

known facts, and suggest that some one be sent out to test it, the company will not be held as guaranteeing its truth.¹

It has been held that the statement in a prospectus that something will be done, is not a statement of fact to give ground for a rescission.² But a representation of opinion, expectation or intention may be sufficient misrepresentation of fact: "for the statement of a man's mind is as much a matter of fact as the state of his digestion."³

Ambiguous statements may also furnish ground for rescission, if, according to a reasonable construction, they contain a misrepresentation.⁴

Representations made in a prospectus, which is issued by the promoters, although not rendering the company liable in damages, not having itself made the representation, are as regards a contract induced by such representation, and as regards the question of a rescission of the contract, in the same position as if the company had itself made the representation.⁵

But a person defrauded by directors must, if the subsequent acts and dealings of the parties have been such as to leave him no remedy but an action for the fraud, seek his remedy against the directors personally.⁶ To enable the shareholder to make the directors personally liable to indemnify him in respect of the shares as before stated, it must be established that there was, by the prospectus, a fraudulent misrepresentation made by the person sought to be made censurable, and that such misrepresentation deceived the shareholder,⁷ and the main question in such case is, whether the plaintiff acted on the misrepresentation, not whether he acted on the misrepresentation alone.⁸

¹ In *re* British Burmah Lead Co., 56 L. T., 815; Palmer Comp., 237.

² *Beattie v. Elbury*, 7 Ch., 804; *Alderson v. Maddison*, 5 Ex. Div., 293; 8 App. Cases, 367; *Billars v. Tucker*, 13 Q. B. D., 562; Palmer Comp., *supra*.

³ *Edgington v. Fitzmaurice*, 29 C. D., 483; per Bowen, L. J.

⁴ *Hallows v. Fernie*, 3 Ch., 476; *Arkwright v. Newboid*, 17 Ch. Div., 322; *Smith v. Chadwick*, 9 App. Cases, 187. See also Palmer Comp., 238.

⁵ *Karberg's Case*, Crt. of Appeal (1892), 3 Ch., 1. In rescinding the contract the parties must be restored, as far as possible, to their original position, and allotment money must be refunded with interest at the legal rate (*ibid*).

⁶ *Western Bank of Scotland v. Addie*, L. R. 1 H. L., Sc. 145; *Houldsworth v. Glasgow Bank*, 5 App. Cas., 317, 328, 331, 340.

⁷ *Derry v. Peck*, 14 App. Cas., 337.

⁸ *Edgington v. Fitzmaurice*, 29 Ch. Div., 459; *London & Leeds Bank*, W. N. 1887), 31; 56 L. T., 115; 56 L. J. Ch., 321; *Arnison v. Smith*, 41 Ch. Div., 348, 359, 369. See *Petrie v. Guelph Lumber Co.*, 11 Can. S. C. R., 450.