A COMMENT ON THE WARRANTY IN SALE AGAINST LATENT DEFECTS

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If it be true that revision of the Civil Code is in the making, then there can be no better time than this for suggesting that at least in the sphere of corporeal moveables, a long hard look should be given at its provisions in respect of sale, the master special contract. In particular such a look should, it is suggested, be given to articles 1522 and 1523. Both articles have been the subject of exhaustive analysis by Professor Durnford in his recent and learned "What is an Apparent Defect in the Contract of Sale.[1] " Indeed, the submissions there made by Professor Durnford prompt this brief comment.

Article 1522 states : "The seller is obliged by law to warrant the buyer against such latent defects in the thing sold, and its accessories, as render it unfit for the use for which it was intended, or so diminish its usefulness that the buyer would not have bought it, or would not have given so large a price, if he had known of them." Article 1523 is exegetical of "latent" and states : "The seller is not bound for defects which are apparent and which the buyer might have known of himself."

To the non-lawyer, article 1522 states its policy quite clearly, namely that the seller is obliged to supply a thing which by and large is worth the price the buyer has paid or promised to pay. It appears, so far as language is trustworthy, to reject the policy of *caveat emptor*, or, as the old Germanic law put it, "He who does not open his eyes opens his purse." But the non-lawyer would soon find that however noble the language of article 1522, in Quebec, at least, the more prudent course may be to assume that the German maxim is the law. The reason for this disparity between the non-lawyer's reading of article 1522 and its construction by at least some lawyers in Quebec, is the obvious one, namely, the difficulty, which may be more imaginary than real, of devising a sufficiently reliable objective test for defects which are not apparent to the buyer and which he could not have known of himself.[2] *Caveat emptor* (meaning that the buyer takes the risk of all defects) has the merit of simplicity. "Price-worthiness" has the defect that it forces the lawyer not only to acknowledge the existence

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[1] McGill Law Journal, Vol. 10, No. 1, at p. 60.

[2] Cf. article 1523.

of an affirmative social policy, but to tackle the more arduous problem of making it work.

In Quebec the problem of making the social policy of article 1522 work affirmatively is made more difficult by its use of the adjective "latent" to qualify "defect". "Latent", Professor Durnford declares, means "hidden".[3] This, of course, tells us nothing, for what is all important is what is meant by "hidden". But "hidden" is a much more suggestive word than "latent", for whereas "latent" as applied to a defect can mean no more than a defect which begins to operate once the buyer puts the thing to the use for which it was intended and appears, in course of that use, so as to impair its efficiency, "hidden" not only connotes impairment of efficiency, but also positive concealment.

It is arguable, indeed strongly arguable, that the use of the more suggestive "hidden" is justified by the language of article 1523, which is that, "the seller is not bound for defects which are apparent and which the buyer might have known of himself," but it is equally arguable that a defect may be unapparent to a buyer and yet not a defect positively concealed from him. The truth is that there can be no solution in terms of verbal jugglery. As Humpty Dumpty said to Alice, "When I use a word it means just what I choose it to mean, neither more nor less . . . The question is, which is to be master —."

The force of this is illustrated by the conjunction of "hidden" with the closing words of article 1523, "and which the buyer might have known of himself." Put tersely, "hidden to whom ?"

There are several reasons why article 1523 provides that a buyer cannot complain of defects he might have known of himself. The principal reason is doubtless the desire to ensure the binding effect of a contract once made. In the absence of express stipulation, the buyer cannot repudiate his bargain upon any pretext whatever. The seller must be able to rely on the fact of contracts honestly entered into. To hold otherwise would be to permit mercantile anarchy. Hence, by implication, the buyer is held to have contracted to buy the thing with defects which he might have known of himself unless he stipulate otherwise.[4] Even so, the protection which this implication is calculated to give to the seller has less value for him if the test of knowledge is subjective. There may be a world of difference between the "eyes" of the rustic and those of the artisan. On the other hand, both may be substantially blind in a market of highly sophisticated consumer goods

[3] *Op. cit.*, p. 61.

[4] All this is simply a facet of the problem of the objective test, once a distinct problem in itself; it is the typical legal technique of devising a solution by way of categories.

so built that even the most laborious examination by the uninitiated is an exercise in futility. What then should be the test of the buyer's knowledge ?

In many jurisdictions the test might be of objective reasonableness, that is a jury question. Would a reasonably alert buyer, possessed of the subjective knowledge and experience of the buyer, have seen the defect of which complaint is now made ? Palpably, the "subjective knowledge" will vary from buyer to buyer, and *au fond* it is a test of reasonably intelligent behaviour on the part of the buyer. It means that he can rely on his lack of knowledge and absence of experience, but he cannot rely on his subjective naiveté or his having bought regardless of the consequences. It may not be a test which, on the facts, readily and easily yields an answer, but that is life, the facts create the law, not the other way round. Professor Durnford claims that this is not the test applied in Quebec, and maintains that even if it were, it should not be. His opinion is that "the buyer must consult a competent general expert such as an architect, who will report all defects which his skill and knowledge make apparent to him and will report to his client the necessity for specialized experts where there exists indications of the possibility of other defects. Where there are no defects or signs of possible defects (warranting specialized experts) visible to the architect, then any defects in the building will be latent." [5] It is true that in this passage he is speaking of the purchase of a building, but the law of Quebec in this respect at least, draws no distinction between immoveable and corporeal moveables, and *mutatis mutandis* Professor Durnford is well content to apply his rule to corporeal moveables, and so submits: "... when one is buying a used car, he must examine it and consult an expert if he is not himself mechanically knowledgeable, and that any defect that a competent expert would have found will be apparent and consequently the sole responsibility of the buyer. This will apply so long as the defects are apparent,[6] even though the vehicle may not even be fit for the road, unless of course, the buyer has the necessary grounds for taking an action to annul the sale on the grounds of fraud." [7]

In the writer's submission, Professor Durnford is advocating a social policy of *caveat emptor* in so far as such a policy can be made to function within the language of article 1522. That this is so is best illustrated by his condemnation of the decision in *Bourget v. Martel*.[8] There the plaintiff bought a 1947 Buick at a net price of

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[5] *Op. cit.*, p. 76.

[6] In the sense of his test.

[7] *Op. cit.*, p. 83.

[8] (1955) Q.B. 659.

$1250, made up of $50 cash deposit, $400 allowed on a traded-in Chrysler, and the balance with interest ($998) payable by installments. At the time of the making of the contract, the Buick was being "repaired", and the buyer did not take possession of it until four or five days later. Two or three days after taking possession, he had it examined by motor mechanics who told him, "qu'il avait fait un bien mauvais marché." The fact was that the car "n'était pas en état de marcher dans le chemin", and to make it so would have required considerable expenditure.

Two questions were considered, namely whether the defects were "hidden" and the effect of a clause in the contract that the car was sold "telle que vue et examinée." As for the first, the findings in fact were that most of them required "un homme du métier pour le constater",[9] nevertheless, the conclusion in law was that they were hidden "pour un acheteur ordinaire sans expérience dans le fonctionnement d'une automobile".[10] As for the second, because the test was that of the knowledge of an ordinary buyer without experience of motor car engines and transmissions, it could only apply to defects which such a buyer could have known of himself.[11] In truth the buyer had trusted, and trusted too well, in the honesty of the seller; even so, a unanimous Court held him entitled to redress. The social policy of the Court is best expressed in these words of Gagné, J., "A tout événement, il est certain que lorsqu'on achète une automobile usagée, on s'attend et *on a droit de s'attendre* à recevoir une voiture qui fonctionne normalement et non pas une voiture sur laquelle il faudrait dépenser quelques centaines de dollars pour la mettre en état de s'en servir." [12]

Professor Durnford disapproves of this decision. He maintains that there is strong authority, both doctrinal and jurisprudential, to the contrary.[13] He may well be right. Whether he is or not is not the concern of this comment. Its concern is to suggest that, if he is right, the policy which he advocates should not be accepted as being the law of Quebec for the remainder of this century without considerable consideration being given to the needs of that time-span. In practical effect his policy is substantially one of *caveat emptor*, scarcely distinguishable from the *caveat emptor* of 19th century Anglo-American law. The attitude of that law as it then was is vividly portrayed by the words of Davis, J., delivering the judgment of the Supreme Court of

[9] There is no suggestion that the defects could not have been discovered by an expert, see p. 664.

[10] *Loc. cit.*, p. 663.

[11] "Il me semble qu'ils signifient seulement que Martel (the buyer) l'acceptait telle qu'elle lui avait paru lors de son examen", per Martineau, J. at p. 668.

[12] At p. 664; italics supplied.

[13] *Op. cit.*, p. 80.

the United States in *Barnard* v. *Kellogg*,[14] "No principle of the common law has been better established or more often affirmed, both in this country and in England, than that in sales of personal property, in the absence of express warranty,[15] where the buyer has an opportunity to inspect the commodity, and the seller is guilty of no fraud,[16] the maxim *caveat emptor* applies. Such a sale, requiring the purchaser to take care of his own interests, has been found best adapted to the wants of trade in the business transactions of life. And there is no hardship in it, because . . . the purchaser can require of the seller a warranty . . . If he is satisfied without a warranty, and can inspect and declines to do it, he takes upon himself the risk that the article is merchantable." The only technical difference between this position and that of Professor Durnford is that in Quebec, if the buyer does inspect with his expert and finds nothing, he has, notwithstanding, the warranty of article 1522, but it is little more than a technical difference because the standard of expertise required by Professor Durnford is so high [17] that in the sphere of corporeal moveables an examination of the thoroughness envisaged by him would leave little to discover. In brief, his adaptation of the German maxim referred to above is : — "he who does not have his eyes opened by all relevant experts, opens his purse."

But there is a further and vital connection between Professor Durnford and the mid-19th century American Supreme Court Justice, and that is their social philosophy. Davis, J., justified *caveat emptor* because it was "best adapted to the wants of trade in the business transactions of life." This is the heart of the problem — whom should the social policy protect — the trader, or, in a 20th century consumer world, the buyer? The crux of Professor Durnford's position is that as a matter of social philosophy, he believes in "individual responsibility — each man for himself" and is opposed to anything which might smack of "welfare". He assumes that the bargaining and psychological positions of the respective parties are equal or he chooses to ignore this aspect of the problem. His "law" flows from his "philosophy", not from any "only correct construction" of article 1522. This is as it should be, for it is the facts of life which make the law. It is because the facts of life today are vastly different from those of 1870 that in Anglo-American law there has been virtual abandonment of *caveat emptor*.[18] *Bourget* v. *Martel* may not be good law in Quebec, but in

[14] (1870) Wallace 383.

[15] Here it has the same meaning as in the Civil Code; in modern English law this is no longer so, the term now used being "condition".

[16] By no means wholly coincidental with "fraud" in the civil law.

[17] See *op. cit.* at p. 76 where he speaks of "competent general expert" and "specialized experts".

[18] See Prosser—*Law of Torts* (2nd ed.), p. 494.

many other jurisdictions it is because in terms of much of contemporary social philosophy it makes good sense.

It is true that Professor Durnford justifies his construction of article 1522 on the ground that "the law dislikes uncertainty and that it should be the constant aim of the law to lessen the likelihood of litigation." [19] Presumably by "law" is meant those who formulate and administer rules of law, for the "law" is not a perspicacious entity, and has no will of its own. It is what men make it, notwithstanding the concealment of what they do by such emotive phrases as "civil law" or "common law", neither of which has any real meaning in the modern world. Even so, is this ground valid ? Can it be proved statistically ? In the absence of the pertinent data it is equally plausible to argue that although litigation upon the meaning [20] of a legal rule does have important consequences it is in volume peripheral at least in matters of private law. The bulk of the volume of litigation arises from the infinite diversity of fact patterns, the equally infinite perversity of parties (including the blackmailing tactics of the longer purse), the gamble of damages, and the uncontrollable ingenuity of counsel. The dogma of the verbalisation of a rule is not the prime source of litigation, as the log jam of running down actions testifies. Furthermore, only rigid mechanical rules can prevent litigation, but such rules are not the stuff of law. The primary purpose of law can be efficiently fulfilled only so long as the law is as large as life, for law is life or nothing. So soon as any particular rule falls short of life, there is stress and strain, something must give and in the end of the day it is never life. In a non-authoritarian society the rule changes. In any event the primary purpose of "law" is to supply rules whereby to effect the administration of justice; therefore, should there be a conflict between that purpose and Professor Durnford's purpose, the latter must give way.

Before passing to a cursory survey of the development away from *caveat emptor* of Anglo-American law and of the solutions which it offers to meet the needs of our consumer society, it may be useful to inquire whether Professor Durnford's construction is in the tradition of the Civil Law.[21]

The substance of article 1522 is directly traceable to the developed Roman Law. According to Moyle, "the Civil Law gave the purchaser no remedy for defects of quality in the goods sold, unless he took care to guard himself against the contingency : its maxim, in effect, was

[19] *Op. cit.*, p. 64.

[20] A deceptive word.

[21] That is the doctrine and jurisprudence of Rome, and not particular manifestations thereof such as the law of France, of Québec and other jurisdictions.

caveat emptor." [22] The development came with the Aedilician Edict, the policy of which was to impose upon the seller an obligation to supply a thing for effective use. The device employed was that of the redhibitory defect. "The defect... must be unknown to the purchaser, for otherwise he cannot say that he has been deceived, and he is presumed to be aware of it from circumstances from which it could not fail to be inferred by a reasonable man... Further, the defect must be invisible, or such that were it not pointed out to the purchaser, he could not have perceived it, although it might have been detected by an expert : if it is so obvious that he could not have failed to observe it had he kept his eyes open... he cannot avail himself of the aedilician remedies. If he is himself an expert, and so could easily detect defects which a non-expert could not, it would seem that he cannot proceed against the vendor for non-disclosure : but upon this point there seems to be no express textual authority." [23] This is a far cry from Professor Durnford's concept of the redhibitory defect. Zulueta says, "At no time was there any liability for defects known to the buyer or so obvious that he ought to have known them",[24] and a recent writer asserts, "It is sometimes said that there was no liability in respect of defects which the buyer ought to have known. If this means that there was any duty of inquiry or examination cast upon the buyer, it probably goes too far. Perhaps the buyer need make no examination, but would be bound, if he did choose to make one, by defects revealed thereby in such a way as to make them obvious to any one." [25] He finds support from the South African, Mackeurtan, who states that upon the texts the true rule is that the seller is bound to warrant against all defects which are such as substantially to unfit the thing for its ordinary purpose, but where the buyer makes an inspection at or before the purchase, he cannot complain of defects which he in fact saw or which were reasonably capable of perception by him.[26] This approximates to the civilian rule applied in Scotland, "the principle of the law of Scotland is, that every man selling an article is bound, though nothing is said of the quality, to supply a good article without defect, unless there are circumstances to show that an inferior article was agreed on. That is the implied warranty in law, and therefore the price agreed on is important, as showing the understanding of the parties. For when anyone sends an order for goods, without a word as to their quality, he is entitled to such an

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[22] *Contract of Sale in the Civil Law* (1892 ed.), p. 191.

[23] *Ibid.*, pp. 197-198.

[24] Sale, p. 46.

[25] Rogerson, "Implied Warranty against Latent Defects", in *Roman Law of Sale, Studies in memory of Zuhuta*, at p. 130.

[26] *Law of Sale of Goods in South Africa*, at pp. 203 and 300.

article, as the price entitles him to expect of good, sound fair quality." [27] As Mackeurtan puts it the essential rule of the Civil Law "is not *caveat emptor*, but *respondeat venditor*."

As stated above, the Anglo-American rule was otherwise, and, at least in England in terms of the linguistic structure of the Sale of Goods Act, 1893,[28] still is *caveat emptor*. In principle it had no genuine warranty as to quality or fitness for effective use, although if the seller contracted to sell peas and delivered beans, there was total failure of contract.[29] Prosser offers the explanation that procedurally any remedy had to be in delict, and on the case.[30] So in the case of a sale of meat which was in fact latently diseased, the buyer had to pay.[31] This, in a rapidly expanding commercial society, was a trifle rigid and there did emerge a restricted obligation upon some sellers to supply goods effective for use. The criteria employed were analogous to those of articles 1522, namely, fitness for use and price-worthiness. Today they are found in section 14 of the great codifying Sale of Goods Act, 1893,[32] the substance of which is a verbal affirmation of *caveat emptor* followed by a statement of exceptions, namely, that when the seller is a professional trader in the goods supplied (i) he must supply goods reasonably fit for the particular purpose [33] for which the buyer requires them if the buyer expressly or by implication [34] makes known to the seller that he is relying on the seller's skill or judgment, and (ii) he must in a sale by description [35] supply goods of merchantable quality, provided that if the buyer has examined the goods he takes the risk of defects which such examination ought to have revealed,[36] but he is not bound to make it.

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[27] Lord Justice-Clerk Hope charging the jury in *Wheeler v. Methuen* (1843) 5 D. 402 at p. 406, using the second of the criteria given in article 1522.

[28] *Op. cit.*, p. 304.

[29] *Chanter v. Hopkins* (1838) M. & W. 399.

[30] *Op. cit.*, p. 493.

[31] *Emmerton v. Mathews* (1862) 7 H. & N. 586.

[32] The prototype of the sale of goods legislation in the other provinces of Canada and of the American Uniform Sales Act, the latter being superseded by the Uniform Code.

[33] Meaning in most cases the ordinary purpose for which the commodity is bought, for example a motor car for locomotion.

[34] In practice, a working presumption which the seller has considerable difficulty in rebutting, but sometimes he is successful, *Travels v. Longel* (1948) 64 T.L.R. 150: compare *Grant v. Australian Knitting Ltd.* (1936) A.C. at p. 99.

[35] The modern law is that all sales of goods are sales by description unless the circumstances clearly demonstrate otherwise, *Travers v. Longel* (1948) 64 T.L.R. 150.

[36] The examination required is one which a reasonable buyer would make in the circumstances; for example, the buyer of a slingshot need not bite it, or hit it with a hammer or apply the bizarre tests suggested by the fertile imagination of desperate defence counsel, *Godley v. Perry* (1960) 1 All E.R. 36.

The latter undertaking has all but swallowed up the former [37] because of the judicial development of "description" and the construction of "merchantable quality". The test of this quality is whether the goods as tendered are saleable in the market as reasonably fit for the uses to which such goods are ordinarily put and likely to fetch not less than the average market price for such goods. But the explosive category has been description. At one time it was the belief that the sale of a certain and determinate thing could not be by description. Today all sales, even sales of things over the counter, are sales by description unless the contrary is shown.[38]

This undertaking of merchantable quality has three shortcomings. The first is that the seller must be a trader in the goods supplied. Perhaps this is not too serious, but it requires an investigation into the realities of the non-professional used goods market. Lawyers may not be equipped for the making of such a confining investigation. The second and more serious is the effect of the doctrine of acceptance,[39] which in practice prevents most buyers from returning the goods and having to remain content with damages. The third and most serious is the rule that the seller may, by an appropriate stipulation, exclude the warranty, as, for example, may be done in Quebec under article 1507.

In recent years the power of the seller to contract out of his obligations has been much curtailed. In England the courts have evolved the doctrine of the "fundamental obligation", an elegant description of which is the *dictum* of Gagné, J. in *Bourget v. Martel* "lorsqu'on achète une automobile usagée, on s'attend et on a droit de s'attendre à recevoir une voiture qui fonctionne normalement."

The modern starting point of this doctrine is *Pollock v. Macrae* [40] where P. supplied, under an exclusion clause, a set of marine motor-engines for M.'s fishing boat. It was found in fact that the engines suffered from a congeries of defects which destroyed their workable character, and held that P. had failed to fulfil his contract. The importance of this non-fulfilment is that it negates the exclusion clause. A seller cannot contract to supply a thing and, with the same breath, contract out of his "contract". This is pure Civil Law for the redhibitory "obligation is a consequence of that contracted by the

[37] Of course, almost always they are indivisible, see *Godley v. Perry, supra: Mash & Murrell Ltd. v. Emanuel Ltd.* (1962) 1 All E.R. 77.

[38] Compare the anguished cry of Holmes, L.J., in *Wallis v. Russell* (1902) Irish R. 585 at p. 631 with the modern statement by Sellers, J., in *Travers v. Longel supra.*

[39] 1893 Act., s. 35.

[40] 1922 Session Cases (H.L.) 192, recently applied in *Mechans v. Highland Marine Charters Ltd.* 1964, Scots L.T. 27.

vendor, "to cause the purchaser to have the goods" : for this latter obligation, according to the intention of the parties, is not fulfilled unless he has them for effective use." [41]

In the English law of sale of goods, the technical device has been the concept of "description". Section 13 of the 1893 Act imposes upon the seller an obligation to supply goods as described by the contract, and the courts have construed every item in a description as constituting a substantial ingredient in the identity of the thing sold. As stated above, almost all sales are by description, and as "description" is most widely construed in favour of the buyer, unless the seller meets the description his exclusion clause is worthless.[42]

The most dramatic application in England of the doctrine of the "fundamental obligation" is the sphere of conditional sale, known there as hire-purchase and which for technical reasons is not classified as a sale but as a contract of lease for a corporeal moveable. In *Yeoman Credit Ltd. v. Apps*,[43] the lessor contracted to supply a motor car which when supplied had such an accumulation of defects as to be unusable, being neither safe nor roadworthy. To this extent the facts are very similar to those in *Bourget v. Martel*,[44] but there was the additional factor of an elaborate exclusion clause : — "no warranty whatsoever is given by the owner as to the age, state or quality of the goods or as to fitness for any purpose and any implied warranties and conditions are also hereby expressly excluded . . ." [45] It was futile. The court applied the well known *dictum* of Lord Denning: — "it is now settled that exempting clauses of this kind, no matter how widely they are expressed, only avail the party when he is carrying out his contract in its essential respects. He is not allowed to use them as a cover for misconduct or indifference or to enable him to turn a blind eye to his obligations." [46]

The American Uniform Sales Act by section 2-302 empowers the court to refuse to enforce in whole or in part a contract containing an unconscionable clause. It repeats, in somewhat different language, the undertakings as to merchantable quality and fitness

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[41] Moyle *op. cit.*, p. 189.

[42] Chitty, vol. II s. 1393.

[43] (1961) 2 All E.R. 281.

[44] (1955) Q.B. 659.

[45] Statutory protective provisions were not applicable to this particular transaction.

[46] *Karsales (Harrow) Ltd. v. Wallis* (1956) 2 All E.R. at p. 868: a recent discussion of almost all facts of "description", "fundamental obligation", and the effect of examination by the buyer or hirer is to be found in *Atley Industrial Trust Ltd. v. Grimley* (1963) 2 All E.R. 33: the most recent Canadian case is *Knowles v. Anchorage Holdings Co.* (1964) 46 W.W.R. (B.C.) 173.

for purpose, although permitting, subject to qualifications, their exclusion or modification. Goods to be merchantable must *inter alia* (a) pass without objection in the trade under the contract description; (b) be fit for the ordinary purposes for which such goods are used.[47] Where the seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, he must supply goods fit for such purpose.[48] When the buyer, before entering into the contract has examined the goods or has refused to examine them, there is no undertaking by the seller with regard to defects which such an examination ought in the circumstances to have revealed to him.[49] Refusal requires a prior demand by the seller that the buyer examine the goods fully. The particular buyer's skill and the normal method of examination in the circumstances determine what defects are excluded. A non-professionnal buyer is held only to have the risk of such defects as a layman might be expected to observe.

In the United States it has not been found necessary to develop the doctrine of "fundamental obligation" in the dramatic form of the English courts for several reasons, the most important of which are: (i) the refusal to follow the earlier English law whereby "warranty" was relegated to the status of a collateral contract;[50] (ii) the permitting of revocation by the buyer of "acceptance", thus in effect allowing a redhibitory action closely akin to that which exists in Quebec;[51] and (iii) more recently, more rigid minimum requirements in respect of exclusion clauses.[52] Even so, on both sides of the Atlantic the development has been towards, in effect, making "the seller an insurer of his goods."[53]

Although circumstances of time may not yield popularity to the submission about to be made, nevertheless the submission is that because of the acceptance of pure civilian *respondeat venditor* throughout the Anglo-American world the opportunity has arrived for the promulgation in Canada of an Uniform Sales Act. When Quebec abandoned the pure civil law doctrine of *traditionibus non nudis pactis dominia rerum transferuntur* and adopted by article 1472 the doctrine of consensual conveyance it abandoned the funda-

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47 S. 2-314.
48 S. 2-315.
49 S. 2-316.
50 *Williston on Sale*, s. 182 *et seq.*
51 Uniform Commercial Code, s. 2-698, s. 2-711.
52 *Ibid*, s. 2-316.
53 Prosser, *op. cit.*, p. 494.

mental and distinctive principle of civilian *emptio venditio*. In terms of living principles, as distinct from peripheral matters, there never has been in the sphere of the sale of corporeal moveables greater identity among the ten jurisdictions which abound in Canada.