

1935

EQUITY - RESCISSION OF CONTRACT INDUCED BY FRAUD - MONEY JUDGMENT AS AN ALTERNATIVE TO SPECIFIC RESTITUTION

Follow this and additional works at: <https://repository.law.umich.edu/mlr>



Part of the [Contracts Commons](#), [Courts Commons](#), and the [Property Law and Real Estate Commons](#)

Recommended Citation

EQUITY - RESCISSION OF CONTRACT INDUCED BY FRAUD - MONEY JUDGMENT AS AN ALTERNATIVE TO SPECIFIC RESTITUTION, 34 MICH. L. REV. 134 (1935).

Available at: <https://repository.law.umich.edu/mlr/vol34/iss1/20>

This Regular Feature is brought to you for free and open access by the Michigan Law Review at University of Michigan Law School Scholarship Repository. It has been accepted for inclusion in Michigan Law Review by an authorized editor of University of Michigan Law School Scholarship Repository. For more information, please contact mlaw.repository@umich.edu.

EQUITY — RESCISSION OF CONTRACT INDUCED BY FRAUD — MONEY JUDGMENT AS AN ALTERNATIVE TO SPECIFIC RESTITUTION — Plaintiff entered into an agreement for the exchange of interests in real estate with one of the defendants. After payment of part of the boot money agreed upon, the plaintiff defaulted and sued to have the agreement rescinded for fraud. The trial court rendered a money judgment for the amount at which the plaintiff's property had been taken on the trade. *Held*, that defendant's wife, to whom the property had been conveyed, should have been joined, and that the decree should be modified to order a reconveyance to the plaintiff. *Bacon v. Fox*, 267 Mich. 589, 255 N. W. 340 (1934).

It is a general principle of equity that a court of chancery, having properly obtained jurisdiction of a case, will retain it to give complete relief, even though this will involve the granting of a money judgment or other relief generally considered to be of a legal character.¹ Thus, in actions for the specific performance

¹ *Lynch v. Metropolitan Elevated Ry.*, 129 N. Y. 274, 29 N. E. 315 (1891); *Baker v. Langley*, 247 Mass. 127, 141 N. E. 671 (1923); 1 POMEROY, EQUITY JURISPRUDENCE, 4th ed., §§ 181, 231 et seq. (1918).

of contract² or injunction against tort³ a court of equity will under certain circumstances award damages in lieu of or in addition to the injunctive remedy. In the rescission field also there is authority for the retention of the case by a court of equity to give the plaintiff pecuniary compensation after rescission had been found to be unavailable.⁴ In a recent Washington case arising under facts very similar to those of the principal case, a judgment was affirmed which ordered the defendant to return the property received from the plaintiff or in the alternative to pay the plaintiff the value thereof.⁵ While specific restitution of the property is more likely to accomplish the return to the status quo and should be the form of the judgment or decree, if possible, the Michigan court in the principal case indicates that substantial or proximate restitution can be given, when the specific remedy is unavailable. On the other side of the question, the inability of the plaintiff to make exact restitution does not necessarily defeat rescission.⁶ The principal case indicates a strong preference for specific restitution of land conveyed through fraud, where specific restitution can be accomplished without injury to third persons deserving of legal protection. Presumably the Michigan court is not willing, as is the Washington court, to give the defendant a choice between specific and money restitution, and will exhaust the possibilities of specific restitution of the land conveyed before permitting a decree for the money equivalent.

W. A. B.

² *Sanitary District v. Martin*, 227 Ill. 260, 81 N. E. 417, 10 Ann. Cas. 227 (1907); *Milkman v. Ordway*, 106 Mass. 232 (1870); *Blankenhorn v. Edgar*, 193 Iowa 184, 186 N. W. 893 (1922). *Contra*, *Marks v. Gates*, (C. C. A. 9th, 1907) 154 F. 481, 14 L. R. A. (N. S.) 317, 12 Ann. Cas. 120; *Childs v. Reed*, 34 Idaho 450, 202 P. 685 (1921).

³ *Lewis v. Town of North Kingston*, 16 R. I. 15, 11 A. 173, 27 Am. St. Rep. 724 (1887); *Miller v. Edison Elec. Illum. Co.*, 184 N. Y. 17, 76 N. E. 734, 3 L. R. A. (N. S.) 1060 (1906). *Contra*: *Moore v. San Vincente Lumber Co.*, 175 Cal. 212, 165 P. 687 (1917).

⁴ *Taylor v. Taylor*, 259 Ill. 524, 102 N. E. 1086 (1913); *Baldwin v. Brown*, 166 Ark. 1, 265 S. W. 976 (1924); *Swan v. Talbot*, 152 Cal. 142, 94 P. 238 (1907); *Roncowski v. Joswiak*, 230 Mich. 327, 203 N. W. 105 (1925).

⁵ *Pletcher v. Porter*, 177 Wash. 560, 33 P. (2d) 109 (1934).

⁶ *Harnden v. Hadfield*, 113 Kan. 525, 215 P. 441 (1923); *Peabody v. Dymsha*, 280 Mass. 341, 182 N. E. 580 (1932); 3 BLACK, RESCISSION AND CANCELLATION, 2d ed., § 618 (1929).