

WARRANTY—*Continued.*

4. 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. *Ib.*
5. 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. *Ib.*
6. 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. *Ib.*
7. 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. *Ib.*
8. 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. *Ib.*
9. An offer to return chattels within a reasonable time, is equivalent in its effect upon the remedy, to an offer accepted by the seller. *Ib.*

See EVIDENCE, 5.

WASTE.

See JURISDICTION, 10 to 13.

MORTGAGOR AND MORTGAGEE, 4, 5.

WIFE'S RIGHT TO PERSONALTY.

1. It is not in the power of a husband in this state, by will, to deprive his widow of that portion of his personal estate to which she is entitled by law. *Hays vs. Henry*, 337.
2. Yet there can be no doubt of his right to dispose, absolutely, of this description of property during his life, independently of the concurrence and exonerated from any claim of the wife, provided the transaction be not colorable merely, and be unattended with circumstances indicative of fraud upon the rights of the wife. *Ib.*

See FRAUDULENT CONVEYANCES, 1.

WILL AND TESTAMENT.

1. If the interest which a creditor takes by a will, is not co-extensive with, or of the same nature of that to which he is entitled from the testator as his debtor, he will be entitled to both. *Waters vs. Howard*, 112.
2. The degree of intention necessary to raise a case of election must plainly appear upon the face of the will, but the court is not to disregard what amounts to a moral certainty of the intention of the testator. *Ib.*
3. Though evidence *dehors* the will, will not be admitted to prove or dis-