

the purchase without respect to, or confiding in, the statements and representations made to him of their condition and value, prior to, and at the time of the purchase.

The rule is, that though the seller of a chattel, of which he has the possession, is ordinarily understood to warrant the title, he is not bound to answer for the *quality*, unless under special circumstances; unless he expressly warrants the goods to be sound and good, or unless he makes a fraudulent representation, or uses some fraudulent concealments concerning them, which amounts to a warranty in law. 2 *Kent's Com.*, 478.

It is not meant to be asserted, that every mere false assertion of value, when no warranty is intended, will be a ground to relieve a purchaser. If the assertion is a mere matter of opinion, in which parties may differ—or if the seller indulge in the common language of puffing, it will not amount to a warranty. For, as expressed in the common maxim, *simplex commendatio non obligat*. According to Mr. Chancellor Kent, “an assertion respecting an article must be positive and unequivocal, and one on which the buyer places reliance, in order to amount to a warranty. And if the vendee has an opportunity of examining the article, the vendor is not answerable for any latent defect, without fraud, or an express warranty, or such a direct representation as is tantamount to it.” 2 *Kent's Com.*, 485.

But if a party undertakes to make a direct representation of a fact—even though he be mistaken as to the fact—if the other party is induced to act upon such representation, equity will relieve against the act equally as if it had been a wilful and false assertion—for the injury is the same. *McFerran vs. Taylor and Massie*, 3 *Cranch*, 270.

As remarked by Chief Justice Marshall, in delivering the opinion of the court in that case, “he who sells property on a description given by himself, is bound to make good that description; and if it be untrue in a material point, though the variance be occasioned by mistake, he must still remain liable for that variance.”