pending the decision of the case (§59). It seems a pity that this sensible rule was not extended to England.

In early English law *caveat emptor* was the general rule, and it was one well suited to primitive times. Men either bought their g∞ds in the open market-place, or from their neighbours, and buyer and seller contracted on a footing ol equality. Now the complexity of modern commerce, the division of labour and the increase of technical skill, have altogether altered the state of affairs. The buyer is more and more driven to rely on the honesty, skill and judgment of the seller or manufacturer. Modern law has recognized this, and protects the buyer by implying various conditions and warranties in contracts of sale, which may be summarized as follows: First, there is an implied undertaking on the part of the seller that he has a right to sell the goods (§ 12). Secondly, if goods be ordered by description, they must correspond with that description (§13). This, of course, is a universal rule—*Si aes pro αuro veneαt, non valet.* Thirdly, there is the case of manufacturers or sellers who deal in particular classes of goods. They naturlly have better means of judging of their merchandise than the outside public, and the buyer is entitled within limits to rely on their skill or judgment. A tea merchant or grocer knows more about tea than his customers can, and so does a gunsmith about guns. In such cases, if the buyer makes known to the seller the particular purpose for which the goods are required, there is an implied condition that the goods are reasonably fit for it, and if no particular purpose be indicated there is an implied condition that the goods supplied are of merchantable quality (§ 14). Fourthly, in the case of a sale by sample, there is “ an implied condition that the bulk shall correspond with the sample in quality,” and that the buyer shall have a reasonable opportunity of comparing the bulk with the sample (§ 15).

The main object of sale is the transfer of ownership from seller to buyer, and it is often both a difficult and an important matter to determine the precise moment at which the change of ownership is effected. According to Roman law, which is still the foundation of most European systems, the property in a thing sold did not pass until delivery to the buyer. *Traditionibus et usucapionibus dominia rerum, non nudis pactis, transferuntur.* English law has abandoned this test, and has adopted the principle that the property passes at such time as the parties intend it to pass. Express stipulations as to the time when the property is to pass are very rare. The intention of the parties has to be gathered from their conduct. A long train of judicial decisions has worked out a more or less artificial series of rules for determining the presumed intention of the parties, and these rules are embodied in sections 16 to 20 of the act. The first rule is a negative one. In the case of unascertained goods, *i.e.* goods defined by description only, and not specifically identified, “ no property in the goods is transferred to the buyer unless and until the goods are ascertained.” If a man orders ten tons of scrap iron from a dealer, it is obvious that the dealer can fulfil his contract by delivering any ten tons of scrap that he may select, and that until the ten tons have been set apart, no question of change of ownership can arise. But when a specific article is bought, or when goods ordered by description are appropriated to the contract, the passing of the property is a question of intention. Delivery to the buyer is strong evidence of intention to change the ownership, but it is not conclusive. Goods may be delivered to the buyer on approval, or for sale or return. Delivery to a carrier for the buyer operates in the main as a delivery to the buyer, but the seller may deliver to the carrier, and yet reserve to himself a right of disposal. On the other hand, when there is a sale of a specific article, which is in a fit state for delivery, the property in the article prima facie passes at once, even though delivery be delayed. When the contract is for the sale of unascertained goods, which are ordered by description, the property in the goods passes to the buyer, when, with the express or implied consent of the parties, goods of the required description are “ unconditionally appropriated to the contract.” The cases which determine what amounts to an appropriation of goods to the contract are numerous and complicated. Probably they could all be explained as cases of constructive delivery, but at the time when the law of appropriation was worked out the doctrine of constructive delivery was not known. It is perhaps to be regretted that the codifying act did not adopt the test of delivery, but it was thought better to adhere to the familiar phraseology of the cases. Section 20 deals with the transfer of risk from seller to buyer, and lays down the prima facie rule that “ the goods remain at the seller’s risk until the property therein is transferred to the buyer, but when the property therein is transferred to the buyer, the goods are at the buyer’s risk whether delivery has been made or not.” *Res peril domino* is therefore the maxim of English, as well as of

Roman law.

In the vast majority of cases people only sell what they have a right to sell, but the law has to make provision for cases where a man sells goods which he is not entitled to sell. An agent may misconceive or exceed his authority. Stolen goods may be passed from buyer to buyer. Then comes the question, Which of two innocent parties is to suffer? Is the original owner to be permanently deprived of his property, or is the loss to fall on the innocent purchaser? Roman law threw the loss on the buyer, *Nemo plus juris in alium transferre potest quam ipse habet.* French law, in deference to modern commerce, protects the innocent purchaser

and throws the loss on the original owner. “ En fait de meubles, possession vaut titre ” (*Code civil,* art. 1599). English law is a compromise between these opposing theories. It adopts the Roman rule as its guiding\* principle, but qualifies it with certain more or less arbitrary exceptions, which cover perhaps the majority of the actual cases which occur (§§ 21 to 26). In the first place, the provisions of the Factors Act, 1889 (52 and 53 Vict. c. 45, extended to Scotland by 53 and 54 Vict. c. 40), are preserved. That act validates sales and other dispositions of goods by mercantile agent acting within the apparent scope of their authority, and also protects innocent purchasers who obtain goods from sellers left in possession, or from intending buyers who have got possession of the goods while negotiations are pending. In most cases a contract induced by fraud is voidable only, and not void, and the act provides, accordingly, that a voidable contract of sale shall be avoided to the prejudice of an innocent purchaser. The ancient privilege of market overt@@1 is preserved intact, section 22 providing that "where goods are sold in market overt, according to the usage of the market, the buyer acquires **a** good title to the goods provided he buys them in good faith, and without notice of any detect or want of title on the part of the seller. ” The section does not apply to Scotland, nor to the law relating to the sale of horses which is contained in two old statutes, 2 & 3 Phil. and Mar. c. 7, and 31 Eliz. c. 12. The minute regulations of those statutes are never complied with, so their practical effect is to take horses out of the category of things which can be sold in market overt. The privilege of market overt applies only to markets by prescription, and does not attach to newly- created markets. The operation of the custom is therefore fitful and capricious. For example, every shop in the City of London is within the custom, but the custom does not extend to the greater London outside. If then a man buys a stolen watch in Fleet Street, he may get a good title to it, but he cannot do so if he buys it a few doors off in the Strand. There is, however, a qualification of the rights acquired by purchase even in market overt. When goods have been stolen and the thief is prosecuted to conviction, the property in the goods thereupon revests in the original owner, and he is entitled to get them back either by a summary order of the convicting court or by action. This rule dates back to the statute 21 Hen. VIII. c. 11. It was probably intended rather to encourage prosecutions in the interests of public justice than to protect people whose goods were stolen.

Having dealt with the effects of sale, first, as between seller and buyer, and, secondly, as between the buyer and third parties, the act proceeds to determine what, in the absence of convention, are the reciprocal rights and duties of the parties in the performance of their contract (§§27 to 37). "It is the duty of the seller to deliver the goods and of the buyer to accept and pay for them in accordance with the terms of the contract of sale ” (§ 27). In ordinary cases the seller’s duty to deliver the goods is satisfied if he puts them at the disposal of the buyer at the place of sale. The normal contract of sale is represented by a cash sale in a shop. The buyer pays the price and takes away the goods: "Unless otherwise agreed, delivery of the goods and payment of the price are concurrent conditions" (§ 27). But agreement, express or implied, may create infinite variations on the normal contract. It is to be noted that when goods are sent to the buyer which he is entitled to reject, and does reject, he is not bound to send them back to the seller. It is sufficient if he intimate to the seller his refusal to accept them (§ 36).

The normal theory of sale is cash against delivery, but in the great majority of actual cases, especially in commercial transactions, this theory is departed from in practice. The interests of the seller are therefore protected by two rules—namely, those as to lien and as to stoppage *in transitu*. In the absence of any different agreement, as, for instance, where there is a stipulation for sale on credit, the unpaid seller has a right to retain possession of the goods until the price is paid or tendered. The right may, of course, be waived, even when it is not negatived by the contract. It is to be noted that when the seller takes a bill of exchange or other negotiable instrument for the price, the instrument operates as conditional payment. On the dishonour of the instrument the seller's rights revive (§§ 38-43). If the buyer becomes insolvent the unpaid seller has a further right founded on ancient mercantile usage. He may have parted with both the property in and possession of the goods sold, but he can attach the goods as long as they are in the hands of a carrier or forwarding agent, and have not reached the actual possession of the seller or his immediate agent. “ Subject to the provisions of this Act, when the buyer of goods becomes insolvent, the unpaid seller who has parted with the possession of the goods has the right of stopping them *in transitu—* that is to say, he may resume possession of the goods as long as they are in course of transit, and may retain them until payment or tender of the price ” (§44). The right of stoppage, however, cannot be exercised to the prejudice of third parties to whom the bill of lading or other document of title to goods has been lawfully trans- ferred for value (§ 47).

The ultimate sanction of a contract is the legal remedy for its

@@@1 That is, “ open market" where the goods on sale are exposed to view.