

be performed within a "reasonable time," according to the circumstances, which, if not mutually agreed upon, would be for the court or judge to determine.

Penalty Clause—

Where a definite time is fixed for the completion of the contract and a stated sum agreed upon by way of damages if not completed by such date, say \$20 per day for each and every day thereafter, until completion, such agreement is enforceable, providing it is not nullified by some act of the owner himself. For instance, the contract is for the construction of a particular building according to certain plans and specifications, using certain kinds of material; but during the course of erection some change is made, either by the request or consent of the owner of the building, in the substitution of some other kind of material in place of that agreed upon; or some change is made in the plan of some room, or hall, or stairs or chimney, no matter what: this makes a new contract. It is not the building the contractor bound himself under a penalty to complete by such date, and therefore he is released from the stipulated damages.

To prevent such changes from nullifying the penalty clause they must be embodied in an additional written agreement, signed by the contracting parties, in which it is definitely stated that the other parts of the original agreement, including the penalty clause, are to remain in force.

65 Cancelling Contracts.—In cases where a person has been induced through fraud, or falsehood, or misrepresentation of any kind, to enter into a contract to purchase land or any kind of personal property, he can repudiate the contract or bargain, and if he has paid money he can recover it. But he must act as soon as he discovers the fraud, and restore, or offer to restore, the property in the same condition it was in when he received it. The fraud or misrepresentation must be of a material nature and actually deceive.

A purchaser who would rescind a contract must be in a position to restore the property. If he treats the property as his own (more than to care for it) after discovering the fraud, he cannot afterwards return it and recover his money. If a portion of the goods were used before the discovery of the fraud, it would be for the court to determine the value of the portion used. There is no chance for a person to rescind a contract merely because he changes his mind. (See Section 33 for withdrawal of a proposition.)

66 Breach of Contract is a failure to do what was required or covenanted to do, or the doing of what was forbidden.

67 Damages for Breach of Contract or Wrongs.—The law provides two classes of remedies for the enforcement of the rights created by contract—civil and criminal. The criminal are for the punishment of crime, and in a general sense are dealt with by the Crown; the civil belong to the individual and enable him to enforce his personal rights. His remedy is by suit for damages. There are different classes of damages: (1) Compensation for the actual loss sustained. (2) Nominal, where the failure to perform the contract is not regarded as intentional but merely through inability to do so. (3) Liquidated, where the amount is previously agreed upon in case damages should be awarded. (4) Speculative, where the profits that would have resulted from the performance of the contract are known, they may be recovered. (5) Exemplary, where for a malicious violation of a contract a sum in excess of the actual loss is awarded as a punishment—"smart money."