

- liable for any latent defect, without fraud or an express warranty, or such a direct representation as is tantamount to it.
- Every mere false assertion of value, when no warranty is intended, will not constitute a ground of relief to the purchaser. If the assertion is a mere matter of opinion, in which parties may differ, or if the seller indulge in the common language of puffing, it will not amount to a warranty.
- But, if a party undertakes to make a direct representation of a fact, even though he be mistaken as to the fact, if the other party is induced to act upon such representation, equity will relieve against the act, equally as if it had been a wilful and false assertion, for the injury is the same.
- Though the means of correct information be equally open to both parties, yet, if either of them does, or says any thing, tending to impose upon the other, and he is imposed upon to his injury, the contract will not be allowed to stand.
- In the case of a breach of warranty, the vendee may sue upon it, without returning the goods, or rescind the contract by returning them, or the offer to return them in a reasonable time, so that the seller is placed in *statu quo* and sue for, and recover back, the purchase money, in an action for money had and received.
- What is a reasonable time, within which the purchaser must rescind the contract, by a return of, or an offer to return, the thing purchased, does not appear to be stated in the books. The time, however, is to be computed from the period when the unsoundness is discovered, and not from the date of the contract.
- An offer to return negroes found to be unsound, made within a month after the sale, and as soon as their unsoundness was discovered, was held to be within a reasonable time.
- An offer to return the chattels within a reasonable time, is equivalent in its effect upon the remedy, to an offer accepted by the seller.
- In a case of misrepresentation of facts, whether made with a knowledge of their untruth, and with intent to defraud, or made inadvertently by mutual mistake of parties, or by mistake of either of them, if the other has been prejudiced thereby, a court of equity has jurisdiction, and will set aside the contract and declare it a nullity.
- A court of equity has concurrent jurisdiction with courts of law, in all cases of fraud and damage, and it makes no difference, that the sale sought to be rescinded on the ground of fraud, was a sale of personal property.

[The bill was filed in this case on the 3d of October, 1848, to vacate a sale of negroes made by the administrator of James Mitchell, deceased, to the complainant, on or about the 1st of May in that year.

The bill charged the defendants with having made fraudulent misrepresentations of the value and condition of the negroes; they having stated that they were appraised in the inventory at twelve hundred dollars, when they were in fact only appraised