and of the greatest Price, but is moderated to that which is good and merchantable and of common Use. *l. 19. ff. de rei vindic. l. 18. ff. de rei vindic.* But if the Contract regulates that which is due, or if the Intention of the Contractors appears by the Circumstances, we must hold to that. *l. 13. §. 2. ff. de vers. oblig.* In England and France Concealment and Circumvention do not make void a Contract of Sale, and the injured Persons have no Remedy. *Case 1. Inst. 102. d. Groenweg. de legib. abrog. in l. 13. ff. de act. empt.*

The Price of the Sale can never be any other Thing than current Money, which makes the Estimate of a Thing sold, and distinguishes this Contract

Contract from Exchange and others. *l. 2. Inst. de empt. et vend.* But yet the Parties may agree to give Payment of the Price either in Movables or Debts or other Effects. In which case there are two Sales: The first is of the Merchandise sold, and the second of that which the Buyer gives to discharge himself of the Price. But to avoid the Multiplicity of Sales the two are taken for one alone, and the second eclipses under the first. *l. 3. §. 12. ff. de don. int. vir. et alix.* Because it happens that the same Sum of Money makes the Price of both Sales in that case the Buyer discharges himself of the Price & that which is due without giving Money, by giving in Lieu of the Price the same which he sold in his Part. The Price must be certain, or such as may be ascertained by the Determination of one to whom it is referred. By the Civil Law a Sale in which the Price is referred to one of the Contractors whether it be the Seller or Buyer is null. *l. 35. §. 1. ff. de contrah. empt.* Seeing that Partly may render the Contract silly. But by the Law of Scotland the Price may be referred either to a third Party, or to the Seller or Buyer. *13. Novem 1639. In Montrose contra. Scot.* Who should estimate the goods sold neither at the highest nor lowest Price but at the common Rate without any regard to the particular Circumstances & Affection, which either the one or the other of the Contractors might have had for the Thing that is to be estimated, or of their Want of it: What it is worth in Equity, what it would be worth in common Use to any Person whatsoever, and what it might be reasonably sold for, is only to be considered. *l. 13. pr. ff. de leg. Julii. l. 13. pr. ff. de leg. Julii. l. 52. §. 29. ff. de furt.* If a third Party, to whom the Determination of the Price is left neither can nor will determine it, or if the Seller to whom it is referred make it extravagantly high, or the Buyer unconscionably low, the Laws of Equity who supply all Defects may determine, or moderate. It is no Matter what the Price be, if agreed between the Buyer and Seller. *Nihil enim venditori de set qui bene emit Seneca de Ben. lib. 6. Cap. 15.* The Roman Law doth indeed annul a Sale, where the Price is less than the Half of the just Value of what is sold, or doth by more than the Half exceed it. *l. 2. C. de rescind. vend. called solus reipsa,* whether the Party who had the Advantage knew or was ignorant of the Worth of the Thing sold. *l. 1. §. 1. C. eod.* But that Rule doth not obtain in Scotland 23 June 1669 Fairlie contra. Ingles Stair Lib. 1. Tit. 10. §. 14. Because of the Difficulties in fixing the just Price of Things and the too many Inconveniencies of annulling Sales on Account of Excess in the Price, or in which Things are not sold at their real Value. The Civil Policy consists at