

value" the purchaser being a woman who lacked business experience and who was unable to form an opinion herself as to the real value of the property, notwithstanding that she went into possession and leased part of the land and sold another part, it appearing that she had not become aware of the fraud until the action: *Larson v. Rasmussen*, 10 D.L.R. 650.

A representation by the purchaser of land to the vendor that he was buying for himself and not for a third party to whom he knew the vendor would not sell, although false, is not a representation material to the contract or one resulting in any damage to the vendor as its immediate and direct consequence, so that a sale which the vendor was induced to make by such false representation cannot be rescinded on the ground of fraud: (*Bell v. Macklin* (1887), 15 Can. S.C.R. 576, followed). *Nicholson v. Peterson*, 18 Man. L.R. 166.

Although it may no longer be open to the party defrauded to avoid the agreement, he may have a remedy for the fraud by action for damages or compensation for the loss occasioned by it, provided the fraud amounts to a substantive cause of action against the party who committed it. *Campbell, C.J.*: *Clarke v. Dickson* (1858), 27 L.J.Q.B. 223, E. B. & E. 148; *Blackburn, J.*, in *Reg. v. Sadlers' Co.* (1863), 32 L.J.Q.B. 337, 10 H.L.C. 404. But in such action he cannot recover any damages which might have been prevented by avoiding the contract when he had the opportunity if any, of which he did not avail himself; as the loss upon shares which he might have repudiated before they fell in value, or the deterioration of goods which he might have returned: *Ogilvie v. Currie* (1868), 37 L.J. Ch. 541; *Waddell v. Blockey* (1879), 48 L.J.Q.B. 517, 4 Q.B.D. 678. See *Arnison v. Smith* (1889), 41 Ch.D. 348.

Delay is not imputable against the party defrauded until he has knowledge of the fraud, or at least such means of knowledge as he was bound to avail himself of: *Browne v. McClintock* (1873), L.R. 6 H.L. 424; *Erlanger v. New Sombrero Phosphate Co.* (1878), 3 App. Cas. 1218. And it lies upon the party against whom the fraud is established and who charges the delay to prove the knowledge in the other party, and the time of acquiring it: *Lindsay Petroleum Co. v. Hurd* (1874), L.R. 5 P.C. 221; *Arnison v. Smith* (1889), 41 Ch.D. 348. Delay is no answer to a substantive action for damages caused by fraud, at law or in equity, except under the Statute of Limitations: *Peck v. Gurney* (1873), 43 L.J. Ch. 19, L.R. 6 H.L. 377.

Avoidance of the agreement involves a restitution of the parties to their original rights and property; it can be effected only upon this condition, and, therefore, only so long as such restitution is possible: *Western Bank v. Addie* (1867), L.R. 1 H.L. (Sc.) 145, 164; *Bramwell, L.J.*, *Chynoweth's Case* (1880), 15 Ch.D. 13, 20. A contract voidable for fraud cannot be avoided when the other party cannot be restored to his *status quo*; for a contract cannot be rescinded in part and stand good for the residue. If it cannot be rescinded *in toto*, it cannot be rescinded at all; but the party complaining of the non-performance, or the fraud, must resort to an action for damages: *Sheffield Nickel Co. v. Unwin* (1877), 46 L.J.Q.B. 209, 2 Q.B. 214. Where the contract has been completely executed, there cannot be rescission for misrepresentation unless fraudulently made: *Seddon v. North-Eastern Salt Co.*, 74 L.J. Ch. 199, [1905] 1 Ch. 326.