

## RE FOTHERGILL vs. PHILLIPS IF EXECUTED

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One of the elementary principles of the law of contracts is that the Court will decree a rescission of a contract, only when the property involved remains in such a position that the parties may be restored to their original status.

Another rule of law is that fraud vitiates any contract.

Bearing these two doctrines in mind let us suppose that in the Fothergill case, the contract had been executed, and the purchase price paid. The vendor now comes into Chancery seeking revision of the contract, on the grounds that the purchase has fraudulently concealed the fact that he had previous to the contract wrongfully taken 2,000 tons of coal from the property.

What was the position of the parties at the time the contract was entered into? On the part of the vendor it might be said that he owns the property, plus an action for trespass against the purchaser in respect to the 2,000 tons of coal.

It is my contention that the purchaser by his act of trespass is legally bound to make a full disclosure of his act which hits at the roots of the contract. Failing to do so has induced the vendor to part with that which he would never have relinquished had he been aware of the facts, i.e., his right of action. To my mind it is fraud on the part of the purchaser to attempt to cover up his wrongful act by concealing such a material part of the subject matter.

The decision should be that the contract may be rescinded. This would seem to be in keeping with the McKenzie case as studied in the Canadian Bar Review Volume 13, where it was stated that a contract even though executed may be rescinded by any material misrepresentation of an existing fact.

The result of such rescission would be that the purchase money would be returned to the purchaser, and the vendor would get back his right of action. Thus both parties would be restored to their former position.

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On February 7, a team from the Law School met Dal'ousie at Halifax to debate the resolution: "The Senate of Canada Be An Elected Body." Jim Lunney and Eric Teed upheld the affirmative for the Law School. The judges' vote was 2 to 1 for the negative.

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On February 19, Ron MacDonald and John Gray attacked the resolution: "A World Federal Government Be Established." The affirmative was represented by a team from the U. N. B. in Fredericton. By an unanimous vote, the negative was declared successful. The debate was held in the lecture room of the Saint John High School.