

Where rescision is claimed, it is sufficient that there was misrepresentation of fact which induced the contract; it is immaterial that the representation was innocent.¹ In an action of deceit it is essential that there shall have been deceit.² An action of deceit is a common law action, there is no such thing as an equitable action of deceit.³

That which would not sustain an action for deceit may be sufficient to sustain an action for rescision. No mere silence will ground an action of deceit, unless the non-disclosure is such as to make statements in the prospectus false;⁴ but silence as to a material fact which ought to have been disclosed may be a ground for an action for rescision. And an action for rescision may succeed where the misrepresentation was innocent, while in an action for deceit the representation must be either wilfully false or made with reckless disregard as to whether it is true or not.⁵

Where the prospectus represented that certain figure heads had consented to become members of the particular company which the prospectus related to, whereas they had only consented to be upon the board of a company to be thereafter formed *with their approval*; the company being formed without their approval, this was held to be misrepresentation as to the shareholders.⁶

Where the prospectus stated that a certain proportion of shares had been subscribed for, when as a matter of fact, such subscription was a sham one, this was held to be such a misrepresentation as entitled the applicant to rescision.⁷

¹ Smith's Case, 2 Ch., 604; Reese River, etc., L. R., 4 H. L., 79; London & Staffordshire Co., 24 Ch. Div., 149.

² Derry v. Peck, 14 App. Cas., 337; Arkwright v. Newbold, 17 Ch. Div., 301. And see judgment of Gwynne, J., in Petrie v. Guelph Lumber Co., 11 Can. S. C. R., 450.

³ *Ibid.*, at p. 471, citing opinion of Lord Blackburn in Arkwright v. Newbold, 9 App. Cases, 197.

⁴ Peck v. Guernsey, L. R., 6 H. L., 403; Aaron's Reefs, &c. (1897), A. C.

⁵ Peck v. Derry, 12 App. Cas., 337; Arkwright v. Newbold, 17 Ch. Div., 301; Karberg's Case (1892), 3 Ch., 1. See Petrie v. Guelph Lumber Co., 11 Can. S. C. R., 450.

⁶ Karberg's Case (1892), 3 Ch., 1.

⁷ Alderson v. Smith, 41 C. D., 348; Henderson v. Lacon, 5 Eq., 240; Ross v. Estates Investment Co., L. R. 3 Ch., 682; Kent v. Freehold Land Co., 3 Ch., 493.