

was to be nullified if it turned out as a fact that there had been a gross overcharge. And such appears to be now the actual situation.

Then, apart from this shackle upon the truth, it is argued that it is contrary to the rule of evidence and the decisions of the Courts to allow oral testimony to be given which is inconsistent with or repugnant to the terms of the written instrument. . . . There is a well-marked line of cases establishing this doctrine, that evidence may be given of a prior or contemporaneous oral agreement which constitutes a condition upon which the performance of the written agreement is to depend. The oral evidence may be such as to affect the performance of the written agreement by shewing that it is not to be operative till the condition is complied with. The enforcement of the contract may be suspended or arrested till the stipulation orally agreed on has been satisfied. Here there was to be, in substance and in essence, no bargain if the piano was not worth the price stated in the writing. At the outset and before the signing of the contract, the defendant was practically prevented from getting correct information as to value from a competent person, but it was left for him to satisfy himself on that point forthwith thereafter. Ten dollars he had paid, but there was no intention of paying any more till he was satisfied as to the truth of the representation as to value. The prosecution of the contract was in abeyance till the matter was cleared up to the satisfaction of the defendant.

The most recent case, cited by Mr. Raney, sanctions the admissibility of parol evidence to prove the existence of a collateral agreement in the nature of a condition upon which the contract sued upon was entered into by the defendant. That is said by Collins, M.R., at p. 12 of *Henderson v. Arthur*, [1907] 1 K.B. 10; and it is not necessary to refer to earlier cases, except perhaps to the judgment of Byles, J., in *Lindley v. Lacey*, 17 C.B.N.S. 578, 587. . . .

The purchaser was inveigled into signing the contract by the representation of the real value of the piano and the accompanying promise. The representation proving untrue, the failure to fulfil the promise introduces the element of deception and fraud on the part of the seller. This suggests another aspect of the case upon which the decision in favour of the defendant may be supported. The evidence here may very well support the finding that there was a deceitful representation as to the fair and reasonable value of the piano—a matter well known to the seller and not to the purchaser—and the prudence of the purchaser