

Dibley V Furter

Sale - cancellation by purchaser - Redhibitory defect - property sold with graveyard on it. Court found usefulness of prop not materially impaired. Fraudulent concealment of such latent defect. Purchaser would otherwise not have bought. Entitled to restitution in special circumstances.

Redhibitory defects are those which destroy or impair \perp usefulness of \perp thing for \perp purpose for which it has been sold or for which it is commonly used. Objective test is used to determine if \perp defect has destroyed or impaired \perp usefulness for everyone & not just \perp particular purchaser & \perp defect must attach to \perp thing sold.

Purchaser loses his claim if \perp thing has been destroyed through his fault, or by a 3rd party for whose actions he is liable or if he has alienated \perp thing.

Fact: Purchaser claimed rescission of a contract of sale of a farm which was to be used for residential purposes on \perp ground \perp a graveyard existed on a portion of \perp ground. Court found \perp @ \perp time of \perp sale \perp seller knew of \perp existence of \perp graves on \perp property but fraudulently concealed \perp latent defect from \perp purchaser. ✓

Held (1) \perp evidence did not show \perp usefulness of \perp property had been materially impaired. Purchaser had not proved \perp graves were Redhibitory defect & \therefore not entitled to aedilician Relief ✓

Held (2) Regards \perp fraud, \perp purchaser would not have bought \perp farm had he known of \perp graveyard & \perp in \perp special circumstances of \perp case he was entitled to restitution.