

Reports and Notes of Cases.

Province of Alberta.

SUPREME COURT.

Scott, Stuart, and Walsh, JJ.]

[21 D.L.R. 97.]

YOUNG v. SMITH.

1. *Corporations and Companies—Share Subscription Obtained by Fraud or Misrepresentation.*

A representation by the seller of company shares that other shareholders had paid cash for their shares is a material representation.

2. *Contracts—Rescission — Misrepresentation — Materiality—*

The test of a material inducement on a claim to rescind a contract for misrepresentation is not whether the buyer would have acted differently if the misrepresentation had not been made, but whether he might have done so; it is sufficient to prove that in the ordinary course of events the natural and probable effect of the misrepresentation was to influence the mind of a normal representee in the manner alleged.

3. *Contracts—Rescission — Misrepresentation — Materiality—Inducement.*

Both materiality and inducement are questions of fact on a claim to rescind a contract for misrepresentation.

Young v. McMillan, 40 N.S.R. 52, considered.

ANNOTATION IN D.L.R. ON ABOVE CASE.

A contract to buy shares induced by misrepresentation may be rescinded at the option of the deceived party. If the purchase money has been paid to the company he may bring an action of rescission. *Re London & Staffordshire Co.*, 24 Ch.D. 149.

He must, however, act promptly upon the discovery of the misrepresentation and a short delay has been held to be sufficient to deprive him of the right to rescind. *Petrie v. Guelph Lumber Co.*, 11 Can. S.C.R. 450; *Re Scottish Petroleum Co.*, 23 Ch.D. 413; *Beatty v. Nealon*, 12 A.R. 50. And means of knowledge as distinguished from actual knowledge, may be sufficient to