

RE FOTHERGILL vs. PHILLIPS IF EXECUTED**NEIL G. PRICE**

Question: If this transaction had gone through, would the Court have rescinded contract?

Answer: In my opinion the contract would not have been rescinded if the contract had been performed.

This was not the case of a contract uberrima fidei. The sale was made with the request by the purchaser, and not at the request of the vendor where the question of non-disclosure or misrepresentation usually arises.

To my mind it is essential that this contract for sale of land be separated from any liability for a tortious or criminal act. It is to be observed that there is no suggestion that the vendors did not receive an adequate amount for the land and the coal included.

In most cases of rescission it is important that the purchaser gets what essentially he thinks he is getting and that the vendor receives an adequate payment for what he is selling.

In this case there apparently is only one ground for rescinding a performed contract and that is: by the non-disclosure of an act done the vendor lost a chance to sue or take legal action in respect of the offense.

What has this substantially to do with the actual contract for the sale of land, if no inadequacy by way of payment or land received is shown?

The case of *Ward vs. Hobbs* 3 QBD 150 may illustrate this point.

In that case Hobbs sent to a public market pigs which to his knowledge were suffering from typhoid fever. To send them to market in this state was a breach of a penal statute. Ward bought the pigs, no representation being made as to their condition. It was later contended that the exposure of pigs in market was a representation that they were free of disease.

Lord Selborne in discussing this law on this point says: To say that every man is always taken to represent in his dealings with other men, that he is not, to his knowledge, violating any statute, is a refinement which would not appear reasonable to any man."

Thus it appears that, insofar as rescission of a contract is concerned, the right to a legal action against a person is not, in itself sufficient.

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During January the athletic committee sponsored a sleigh-ride for those members of the School and their friends who are devotees of the outdoor life. Since the decline of bowling in undergraduate legal circles, it was felt that some less taxing, but equally healthful form of exercise be initiated. The sleigh-ride was the happy outcome. A reception after the return of the expedition was attended by those who found the dangers of the night air more than they cared to challenge, so that everybody at the School was able to participate in the School's major athletic adventure of the year.