

Louisiana Law Review

Volume 4 | Number 1
November 1941

Sales - Rescission for Misrepresentation - Duty of Vendee to Disclose Value

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Repository Citation

W. F. M. M. Jr., *Sales - Rescission for Misrepresentation - Duty of Vendee to Disclose Value*, 4 La. L. Rev. (1941)
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of an existing mineral servitude, no such express reservation should have been necessary to reserve title in the vendor in the *Herrick* case.

E. L. L.

SALES—RESCISSION FOR MISREPRESENTATION—DUTY OF VENDEE TO DISCLOSE VALUE—Action to recover possession of a diamond ring, wherein one Sims, a negro, intervened, claiming ownership. Sims found the ring and took it to a jewelry store, where the plaintiff was employed. Upon examination of the ring, another employee told Sims that the ring had bubbles in it; the employer stated that it was not worth more than \$130 and expressed a willingness to buy it for that sum. He apparently made a fruitless effort to get the money. Sims was about to leave the store when he was engaged in conversation by plaintiff, who had not theretofore participated in the meeting; plaintiff bought the ring for \$130. In reality it was worth \$1,250. *Held*, the entire staff of the jewelry store, including plaintiff, was in a fiduciary relationship with Sims, and hence each member of the staff was under a duty to disclose all he knew about the ring. Plaintiff was standing nearby at the time and knew of the previous conversation. He failed to disclose information which he was in justice bound to reveal to the other party to the contract who was not on an equal footing with him. Since the negro was led to believe that the value of the ring was \$130, he was thereby led into an error of fact, which “comes under the head of” fraud, and the contract should be rescinded. *Griffing v. Atkins*, 1 So. (2d) 445 (La. App. 1941).

It is common knowledge that each party to a sales transaction will try to secure the greater advantage for himself and drive the harder bargain. The law recognizes that in the haggling of the marketplace some leeway from the standard of strict truth must be allowed for “sales talk.”¹ This idea is epitomized in the old expression, *caveat emptor*.² On the other hand, courts are unwilling to permit one party to take unfair advantage of the other. Consequently, misrepresentation in order to secure a better deal will not be permitted in certain restricted cases where

1. Harper, *A Treatise on the Law of Torts* (1933) 463, § 223; Anson, *Principles of the Law of Contracts* (1930) 249, § 210.

2. “Let the buyer beware.” *Black’s Law Dictionary* (1933) 294.

application of the general rule would lead to an unjust result. In cases where one party to a bargaining transaction trusts and relies upon a party of superior knowledge a standard of strict truth will be imposed on the latter, and any misrepresentation will be grounds for rescission of a contract entered into in reliance thereon.³ The same rule applies where a fiduciary relationship is found to exist.⁴ An expert whose ability is relied upon will not be permitted to evade his duties indirectly. Before he may take advantage of statements made by others in his presence, he must correct misrepresentations.⁵ The duty not to misrepresent in such cases of course includes the duty to make a disclosure where it is known that the other party is laboring under a misapprehension as to some fundamental fact.⁶

When will the "duty of truth" be imposed? The answer depends upon the degree of reliance as well as the position of the parties. For example, a fiduciary relationship is found to exist between attorney and client, guardian and ward, principal and agent, executor and heir, and landlord and tenant.⁷ The same relationship exists when a layman seeks the advice of an expert; and even when a layman *bargains* with an expert, the latter is held to a high degree of care to be measured by the extent of the reliance placed upon his information.⁸ If, however, the layman bargains with the expert without seeking his advice and without relying upon his statements then the parties are considered to be dealing at arm's length.⁹

It is difficult to determine how far the courts will go in finding

3. Art. 1847, La. Civil Code of 1870; *Brandon v. Gottlieb*, 16 La. App. 676, 132 So. 283 (1931). See also *Picard v. McCormick*, 11 Mich. 68 (1862); *Cooley*, A Treatise on the Law of Torts (1907) 442-446, § 245.

4. Arts. 1819, 1832, and 1847, La. Civil Code of 1870. See *Fargo Gas Light and Coke Co. v. Fargo Gas and Electric Co.*, 4 N.D. 219, 59 N.W. 1066, 37 L.R.A. 593 (1894). Cf. *James v. Anderson*, 149 Va. 113, 140 S.E. 264, 56 A.L.R. 421 (1927).

5. Art. 1847, paragraph 9, La. Civil Code of 1870; *Harper*, op. cit. supra note 1, at 448-451, § 219; *Bower*, Actionable Misrepresentation (2 ed. 1927) 93, 94, § 89. Compare *Newman v. Scarborough*, 115 La. 866, 40 So. 248 (1905).

6. Note (1928) 56 A.L.R. 429; Art. 1847 (5) La. Civil Code of 1870. Cf. *Brandon v. Gottlieb*, 16 La. App. 676, 678, 132 So. 283, 285 (La. App. 1931); *Winzey v. Louisiana Industrial Life Ins. Co.*, 195 So. 67, 69 (La. App. 1940).

7. *Fidelity and Deposit Co. of Maryland v. Lindholm*, 66 F. (2d) 56, 89 A.L.R. 279 (C.C.A. 9th, 1933) (a fiduciary relationship exists between executor and heir); *Berman v. Coakley*, 243 Mass. 348, 137 N.E. 667, 26 A.L.R. 92 (1923) (a fiduciary relationship exists between attorney and client). See *Hemenway v. Abbott*, 8 Cal. App. 450, 97 Pac. 190, 195 (1908).

8. Art. 1847, La. Civil Code of 1870; *Harper*, op. cit. supra note 1, at 464-67, § 224.

9. Note (1928) 56 A.L.R. 432; *Trust Co. of Norfolk v. Fletcher*, 152 Va. 868, 148 S.E. 785 (1929).

the duty of full disclosure of value. Generally, the degree of reliance of one party, knowledge of reliance, misrepresentation and proof of fraud must be considered before allowing the action of rescission or the action for damages, and it is the impression gathered from the entire transaction which determines whether the action will lie.¹⁰

In determining the rights of a deceived party, an important distinction must be drawn between the action to rescind the contract made without full knowledge and the action to recover damages for a fraudulent misrepresentation. A contract of sale may be rescinded by showing merely that a misrepresentation was made;¹¹ but in the *ex delicto* action for damages, actual fraud, including the intent to deceive, must be proved.¹² Whether or not the "fraud" in this case would have been sufficient to support a tort action, rescission of the contract might also have been justified on the basis of a unilateral error, known to the other party.¹³ On either basis, the decision seems sound. Although latitude in bargaining may be the general rule, misrepresentation will not be tolerated where the effect of applying the general rule would be to violate concepts of fair dealing.

W. F. M. M., Jr.

SUCCESSIONS—ILLEGITIMATE CHILDREN—INHERITANCE INTER SE
—Decedent, an adulterous illegitimate, died intestate, leaving a war risk insurance policy made payable to his estate. His aunt, as administratrix, and three other collateral heirs opened the succession and obtained the policy. An adulterous illegitimate sister sued the administratrix to annul the judgment, alleging that she was the natural sister and only heir of the deceased and therefore under Article 923¹ of the Louisiana Civil Code entitled to his es-

10. See *Winzey v. Louisiana Industrial Life Ins. Co.*, 195 So. 67, 69 (La. App. 1940). See also *Harper*, *op. cit. supra* note 1, at 464-467, § 224.

11. *Williams v. Hunter*, 13 La. Ann. 476 (1858); *Guerin Theater Seating System v. Guerin*, 163 La. 426, 112 So. 34 (1927). Cf. Arts. 2531, 2541, 2545, La. Civil Code of 1870; *Christe and Lowe v. Pennsylvania Iron Works Co.*, 128 La. 208, 54 So. 742 (1911); *Galt v. Herndon*, 16 La. App. 239, 133 So. 800 (1931); *Williston*, *Treatise on the Law of Contracts* (1936) 4189, § 1500.

12. *Note* (1928) 52 A.L.R. 1153; *Derry v. Peek*, L.R. 14 App. Cas. 337 (1889); *Anson*, *op. cit. supra* note 1, at 234, § 196.

13. *Hurst v. National Bond and Investment Co.*, 96 Fla. 148, 117 So. 792, 59 A.L.R. 807 (1928); *Note* (1929) 59 A.L.R. 809. See Arts. 1819, 1823, La. Civil Code of 1870. *Geremia v. Boyarsky*, 107 Conn. 387, 140 Atl. 749 (1928). Compare *Newman v. Scarborough*, 115 La. 866, 40 So. 248 (1905).

1. "If the father and mother of the natural child died before him, the