

DEFRAUDED BUYERS CAN OBTAIN RELIEF

Three Avenues Open in Case of Misrepresentation.

RESCINDING CONTRACT ONE

Application to Court for Refunding of Money or Suit for Damages Other Two Ways.

BY W. P. SHIPLEY, Chairman Legal Committee Portland Realty Board.

What remedies are available to one defrauded in a real estate transaction and how soon after his discovery of the fraud practiced upon him must he act to secure the intervention of the courts to rescind the contract or obtain other relief?

In previous reports we have briefly reviewed the elements of fraud, the responsibility resting upon a buyer to investigate the representations of fact and the necessity of the buyer's reliance upon those representations before relief can be obtained by him through the courts.

It is now interesting to discuss the measures of relief granted by courts in cases where fraud is shown to have actually taken place. The legal remedies available to a defrauded purchaser of real estate are well settled and clearly defined in this state.

One who has been induced by fraudulent representations to become the purchaser of property has, upon the discovery of the fraud, three remedies available to him. He may elect to rescind the contract and sue for the purchase money paid, or second, he may apply to the court upon its equity side and ask the court to rescind the contract, order the purchase money refunded and generally adjust matters so as to restore the parties to their original positions.

The advantage of a trial by jury can be obtained if a defrauded buyer chooses the first or third alternatives, but not if he chooses the second.

Usually the second course is adopted as giving the most complete relief.

It is likewise well settled in this state that while the defrauded party has the option of adopting any one of these three courses of action, he is restricted to one of them, and that therefore the adoption of one remedy excludes the party from following either of the other courses.

The question often arises, when a buyer discovers he has been defrauded, how long may he wait before deciding which of the three alternatives he will elect to pursue? Must he act promptly and make his decision at once or may he bide his time and speculate upon which course would be most profitable?

Our Supreme Court has said down the rule again and again that he must act at once if he adopts either of the two alternatives first named; that is, if he elects to rescind the contract.

As the court emphasized its position further in Potter Realty Company vs. Breitling, 79 Ore. 293, 306; 155 Pac. 173, in the following language: "Rescission demands prompt action on the part of the defrauded party, and any unreasonable delay in asserting a disaffirmance of the contract will be considered as an election to treat it as continuing and his right of action will be limited to a recovery of the damages which he has suffered."

The books are full of cases where relief has been denied to defrauded buyers by reason of their failure to take prompt action to rescind. Any delay beyond a reasonable time will usually be fatal.

A different rule, however, prevails where the buyer adopts the third alternative and decides to keep the property and sue for damages for the fraud. In such a case, the buyer may take his time and await developments, and so long as he brings his action within the statutory period of six years the courts will entertain his suit.

NOVEMBER SALES ARE HEAVY. Brisk Trade in City Houses and Lots Reported by Dealer. Fred W. German, of the Fred W. German Company, reports a brisk realty business for November. He made the following sales during that month:

Elizabeth Starkell, an out of town resident, sold lot 5 block 2, North Harbor, to W. H. Gideon, for price of \$2000. George D. Boes and wife sold lots 6 and 7, block 6, Woodmere, for \$1200.

sales of farms near this city and transfers of Chehalis city property. One firm, C. A. Briske & Co., reports deals aggregating upwards of \$40,000. Most important of these is the purchase of 20 acres near Forest, seven miles southeast of this city, by Christ Ruby, of Minnesota, from Robert Brickley for \$2200; sale of the E. C. McIntyre farm of 80 acres near Agate to W. H. Saulis for \$2500; a \$7500 deal between Louis Ulrich, of Onalaska and John Pudekka, of Forest, in an exchange of properties; exchange of a Nowakum Valley farm worth \$6000 by J. B. Bower to A. Hilburger for city realty and exchange of a farm of 60 acres near Olympia by Mrs. Chas. Beatty to W. L. Bishop for a six-acre Chehalis Valley farm, total consideration of the deal being \$10,000.

HOOD RIVER, Or., Dec. 7.—(Special.)—W. F. Witham, former Iowa grain rancher, who recently came here, purchasing the H. B. Allen place on the West Side, has added 20 additional acres to his bearing orchard through the purchase of the Edward B. Winter and C. H. Gones places, each of ten acres. C. M. Baldwin has traded his home place west of the city to William L. Setzmaier, of Portland, for a 15-acre ranch near Grand Junction, Colo. Mr. and Mrs. Baldwin will leave this week for their new home.

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J. H. BECKLEY BUYS PLACE IN WOOD RIVER VALLEY. Page & Stratton Property Sale of 900 Acres, All Under Irrigation, Includes Ditch Interest.

One of the largest land purchases in Oregon in recent months has just been made by J. H. Beckley, 525 East Nineteenth street North, who has acquired from Page & Stratton, of the produce firm of Page & Son, the 900-acre stock ranch in the Wood River Valley, 20 miles from Crater Lake, known as the Page & Stratton ranch, for a consideration approximately \$50,000.

Mr. Beckley will stock the ranch with his large herd of shorthorns and plans on making it his home during the summer months. "I consider my new ranch one of the best in the Northwest," said Mr. Beckley. "The place is in an amazingly fertile region. No failures have ever been experienced in this valley by any of the ranchers. This tract of land is as level as a floor, lying on a main road and under full irrigation. In the deal is included a third interest in the Wood River irrigation ditch, known more commonly as the Milhaze ditch, one of the best water rights in the state of Oregon, which is naturally a great asset."

"This is an easy ditch to maintain. It is only a few miles long, and can be tapped at any time on any part of the place by merely driving a pipe into the ground for a reasonable depth and the water will run immediately at a good pressure."

"The cattle on the ranch are in wonderful condition on account of the abundance of hay that grows there. Two-year-old steers, raised by Dan Ryan on an adjoining property, averaged 1250 pounds each and brought in excess of \$150 each on the hoof at the ranch."

Mr. Beckley has been raising cattle on the Klamath reservation for the last six years, and he finally saw the necessity of leaving his present ranch, he says, in order to make large profits. He has been a stockman for many years, operating in Crook County before he came to the Klamath section. He left Friday to attend to business in Klamath Falls.

SPRUCE WORKERS PRAISED. Men Have Performed Duties Faithfully, Says Y. M. C. A. Leader. HOOD RIVER, Or., Dec. 7.—(Special.)—"Never in my life," says Earl Weber, Spruce Production Y. M. C. A. worker, of this city, who has been stationed in Coast county logging camps the past several months, "have I been with squarer, more honest, unassuming men than mountaineers of the South, who in great numbers form a part of the spruce camp workers."

"The most of these men had no idea where they were going when they joined the Spruce Production Division. They were told that it meant immediate service, and they thought that meant going to France. While their work has been faithful, they preferred the use of rifles against the Hun on the western front to wielding of the ax and saw in remote Northwestern lumber camps."

PENDLETON TO ADVERTISE. Commercial Association Decides on Publicity Campaign. PENDLETON, Or., Dec. 7.—(Special.)—To bring attention to Pendleton as an ideal place to spend the winter and to make an all-year home is the purpose of a campaign just launched by the Pendleton Commercial Association. The details of the plan, still to be worked out, contemplate billboard advertising, publicity in the papers of the county and the Portland dailies, the circulation of descriptive literature and other means.

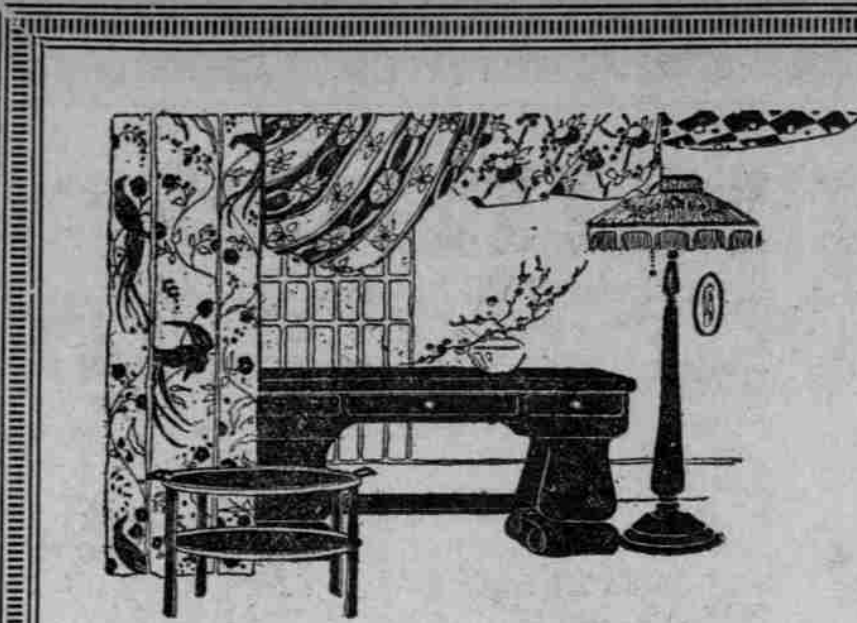
The publicity committee of the club, which presents the plan, made a showing for Pendleton as an all-year residence town that surprised even the pioneer members of the association.

IRRIGATION FUNDS SOUGHT. Tentative Distribution on Yakima Reservation Arranged. YAKIMA, Wash., Dec. 7.—(Special.)—If Congress appropriates the \$718,000 asked for by the Indian Department for continuation of irrigation and drainage development on the Yakima Reservation, Superintendent Holt, of the Indian reclamation service, expects to appropriate the fund as follows: Diversion canal, \$600,000; Toppenish-Simcoe project, \$100,000; water payment for reservation, \$100,000; irrigation maintenance, \$15,000; support Yakima agency, \$3000. The diversion canals will take water to the Wapato project, which now has about 60,000 acres under irrigation and ultimately will have 120,000. The Toppenish-Simcoe project has a possible maximum of 20,000 acres.

Raspberries Picked in December. WHITE SALMON, Wash., Dec. 7.—(Special.)—A branch containing ripe raspberries, many blooms and fruit in formation, picked December 5, was brought to the White Salmon Commercial Club by C. W. J. Beckers. With the exception of one snow flurry and two or three frosts the past month has been like an early Fall. Trucks and autos are still operating in all directions.

Keaton Holiday Specials. Beginning December ninth a Keaton Heavy Red Tube will be given without charge with every Keaton Non-Skid and European Type Casing. This applies to exchange for old tires as well as straight sales. Order your winter equipment at once before this liberal offer expires.

Keaton Tire & Rubber Co. PORTLAND Sixth and Main Street Main 3210



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Furniture

Show Very Exceptional Reductions, With the Object of Immediate Disposal. Some Listed Here

- A 3-cushion overstuffed Davenport, excellent quality, tapestry covering, 2 patterns to select from, or plain green velvet. Originally \$175, go at \$147.50
A 3-cushion Overstuffed Davenport, medium quality tapestry covering, 2 patterns to select from. Originally \$175, go at \$135.00
A 3-cushion Overstuffed Davenport, plain velvet covering, old blue, of mulberry. Originally \$160, at \$127.50
A 155 Mahogany and cane cushion Davenport, loose cushion back, blue velvet and brocade covering. Very stylish. To go at \$118.00
A 145 Carved Mahogany base Davenport, plain English linen covering, plain seat. \$95.00
A 3-cushion Overstuffed Davenport, plain antique rose and gold velvet covering, excellent quality. Originally priced \$122, to go at \$112.00
An \$7.50 3-cushion Overstuffed Davenport in neutral color denim, well made, to go at \$55.00
A 135 High-Back Fireside Chair, fine mahogany base covered with best quality all-wool tapestry and black velvet. To go at \$59.00
A \$25.00 Sheraton Mahogany Tip-Top Table, to go in \$19.50
A \$38.50 medium-sized Overstuffed Chair, excellent quality tapestry covering, two patterns to select from, to go at \$65.00
A \$70 Overstuffed Easy Chair, tufted back and arms, good grade of tapestry covering, \$49.00
A \$55 medium-sized Overstuffed Chair, denim covering, to go at \$37.50
A \$65 small Overstuffed Bedroom Chair with pink satin covering, at \$32.50
A \$41 Mahogany Living-room Chair, black satin covering, to go at \$27.50
A \$45 Jacobean Oak Library Table, splendid finish, to go at \$29.50
A \$22.50 Jacobean Oak Library Table, to go at \$20.00
A \$40 Tip-Top Mahogany Pie Crust Table, to go in this sale at \$13.75
A \$21.50 Black-Lacquered Butler's tray with 4 stands, to go at \$8.75
A \$22.50 Sheraton Mahogany Tip-Top Table, to go in this sale at \$19.50
A \$25.00 Jacobean Oak Drop-leaf Sewing Table, two drawers, to go at \$15.00
A \$48 Inlaid Mahogany Tea Wagon, glass trays, to go at \$27.50

A Varied Collection of Art Lamps Priced for Decisive Disposal

- A \$15.00 Black Wicker Table Lamp, rose silk-lined shade, to go at \$6.75
A \$7.00 Table Lamp, metal and glass, at \$2.00
An \$8.00 Pale Green Porcelain Bed Room Lamp and shade, to go at \$3.25
A \$20.00 Bedroom Lamp, gold and red porcelain, silk shade, to go at \$7.50
A \$35.00 Porcelain Table Lamp, blued black, rose and blue silk shade, \$16.50
An \$18.00 Large Porcelain Table Lamp Base, three-light fixture, two colors, at \$7.50
An \$18.00 Mahogany Floor Lamp, to go at \$11.75
A \$15.00 Floor Lamp, ivory enamel, to go at \$6.75
A \$20.00 Antique Oak Chinese Lamp Base, three-light fixture, to go at \$7.75
An \$8.00 large two-light Ivory Enamel Wood Table Lamp Stand, slightly shopworn, to go at \$3.75
A \$10.00 Medium-Sized Table Lamp Base, green painted wood, to go at \$4.75
A \$5.00 Small Mahogany Stand Lamp Base, three-light shopworn, to go at \$2.25
A \$4.00 Art Nouveau Flower Holder, with glass receptacle, to go at 95c
A \$3.00 Decorated Flat Flower Holder to go at 90c
An \$8.00 Art Nouveau Jewel Box, ivory tint, silk lining, to go at \$1.95
\$8.00 Book Ends, with clock, decorated enamel, to go at \$2.25
A \$12.00 Ivory Enamel Desk Set, six pieces, to go \$3.75
A \$5.75 Cream Enamel Desk Set, four pieces, to go \$1.35
A \$3.00 Silver and Gold Florentine Auto Flower Holder, with glass tube, \$1.00
A \$12.00 White Enamel Clock, decorated in colors, to go at \$3.75
A \$4.00 pair of Candlesticks, shopworn, go at \$1.65
\$5.50 Book Ends, myrtle wood, to go at \$1.50
A \$4.50 Mahogany Nut Bowl, to go at \$2.25
A \$2.00 Mahogany Nut Bowl to go at 95c

A Very Handsome Jacobean Oak Dining-Room Suite

Consisting of 10-ft. Extension Table with apron leaves, large Sideboard 84 inches long, 2 Arm Chairs and 6 Side Chairs. Well worth its regular price of \$650. Now \$387

BABCOCK & PEETS

Incorporated FURNITURE ELEVENTH AND ALDER STREETS

In Good Time for Christmas Buying Comes This Notable

SALE

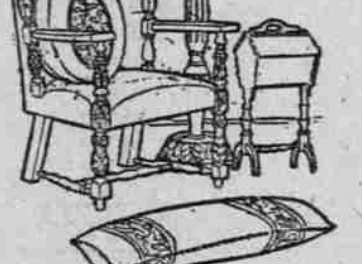
Of Furniture, Drapery and Upholstery Fabrics and Various Novelty Pieces

Beginning Tomorrow at the Establishment of

Babcock & Peets

Incorporated ELEVENTH AND ALDER STREETS

A timely clean-up that involves a goodly collection of various sample and odd pieces of furniture—overstuffed davenports and easy chairs and other living-room and library pieces; fine upholstery and decorative materials, and a number of novelty articles that make worthy Christmas gifts—a sale inaugurated for the purpose of making room for new things constantly arriving. Truly an event of no little importance and one that for exceptional value-giving and variety rings true in every instance. You'll get the real significance of this sale by coming here and acquainting yourself with the character of furniture and other articles offered. The prices will have a strong appeal to holiday gift buyers.



Various Gift Things Greatly Underpriced

- A \$4.00 Art Nouveau Flower Holder, with glass receptacle, to go at 95c
A \$3.00 Decorated Flat Flower Holder to go at 90c
An \$8.00 Art Nouveau Jewel Box, ivory tint, silk lining, to go at \$1.95
\$8.00 Book Ends, with clock, decorated enamel, to go at \$2.25
A \$12.00 Ivory Enamel Desk Set, six pieces, to go \$3.75
A \$5.75 Cream Enamel Desk Set, four pieces, to go \$1.35
A \$3.00 Silver and Gold Florentine Auto Flower Holder, with glass tube, \$1.00
A \$12.00 White Enamel Clock, decorated in colors, to go at \$3.75
A \$4.00 pair of Candlesticks, shopworn, go at \$1.65
\$5.50 Book Ends, myrtle wood, to go at \$1.50
A \$4.50 Mahogany Nut Bowl, to go at \$2.25
A \$2.00 Mahogany Nut Bowl to go at 95c

Perhaps Not Again Such an Opportunity as This in Sample Lengths of

Fine Drapery, Upholstery and Decorative Materials

Ridiculously low prices prevail. Many imported fabrics in the lot, particularly good for Shopping Bags, Knitting and Sewing Bags, Table Throws, Pillow Tops, Chair Coverings and the like.

- 1 1/2-yard lengths of All-Wool Tapestry, 50 inches wide, worth \$7.50 to \$30.00 a yard— Now \$3.00 to \$14.00 Yard
1 1/2-yard lengths of plain and striped Velvet, 50 inches wide, worth \$4.00 to \$12.00 a yard— Now \$1.25 to \$4.75 Yard
1 1/2-yard lengths of English Printed Linens, 50 inches wide, worth \$4.25 to \$6.50 a yard— Now \$1.25 to \$2.25 Yard
1 1/2-yard lengths of English Printed Cottons, 50 inches wide, worth \$3.50 to \$5.00 a yard— Now 75c to \$4.75 Yard
1 1/2-yard lengths of French Warp Printed Cretones, 50 inches wide, worth \$2.50 to \$5.00 a yard— Now 95c to \$3.00 Yard
1 1/2-yard lengths of Plain and Striped Cotton Damask, 50 inches wide, worth \$3.00 to \$4.00 a yard— Now 30c to 95c Yard
1 1/2-yard lengths of Plain and Striped Cotton Damask, 50 inches wide, worth \$2.25 to \$4.50 a yard— Now 50c to \$2.25 Yard
1 1/2-yard lengths of Sunfast fabrics in silk and cotton, 50 inches wide, worth \$1.50 to \$4.75 a yard— Now 50c to \$1.50 Yard

Of Interest to Furniture Buyers

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