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IN THE

Supreme Court of the State of Illinois,

THIRD GRAND DIVISION,

APRIL TERM, A. D. 1863.

GALEN EASTMAN, *Appellant,*
versus
THOMAS BROWN, *Appellee.*

Appeal from the Superior Court of Chicago.

POINTS FOR APPELLANT.

The witness Teetzel had offered to sell Eastman his half interest in a boat for $3,750. The offer had not been declined, but Eastman had gone to Michigan to make arrangements for closing the trade, as the conversation between the parties clearly contemplated he might do before answering. The offer of vendor had not been withdrawn, but was still open.

Eastman sent word to Merrill, his agent, to close the trade, when Brown, the owner of the other half and captain of the boat, professing to act by Teetzel's instructions, falsely stated that Teetzel would no longer sell for $3,750, nor for less than $4,500. Teetzel, on the contrary, swears that he never so stated, or instructed Brown, but was always willing to sell for $3,750, and so stated to Brown. Eastman, believing Brown's false statements, and forced, by the arrangements he had made, to have the boat, made a written agreement in duplicate with Brown, or Teetzel's agent, (see Exhibit B in Record), for the purchase at $4,500, *which agreement Brown pocketed and never gave or disclosed to Teetzel.*

Subsequently Teetzel prepared and gave to Brown for delivery to Eastman a written offer of sale, (see Exhibit A in Record,) *substantially renewing his original offer at $3,750, which also Brown kept, and Eastman nor his agent never saw.*

Afterwards the parties (Teetzel & Eastman) met in Chicago to close the trade, *each supposing that the other had the paper executed by himself.* Eastman, therefore, supposing Teetzel had Exhibit B, calling for the extra $750 note, and that that contract had been entered into under Teetzel's instructions, and *not being apprized of the contrary or of Brown's fraud,* made the note accordingly. It is true, Teetzel then stated that he was not "making the $750," and on Merrill saying, "Then Brown makes it," he said, "yes," or nothing; but it was not then, nor until a year afterwards disclosed to him, that the contract under which he supposed himself to be making the note, and under which he supposed it to be *required* by Teetzel, although by his (Teetzel's) direction *made* to Brown, had in fact never come to Teetzel's possession, nor been made by his direction. The mere changing the direction of the money from Teetzel to Brown, by Teetzel's orders, or the statement that Brown was "making it," not stating how, could not undeceive Eastman of the false impression created by Brown, that the $750 was required by Teetzel as a part of the purchase money under the contract. The facts and Brown's fraud never came to Eastman's knowledge till the fall of 1851, long after the interview mentioned by plaintiff's witness Murphy.

Upon these facts we claim—

I.

The note was void for fraud of Brown.

I. Fraud accompanied by damage is a good cause of action, and concealment where duty requires disclosure, is fraud.

14 Bart. S. C. 72. 22 do. 654.
3 Seld. 352.

II. The party committing fraud need not, as here have received benefit, nor colluded with party benefited.

3 T. R. 51. 3 Scam, 171.
2 Meto. 374. 1 Scam. 344.

III. The false suggestion need not have been *the leading* motive to action; it is enough if it were *a* motive.

22 Pick. 48, 52.

IV. To make the fraud actionable, no relation of trust or confidence need exist.

22 Pick. 48.

V. Where the party guilty of fraud in an executory contract brings an action on it, the fraud may be set up in defense.

18 Pick. 104. 30 Vt. 139.

VI. The contract need not have been rescinded *in toto*.

30 Vt. 139. 1 Hill, 484. 1 Comst. 305.
2 Pars. Cont. 278. 1 Metc. 557.

VII. The loss of an advantageous bargain, or the making a worse one, by reason of willfully false statements, is sufficient damage.

2 Wend. 385. 4 Den. 189.

VIII. Here the vendor was not only in fact always ready to sell on the original terms, but the first negotiations were still open. An offer continues open for a reasonable time, to be determined by the words of the parties and the circumstances of the case.

1 Pars. Cont. 405 (bk. 2, ch. 2, sec. 2).
3 Cush. 224. 1 Foster, 41.
1 Fairf. 185. 21 Eng. L. and Eq. 591.

IX. Where the false representations are as here, such as reasonably to prevent further inquiries, they are a good defense.

18 Pick. 105. 1 Pick. 351.

X. False representations, by a third person, more unfavorably regarded than those of vendor, because he has apparently *no interest to deceive*.

6 Metc. 260.

XI. Courts always require the strictest candor, of a party who professes to act as a mere voluntary *negotiorum gestor*, and will not let him make a profit of either party who reposes confidence in him.

9 Paige, 241. Dunlap's Paley Ag. 33—37.

XII. Here is palpable effort of appellee to reap a reward from his own fraud. He has done nothing for either party, but by deceiving both, without benefiting either, attempts to recover $750 for himself, as a compensation for inducing them to consummate a sale upon the precise terms of an offer already made and accepted.

II.

There was no consideration for the note.

I. It was not given as commissions for Brown. It was not so claimed by him, nor so intended by either party, nor had he earned any. He had neither found buyer or seller; they had found each other, and offered and accepted terms of sale.

II. It was not part of the purchase money of the boat.

It did not in fact go to the owner, nor for his benefit, nor was it, although erroneously supposed by Eastman to be so, required by the owner as a condition precedent to the sale.

III. The supposed consideration, viz.: the obligation on Eastman's part to carry out the contract (Exhibit B.) did not in fact exist, that contract being void for fraud, and never having come to or been acted on by Teetzel. "Where the cause for which the engagement is contracted is false, there is no consideration."

1 Poth. Obl. 123. 2 Taunt. 2.

"To make a valid contract, both parties must assent to the same thing in the same sense."

1 Pars. Cont. 399.

III.

To permit a recovery on this note, under the facts disclosed, is not only to tolerate, but sanction and reward a long continued course of premeditated fraud; to permit a third party who has learned of the negotiations of vendor and vendee, and that their minds have in fact met, to take advantage of his position and knowledge, and of the mutual confidence of the parties in him, to interfere between them, and by false statements and fraudulent concealments, to extort from the vendee a further sum under the guise of higher compensation to the vendor, his principal, but in reality based upon no other consideration than his own treachery and deceit.

Falsehood is too cheap to be purchased at so high a price; and since vendor and vendee have completed and carried out the only contract between themselves required by vendor, and intelligently made by vendee, this excrescence added by fraud of appellee, growing out of no valid mutual agreement between the parties, and based on no real consideration, ought to be rejected and condemned.

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Eastman

vs

Brown

Appl. Bond

Filed Apr 2, 63

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