

Sales - Recission for Misrepresentation - Fraud Practiced By Vendor

John S. Covington

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Pennoyer v. Neff,²³ the doctrine that, if personal service cannot be made upon the defendant within the state, his property must be attached prior to the institution of suit. This procedure creates jurisdiction only up to the value of the property, hence the action is one in rem. It would seem, therefore, that the analogy the court attempts to draw should fail. For the same reason, the court's statement that the interpretation placed on Article 163, providing for jurisdiction in rem, should be indicative of the interpretation to be given Article 162,²⁴ would not appear to be valid. Again, the reasoning would seem to be open to the criticism that one article applies to jurisdiction in rem, the other to jurisdiction in personam.

It is hoped that the court will revert to the position taken by the prior jurisprudence on this question, and by the late Judge Taliaferro, dissenting in the present decision.

Robert Roberts III

SALES—RESCISSION FOR MISREPRESENTATION—

FRAUD PRACTICED BY VENDOR

Plaintiff sued to rescind an act of sale of certain real property, alleging that the defendants misrepresented the amount of legally collectible rents which they were receiving from said property. The district court sustained defendants' exception of no cause or no right of action. The supreme court on the first hearing affirmed, but on rehearing reversed itself and set aside its former decree. *Held*, allegations that plaintiff was induced to purchase an apartment house by vendors' misrepresentations as to legally collectible rentals stated a cause of action against vendors for rescission attributable to error of fact relating to the principal cause, and error of fact induced by fraud. *Overby v. Beach*, 55 So. 2d 873 (La. 1951).¹

The question of the effect of fraud or error upon a contract is one of ancient origin.² The general doctrine of early Roman

23. 95 U.S. 714 (1878).

24. 56 So. 2d 308, 310 (La. App. 1952).

1. A case of similar nature is *Kackley v. Webber*, 310 Ky. 285, 220 S.W. 2d 587 (1949). Cf. *Glichester Properties Ltd. v. Gomm*, 1 All E.R. 493 (1948); *Kabatchniek v. Hanover-Elm Bldg. Corp.*, 103 N.E. 2d 692 (Mass. 1952).

2. *Oeuvres de Pothier, Annotées et Mises en Corrélation avec le Code Civil et la Legislation, Traite du contrat de vente*, nos 233-238, 241 (1861).

law required the good faith on the part of the contracting parties in all matters which would be to the interest of either party to know; however, if the facts were patent and the party could have discovered them by proper precaution, he could obtain no relief.³ Without this qualification the general doctrine would have proved very cumbersome to an advancing commercial world. At early common law the doctrine of *caveat emptor*⁴ applied. The parties dealt at "arm's length."⁵ But this rule too was qualified by restricting its application to cases where the vendee might have with ordinary attention discovered falsehoods or defects.⁶

In both Louisiana law and common law, to sustain an action for rescission in matters of sale on the ground of fraud the following elements are usually necessary:⁷ (1) a false representation of material fact by the vendor made to the purchaser, (2) rights of vendee to rely thereon, and (3) actual reliance. Fraud may consist of intentionally suppressing the truth as to material facts or making an affirmative misrepresentation.⁸ A fraudulent or an innocent misrepresentation of fact is a ground for rescission only if the fact misrepresented is material.⁹ If a party makes a misrepresentation for the purpose of inducing action by another and the latter acts in reliance upon the misrepresentation, the

3. 2 Kent, Commentaries 735 (14 ed. 1896) for a full discussion and authorities therein cited. That this principle has in substance been embodied in our law, it is submitted, is supported by Art. 1847, §§ 3, 4, La. Civil Code of 1870).

4. "Let the buyer beware," Black's Law Dictionary (4 ed. 1951).

5. *Turner v. Harvey*, 1 Jacobs R. 168, 37 Eng. Rep. 814 (1821).

6. See note 3, *supra*.

7. Art. 1847, §§ 4-6, La. Civil Code of 1870; *Decuir v. Packwood*, 5 Mart. (O.S.) 300 (La. 1818); *John Rocchi v. Schwabacher & Hirsch*, 33 La. Ann. 1364 (1881); *Succession of Grivaud*, 192 La. 181, 187 So. 284 (1939); *American Guaranty Co. v. Sunset Realty & Planting Co., Inc.*, 208 La. 772, 23 So. 2d 409 (1945); *Sylvester v. Town of Ville Platte*, 218 La. 419, 49 So. 2d 746 (1950); *Slaughter's Administrator v. Gerson*, 80 U.S. 379 (1871); *Speed v. Hollingsworth*, 54 Kan. 436, 38 Pac. 496 (1894); *Stevenson v. Cauble*, 55 Tex. Civ. App. 75, 118 S.W. 811 (1909); *Ash Grove Lime & Portland Cement Co. v. White*, 238 S.W. 2d 368 (Mo. 1951).

8. Art. 1847, § 6, La. Civil Code of 1870; *American Guaranty Co. v. Sunset Realty & Planting Co., Inc.*, 208 La. 772, 23 So. 2d 409 (1945). For the effect of a fiduciary relationship see *Emerson v. Shirley*, 191 La. 741, 186 So. 88 (1938). Accord: *Griffing v. Atkins*, 1 So. 2d 455 (La. App. 1941).

Speed v. Hollingsworth, 54 Kan. 436, 38 Pac. 496 (1894); *Ash Grove Lime & Portland Cement Co. v. White*, 238 S.W. 2d 368 (Mo. 1951); *Henry v. Collier*, 69 Okla. 24, 169 Pac. 636 (1917).

9. Art. 1847, §§ 1, 2, La. Civil Code of 1870; *Davit v. Long-Bell Farm Land Corp.*, 162 La. 59, 110 So. 88 (1926); *Wessel v. Union Savings & Loan Ass'n*, 198 La. 219, 3 So. 2d 594 (1941); *Sylvester v. Town of Ville Platte*, 218 La. 419, 49 So. 2d 746 (1950); *Slaughter's Administrator v. Gerson*, 80 U.S. 379 (1871); *Wilson v. Robinson*, 21 N.M. 435, 155 Pac. 732 (1916).

former will not be permitted to deny that the misrepresentation was material. The general rule is that a false representation, to constitute actionable fraud, must relate to a present or past fact and must not constitute a mere statement of opinion.¹⁰ Generally if the person to whom the false representation is made does not rely on the representation, but conducts his own investigation, he will not be heard to complain of fraud;¹¹ however, even though the vendee may have investigated he is entitled to rely on representations beyond the scope of his inquiry or on matters which require special knowledge.¹²

In Louisiana law, error of fact, in the absence of fraud, invalidates a contract only if it relates to the principal cause of the contract.¹³ Where, however, error is induced by fraud, it need relate only to a material fact.¹⁴ However, a false assertion as to the value of the thing which is the object of the contract will not invalidate the agreement where the party relying on that assertion might have detected the falsehood with ordinary attention.¹⁵ This is because a representation of value under such circumstances constitutes no more than an expression of opinion.

It is understandable why in the instant case the trial court, and the supreme court on the original hearing, held that the alleged misrepresentation of legally collectible rentals was a misrepresentation of "value" within the purview of Article 1847 (3) of the Civil Code. The collectible rents, in a sense, had a bearing upon the value of the house. Also, the plaintiff could have easily ascertained the amount of legally collectible rents by inquiring at the local branch of the Office of Price Administra-

10. The word "generally" as used in the foregoing statement is subject to qualification. This is especially true where opinions are given by those having superior knowledge—such as our so-called experts. See Keeton, *Fraud: Misrepresentation of Opinion*, 21 Minn. L. Rev. 643, 647 et seq. (1936) for an excellent discussion of this and related topics.

11. *Decuir v. Packwood*, 5 Mart. (O.S.) 300 (1818); *John Rocchi v. Schwabacher & Hirsch*, 33 La. Ann. 1364 (1881); *Davitt v. Long-Bell Farm Land Corp.*, 162 La. 59, 110 So. 88 (1926); *Forsman v. Mace*, 111 La. 28, 35 So. 372 (1903); *Slaughter's Administrator v. Gerson*, 80 U.S. 379 (1871).

12. Art. 1847, § 4, La. Civil Code of 1870; *Hansler v. Nuccio*, 214 La. 1069, 39 So. 2d 734 (1949); *Sylvester v. Town of Ville Platte*, 218 La. 419, 49 So. 2d 746 (1950). But cf. *Great Eastern Oil & Refining Co. v. Bullock*, 151 La. 209, 91 So. 680 (1922).

Miller v. Voorhies, 115 Mich. 356, 73 N.W. 383 (1897); *Morgan v. Dinges*, 23 Neb. 271, 36 N.W. 544, 8 Am. St. Rep. 121 (1888); *Hamaker v. Middaugh*, 134 Neb. 440, 278 N.W. 849 (1938); *Stevenson v. Cauble*, 55 Tex. Civ. App. 75, 118 S.W. 811 (1909); *Kamp v. Hargis Bldg. Co.*, 238 S.W. 2d 277 (Tex. Civ. App. 1951).

13. Arts. 1823-1826, La. Civil Code of 1870.

14. Art. 1847(2), La. Civil Code of 1870.

15. Art. 1847(3), La. Civil Code of 1870.

tion. However, Article 1847(3) is a concession to the principle that a party to a contract is not justified in relying upon a statement of opinion. This principle is in recognition of the fact that vendors are prone to "puff" their wares, and that buyers usually rely on their own judgment concerning value. But in the instant case the defendant's statement that certain rents could be legally collected was not a mere expression of opinion relating to the value of the house, but a representation of an existing fact. It is submitted that the supreme court on rehearing applied appropriate civilian theory by holding the statement was not a false assertion of "value" as contemplated by Article 1847(3).

Basically the problem involved in the instant case is one of *cause*:¹⁶ why did the plaintiff obligate herself? In the abstract, principal *cause* on the part of the purchaser is to get the object offered for sale; and, conversely, the principal *cause* on the part of the vendor is to get the price asked for the object. Plaintiff's allegations, which were accepted as true for the purpose of trying the exception of no cause or no right of action, disclose why plaintiff obligated herself. As stated in her petition, plaintiff's principal *cause* or motive in obligating herself to purchase the property was to obtain an apartment house producing certain rentals. The court treated this as involving a matter of *quality* which brought the case within the purview of Article 2529.¹⁷ Appropriate reference might have been made also to Articles 1844 and 1845.¹⁸

If the vendor's representation was fraudulent then it was necessary that the resulting error relate to only a material part of the contract.¹⁹ Plaintiff's allegation that she would not have purchased had she known the rentals obtained by the defendants

16. Art. 1896, La. Civil Code of 1870: "By the *cause* of the contract, in this section, is meant the consideration or motive for making it; and a contract is said to be without a cause, whenever the party was in error, supposing that which was his inducement for contracting to exist when in fact it had never existed or had ceased to exist before the contract was made." For a very comprehensive treatment of the subject of *cause*, see Smith, A Refresher Course in Cause, 12 LOUISIANA LAW REVIEW 2 (1951).

17. Art. 2529, La. Civil Code of 1870: "A declaration made in good faith by the seller, that the thing sold has some quality which it is found not to have, gives rise to a redhibition, if this quality was the principal motive for making the purchase."

18. Art. 1844, La. Civil Code of 1870: "The error bears on the substantial quality of the object, when such quality is that which gives it its greatest value. A contract relative to a vase, supposed to be gold, is void, if it be only plated with that metal."

Art. 1845, La. Civil Code of 1870: "Error as to the other qualities of the object of the contract, only invalidates it, when those qualities are such as were the principal cause of making the contract,"

19. Art. 1847, La. Civil Code of 1870.

were not legally collectible amounted to an allegation that the error related to a material part of the contract. She had therefore stated a cause of action for rescission on the ground of error induced by fraud.

The defendants also contended that plaintiff's petition did not state a cause of action because the alleged misrepresentation was not contained in the formal act of sale. That contention, as recognized by the court, was based on the premise that plaintiff would be unable to prove the charges in her petition because parol evidence is inadmissible to contradict or vary the recitals of the act. The court rightly dismissed this contention on the well settled ground that the parol evidence rule is inapplicable where, as in the instant case, the plaintiff alleges fraud bearing on a material fact, or error relating to the principal *cause*.²⁰

The decision, it is submitted, is in keeping with the established principles of civil law.

John S. Covington

SALES—SCOPE OF PUBLIC RECORDS DOCTRINE—
SUCCESSION JUDGMENTS

By authentic act plaintiff bought certain land from Richard Raney in 1948. Raney had purchased the property during his marriage to Belle Fraser Raney, and upon her death the property was adjudicated to him by the court. In the succession proceeding, Raney had represented to the court that Belle Fraser Raney died intestate and left no ascendants, descendants, or adopted children. In 1950 the defendants in the instant case instituted proceedings alleging that they were the children and sole heirs at law of the decedent, and should therefore be put in possession of Belle Raney's one-half interest in the community property. The court sent them into possession of the decedent's one-half interest in the realty.

20. *Broussard v. Sudrique*, 4 La. 347 (1832); *Brownson v. Fenwick*, 19 La. 431 (1841); *Bell v. Western M. & F. Ins. Co.*, 5 Rob. 423, 39 Am. Dec. 542 (La. 1843); *Bauduc v. Conrey*, 10 Rob. 466 (La. 1845); *Jamison v. Ludlow*, 3 La. Ann. 492 (1847); *Morris v. Terrenoire*, 2 La. Ann. 458 (1847); *Cox v. King*, 20 La. Ann. 209 (1868); *LeBleu v. Savoie*, 109 La. 680, 33 So. 729 (1930); *Great Eastern Oil & Ref. Co. v. Bullock*, 151 La. 209, 91 So. 680 (1922). See also *Baker v. Baker*, 209 La. 1041, 26 So. 2d 132 (1946); *Pike v. Kentwood Bank*, 146 La. 704, 83 So. 904 (1919). Generally see Comment, 3 LOUISIANA LAW REVIEW 427 (1941).