

Notwithstanding the fact that a vendee was induced to purchase timber lands through the vendor's misrepresentations as to the number of acres thereof, rescission of the contract of purchase will be denied the former after he had entered into a contract with the vendor under which the latter had begun to carry on lumbering operations on the land for the vendee, on the ground that, as the parties could not be placed in their original positions, both contracts must stand: *Eaton v. Dean*, 5 D.L.R. 604.

The defendant bought a house and lot from the plaintiff for \$1,400, purchase money to be payable by instalments of \$10 a month. The contract further provided that unless the amounts were punctually paid, all payments made should be forfeited and all rights of the defendant cease and determine, and the plaintiff be at liberty to re-enter. The defendant paid the first three instalments, although after paying the third he became aware of misrepresentations of the plaintiff inducing the contract. He refused to pay the fifth instalment, but continued to hold possession. The plaintiff brought this action for possession, and claimed for use and occupation since the last payment on the contract. The defendant counterclaimed for rescission and return of his money paid, and in the alternative damages for the misrepresentations. It was held that the defendant had by his conduct affirmed the contract after knowledge of the misrepresentations, and the plaintiff was entitled to judgment for possession unless the defendant should elect to pay the proper value of the property, having regard to the amount to be deducted as compensation for misrepresentations. If he declined to do this, the measure of the defendant's damages would be the amount which he had paid, less a proper occupation rent: *Webb v. Roberts*, 16 O.L.R. 279 (D.C.).

An executed contract induced by misrepresentation cannot be set aside unless the misrepresentation be fraudulent, but the rule does not extend to executory contracts: *Angel v. Jay*, [1911] 1 K.B. 696; *Abrey v. Victoria Printing Co.*, 2 D.L.R. 208, 3 O.W.N. 868; *Reese River Co. v. Smith*, 1 L.R. 4 H.L. 64; *Adams v. Neubigging*, 13 App. Cas. 308; *Angus v. Clifford*, [1891] 2 Ch. 449, and see *Kinsman v. Kinsman*, 5 D.L.R. 871, 3 O.W.N. 966, reversed on other grounds by 7 D.L.R. 31.

A communication from a person representing a real estate agent made to an owner of land from whom he was trying to get a contract of option for the purchase of his property, that there were no other property transactions going on in the neighbourhood in which this property was situated, although the person making the communication may have known that his principal had been buying other pieces of property in that neighbourhood, is not a misrepresentation *dans causam contractui* which would be ground for rescission, where the parties were dealing at arm's length and there was no duty of disclosure: *Kelly v. Enderton*, 9 D.L.R. 472, [1913] A.C. 191, 107 L.T. 781, affirming *Kelly v. Enderton*, 5 D.L.R. 613, 22 Man. L.R. 227.

An agreement for the sale of land whereby the purchaser was to take the property at "its fair actual value" to be fixed by the vendor may be rescinded, where it appears that the vendor fraudulently made the purchase price of the property several hundred dollars in excess of "its fair actual