

1. A false statement as to the facts knowingly or recklessly made by a party, or

2. A concealment of facts that are known to the one and not readily discernible by the other, and yet such as should be revealed. The misrepresentation must *actually deceive* in order to make a case of fraud. To sustain an action of deceit there must be *proof of fraud*—fraud that actually deceives—and nothing short of that will suffice.

The party who has been defrauded may void the contract if he wishes, or he may affirm it and compel the other party to perform it. If he wishes to void it, two things are necessary:

(1) He must not accept any benefit derived from it, or to continue to act under it after he has discovered the fraud;

(2) He must give prompt notice of the fraud after he has discovered it.

The dishonest party cannot disaffirm the contract, but in all cases is bound to carry it out, if the other party demands it. If both parties practise fraud, neither one can enforce the contract against the other.

25 Selling Property Obtained by Fraud.

As a usual thing a person obtaining goods or any kind of property through fraud, and transferring them to an innocent third party for value, gives a good title.

A promissory note obtained through fraud cannot be collected by the party who obtained it; but upon coming into hands of a third party, before maturity, for value, and who did not know of the fraud, would be valid and good against the maker; so would a stolen note. But a forged note cannot be collected; it is void from the beginning.

26 Statute of Frauds and Perjuries.

This famous Statute was passed in the 29th year of the reign of Charles II. of England, 1678, and still exists there, in this country (except Quebec), in Newfoundland, and in the United States (except Louisiana), with but slight change. It was designed to prevent the frequent commission of frauds and perjuries in regard to the enforcing of old claims, and various kinds of promises to answer for the debts of others, and provided that certain contracts had to be in writing to be binding. The following are the requirements of the Statute which come within the scope of this work as they have been varied by our Statutes:

1. That leases of land for more than three years must be in writing and under seal.

2. Contracts for the sale of lands, or for any interest in lands, must be in writing.

3. Every agreement that by its terms is not to be performed within one year must be in writing.

4. Every special promise to answer for the debt, default or miscarriage of another must be in writing.

5. Every agreement, promise or undertaking made upon consideration of marriage, except mutual promises to marry (engagement), must be in writing.

6. Contracts made for the sale of personal property of \$40 and upwards must be in writing, unless part or all of the goods have been delivered, or a part of the purchase price paid. In Quebec, British Columbia, Manitoba,