It may be useful to recapitulate shortly the main points of difference between Roman and English law. They have all been noticed in the preceding part of this article. (1) *Arrha* was not the same as earnest. (2) Written contracts were not necessary in Roman law under any circumstances. (3) There was no warranty of title in Roman law : the transfer was of *vacua possessio,* not of ownership; in England there is a warranty of title (unless the parties other­wise intend) on sales of personalty, but not on sales of real property, though the covenants for title practically amount to a warranty. (4) There was a warranty of quality extending to undisclosed defects in Roman law beyond anything recognized by English law. (5) By Roman law the property did not pass until *traditio;* even then it was only property in a modified sense; it was rather *vacua possessio* secured by *duplæ stipulatio*; by English law the property in specific ascertained goods vests by the contract in the buyer. (6) A sale by a person who was not the owner was not good in Roman law; it is good in certain cases in English law (see below).

There are certain kinds of sale which it is proposed to consider separately on account of the exceptional circumstances in which they stand.

*Compulsory Sale.—*As a general rule sale is a matter of contract between the parties, and no one can be forced to sell against his will. But in this, as in other matters, the right of the state comes in. Under the powers of the Lands Clauses and other Acts the state, exercising its right of eminent domain, may force an owner to sell for the purpose of public improvements,—such as railways. The power of compulsory sale is less common where the interests of the state are not involved; an example occurs in the Partition Act, 1868, under which the court may order a sale instead of a division, even though some of the parties interested dissent.

*Judicial Sale.—*Under this head may be grouped all those sales which are made under the authority and by the direction of a court of justice. In regard to real property the most important example is the sale by order of the Chancery Division. Such a sale may be ordered either under the original jurisdiction of the court or under the provisions of certain Acts of Parliament, such as the Lunacy Regulation Act, 1853, the Partition Act, 1868, the Settled Estates Act, 1877, or the Settled Land Act, 1882 (see Settlement). The Conveyancing Act, 1881, provides for freeing any land from encumbrances on sale by the court, on payment into court of a sum to meet the encumbrance. The Act also makes the order for sale conclusive in favour of a purchaser in almost every case. The abstract of title in a sale by the court is submitted to one of the conveyancing counsel of the Chancery Division, and the particulars and conditions are settled in judges’ chambers. The sale is generally by public auction, the auctioneer being appointed by the judge. The regulations for the conduct of sales by the court will be found in the Rules of the Supreme Court, 1883, Ord. li. r. 1-13.

The Bankruptcy Act, 1883, gives power to a trustee acting under the authority of a court of bankruptcy to sell all or any part of the property of a bankrupt by public auction or private contract. Simi­lar rights are given by the Scotch Bankruptcy Act, 1856. Judicial sales of the property of a debtor in Scotland are regulated by 19 and 20 Vict. c. 92. The term “judicial sale” does not seem to be used as a technical term in English as it is in Scotch law. In admiralty actions a vessel may be sold under a commission of appraisement and sale issued by the court. The practice is now regulated by Ord. li. r. 14-16. Similar powers may be exercised in an action of sett in Scotland. A common instance of a judicial sale is the sale by a sheriff of an execution debtor’s goods under a writ of *fieri facias* or *venditioni exponas.* Where the execution is for a sum above £20 the sale is, unless the court otherwise orders, to be by public auction. Where the sheriff has seized and a claim by interpleader is set up, the court may order a sale of the whole or part of the goods (Rules of the Supreme Court, 1883, Ord. lvii. r. 12). The same rules (Ord. 1. r. 2) give a valuable power to the court or a judge of ordering a sale of any goods of a perishable nature, or such as for any reason it may be desirable to have sold at once.

*Sale by Persons not Owners.—*English law in general agrees with the rule in Dig. 1. 17, 54, “Nemo plus juris ad alium transferre potest quam ipse haberet,” and a purchaser takes his purchase subject to informalities in the title. To this rule there are several exceptions, in which title may be given by persons who are limited owners or not owners at all. An example of sale by a limited owner is a sale by a tenant for life under the powers given by the Settled Land Act, 1882. Under the same head would fall sales by persons having a qualified right of sale under particular circum­stances, such as a sheriff, the master of a ship in a foreign port, or

a pawnee in default of payment (see Pledge). Sales by persons not owners at all must as a rule, in order to be valid, be made to purchasers ignorant of the defect of title on the part of the vendor. In the case of real estate a *bona fide* purchaser for valuable con­sideration without notice, actual or implied, of any adverse title is protected. This is on the principle that equity assists the person in possession of the legal estate. In the case of personal property title may be passed by a person not owner under the Factors Acts and in the case of stolen goods. The effect of the Factors Acts is to enable title to be given by the vendor or vendee or any person on his behalf while he is in possession of the documents of title (see Factors). The law as to the sale of stolen goods will be found under Theft.

*Pre-emption.—*This is a right of purchasing some particular property given to some particular person in priority to the public. It is conferred either by agreement between parties or by law. Thus by the Lands Clauses Act, 1845, before the promoters of an undertaking dispose of superfluous lands not required for the pur­poses of the undertaking they must (with certain exceptions) first offer to sell the same to the person then entitled to the lands from which the same were originally severed. In the United States pre­emption is very important in its connexion with the homestead law (see Homestead). In international law the right is exercisable by a belligerent nation over property not strictly contraband, but which would still be of advantage to the enemy. The goods are not seized and condemned, but purchased by the capturing nation at a reasonable compensation. The right of pre-emption is given to the admiralty by 27 and 28 Vict. c. 25, s. 38 (see Contraband). The old crown prerogative of purveyance and pre-emption was a right of buying up provisions and other necessaries for the royal household at a valuation even without the consent of the owner, and also of impressing horses and carriages for the king’s service on the public roads upon paying a settled price to the proprietor. The right was relinquished by the Act abolishing the feudal tenures (12 Car. II. c. 24).

*Scotland.—*The law of Scotland follows the Roman law more closely than does English law. Thus in Scotch as in Roman law the contract of sale is called a consensual contract ; the sale is not complete until delivery, and market overt does not afford any protection. Writing is essential to the sale of heritable property, not by any statute, as in England, but by the ancient unwritten law. *Rei interventus* may, however, in some cases, like part performance in England, supply the place of writings. The vendor is bound on completion to supply a sufficient progress of titles. In addition to the protection afforded to the purchaser by the progress of titles the statutory form of warrandice in 31 and 32 Vict. c. 101, s. 8 implies, unless specially qualified, absolute warrandice as regards the lands and writs and evidents, and warrandice from fact and deed as regards the rents,—that is to say, that a good title to the land has been conveyed, and that the granter has not done and will not do anything contrary to the writ as regards the rents (see Watson, *Law Dict.,* s.v. “Warrandice”). In the case of movables writing is not necessary for a good contract of sale, except where the sale is of a ship, or the parties agree to reduce the terms to writing. The Mercantile Law Amendment (Scotland) Act, 1856 (19 and 20 Vict. c. 60), has made important changes in the law of Scotland. “ The statute was passed for the purpose of assimilating the law of Scotland to that of England ” (Lord Watson, in M'Bain *v.* Wallace, *Law Reports,* 6 Appeal Cases, 588). By section 1 goods after sale but before delivery are not attachable by the creditors of the seller. By section 2 the sub-purchaser may demand that delivery be made to him instead of to the original purchaser, without prejudice to the right of retention of the seller. By section 3 the seller of goods may attach the goods while in his own possession at any time prior to the date when the sale of such goods shall have been intimated to him. By section 5 the English principle of *caveat emptor* is introduced : " where goods shall be sold the seller, if at the time of the sale he was without knowledge that the same were of defective or of bad quality, shall not be held to have warranted their quality or sufficiency, but the goods, with all faults, shall be at the risk of the purchaser, unless the seller shall have given an express warranty of the quality or sufficiency of such goods, or unless the goods have been expressly sold for a specified and par­ticular purpose, in which case the seller shall be considered, without such warranty, to warrant that the same are fit for such pur­pose. ” The right of retention corresponds closely to the right of lien in England, but rests upon the simpler ground of undivested property (see Watson, *Law Dict.,* s.v. “Sale”). Criminal liability for fraud seems to be carried farther in Scotland than in England (see Fraud).

*United States.—*The law as to the sale of real estate agrees generally with English law. It is considerably simplified by the system of Registration *(q.v.)* The covenant of warranty, unknown in England, is the principal covenant for title in the United States. It corresponds generally to the English covenant for quiet enjoy­ment. The right of judicial sale of buildings under a mechanic s lien for labour and materials is given by the law of many States.