

buyer had the means to acquaint himself with the facts, and if, as a result he has not been deceived.

2. The buyer of a going concern who, after having instituted an action in nullity of the contract of sale, on the grounds of fraud and false representations, sells over the business to his landlord, who, at his turn, disposed of it to other persons, cannot maintain his action in nullity, seeing he had put himself in a position not to be able to restore to the original seller, the business he has bought from him, in the event of he succeeding in his action to cancel the deed of sale.

3. Where a buyer of a trade waits four months without complaining of any fraud practised against him in the contract of sale, makes past payments, and attempts to form a company to carry on the business, he waives his right to demand the nullity of his contract, and is precluded to complain of the alleged fraud of the vendor.

The judgment of the Superior Court, which is affirmed, was rendered by Mr. Justice Panneton, on March 25th, 1916.

The action is in nullity of a deed of sale, of the 5th of December 1913, by which, defendant sold to plaintiff the moving pictures business carried on by him, in Montreal under the name of "Lubin Theatre", including the lease of the property belonging to the *mis en cause*. The grounds of the nullity were false representations made by defendant as to the daily revenues of the theatre, as shown to him by a false book of receipts. The plaintiff prays that the deed of sale be rescinded and demands the reimbursement of \$900, the price of the sale; and damages to the extent of \$800.

The defendant denies any false representations. He alleges that the plaintiff took possession and administered the said theatre for his own benefit several days before he bought it, and several months since without any complaint