guarantee the buyer possession ; the transfer was of *vacua possessio,* not of property. The buyer was secured by a covenant *duplæ stipulatio* against eviction by a superior title, limited to double the price where there was no fraud by the seller. There was a warranty of quality by the seller. He was bound to suffer rescission or to give com­pensation at the option of the buyer if the thing sold had undisclosed faults which hindered the free possession of it. The damages to which he was liable differed according as he was guilty of bad faith *(dolus)* or not. If guilty he was liable for all consequential damage, if innocent only for the diminution in the value of the thing sold by reason of its unsoundness. Thus, if a seller knowingly sold an infected sheep and the whole flock caught the disease and died, he would be liable for the value of the flock; if he was ignorant of the defect, he would be liable only for the difference in value between a sound and an unsound sheep. Mere overpraise did not amount to *dolus;* nor was inade­quacy of price in itself a ground of rescission. When the agreement was complete it was the duty of the seller to deliver the thing sold *(rem tradere).* In case of a sale on credit, the delivery must be made at the time appointed. Prior to delivery the seller must take due care of the thing sold, the care which a reasonably prudent householder *(bonus paterfamilias)* was expected to exercise. Delivery did not pass property in the full sense of the word, but rather *vacua possessio* secured by *duplæ stipulatio.* Risk of loss *(periculum rei venditæ)* after agreement but before delivery fell upon the buyer. On the other hand, he was entitled to any advantage accruing to the thing sold be­tween those dates. It was the duty of some one to pay the price; the obligation was discharged if payment were made by the debtor or by any other person, whether authorized or not by the debtor, and even against his will. The duties of buyer and seller might be varied by agree­ment, the only restriction being that the seller could not by any agreement be relieved from liability for *dolus.*

Sale in English law may be defined to be “ a transfer of the absolute or general property in a thing for a price in money ” (Benjamin, *On Sales,* p. 1). The words “absolute or general” are inserted because there may be both a general and a special property in certain cases, and a transfer of the special property would not be a sale. The above definition, though applied in the work cited only to sales of personalty, seems to be fully applicable to sales of any kind of property. The rules as to legality, capacity of parties, assent, and fraud depend upon the law of Contract- *(q.v.),* of which sale is a particular instance. In­capacity is either absolute or relative, the latter being a bar only in the individual case, *e.g.,* the incapacity of a person in a fiduciary position (see Trust). The capacity of parties tends to become more extended as law advances; thus in England the Roman Catholic, the alien, and the married woman have all been relieved within a compara­tively recent period from certain disabilities in sale and purchase which formerly attached to them.

In England, for historical reasons (see Real Estate), there is a considerable difference in the law as it affects real and personal estate. The main principles of law are perhaps the same, but the sale of real estate is a matter of greater expense and intricacy than the sale of personal estate, and depends to a large extent upon legislation inapplicable to the latter. It appears, therefore, better to treat the two kinds of sale separately.

*Real Estate.—*At common law it was not necessary that there should be written evidence of a contract of sale. The publicity of the feoffment obviated the necessity of writing, which was not essential to the validity of a feoff­ment until the Statute of Frauds (see Feoffment). The earliest statute making a written instrument essential to

a sale appears to be the Statute of Enrolments (27 Hen. VIII. c. 16). The bargain and sale operating under the Statute of Uses, and enrolled under the Statute of Enrol­ments in the High Court of Justice or with the custos rotulorum of the county, is no longer in use; a bargain and sale at common law is a mode of conveyance some­times used by executors exercising a power of sale. Such a bargain and sale must be by deed since 8 and 9 Vict. c. 106, but need not be enrolled. There was no compre­hensive legislative enactment dealing with all cases of sale of real estate until section 4 of the Statute of Frauds. Since that date a contract for the sale of real estate must be in writing (see Fraud, where the provisions of the Act are set out). Sales by auction are within the statute, the auctioneer being the agent of both parties (see Auction). In an ordinary case of the sale of real estate the contract is formally drawn up on the basis of particulars and con­ditions of sale, which ought fairly to represent the actual state of the property. The statute, however, is satisfied by informal agreements, such as letters, if they contain the means of determining the property, the parties, and the price. The price must be a sum of money. If it is another estate, the contract is one of exchange; if no con­sideration passes, it is a gift. The price may be left to be determined by a third person, as by arbitration. For the way in which payment of the price may be made, see Payment. The formation of a binding contract of sale is the most important stage in the transfer of real estate. From the moment at which the parties are bound by the contract the sale is made; the purchaser has the equitable estate in the subject-matter of the contract (see Equity), the vendor holding in trust for him, subject to the pay­ment of the purchase money, for which the vendor @@1 has a lien. The price becomes personal estate of the vendor and the land real estate of the purchaser. The latter has the right to accidental benefits and the burden of accidental losses accruing before completion of the purchase. The rights defined by the contract descend to the representa­tives of a deceased vendor or purchaser. In most cases the personal representative of a deceased vendor may convey the property under 44 and 45 Vict. c. 41, s. 4. After the contract it becomes the duty of the vendor to deliver an abstract of title, to satisfy the purchaser’s reasonable requisitions as to any question arising on the title of the purchaser, and to pay a deposit, usually ten per cent. of the price fixed, within a certain time, the remainder being paid on completion,—that is, the execution of the conveyance and payment of the balance of the price. He also prepares the conveyance, which since 8 and 9 Vict. c. 106 must be by deed. The costs of execution of the conveyance are paid by the vendor. Any of these duties may be varied by special agreement. The sale is not in ordinary cases avoided because the purchaser is in default in payment of the purchase money on the day appointed. The purchaser does not forfeit his rights if he be ready to complete within a reasonable time after the day fixed for completion and to pay interest on the sum overdue. This rule is an old doctrine of equity, and is generally expressed by saying that time is not of the essence of the contract. As a general rule, any real estate is capable of sale, unless it is altogether *extra commercium,* as a church or public building. There are, however, a few exceptions introduced by the legislature, such as estates tail not barred, estates which by Act of Parliament are inalienable (see Real Estate), and crown lands, of which all grants for more than thirty-one years are in general void by 1 Anne st. 1, c. 7. Sales of pretended titles to land are void by 32

@@@1 “Vendor” and “purchaser” are the words always used to denote the parties to a contract of sale of real estate. Where the sale is of personal estate, “ buyer ” and “ seller ” may be used as well.