

Alati v Kruger (1955) 94 CLR 216

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Facts

- The Plaintiff bought a fruit business from the Defendant
- During negotiations for the sale, the Defendant made several misleading statements about the profitability of the business.
- Once the Plaintiff had bought the business, he became aware that the business was not as profitable as he had been lead to believe, and looked to rescind the contract.
- However, the nature of the store meant that the parties could not be exactly restored to their earlier positions.

Issue

- Could the contract be rescinded, even though the parties could not be exactly restored to their original positions?

Held

- The Court acknowledged that the Plaintiff could have sued for breach of warranty or for fraud, but either of these would *affirm* the contract and leave damages as the only remedy.
- Rescission was not available at common law, because the parties could not be restored to their original positions.
- However, it was available at equity, as equity can allow rescission provided that the parties can be substantially returned to their earlier positions.
- Thus, the Plaintiff obtained his desired remedy of rescission.

Quotes

- "If the case had to be decided according to the principles of the common law, it might have been argued that at the date when the respondent issued his writ he was not entitled to rescind the purchase, because he was not then in a position to return to the appellant in specie that which he had received under the contract, in the same plight as that in which he had received it." [223]
- "equity has always regarded as valid the disaffirmance of a contract induced by fraud even though precise restitutio in integrum is not possible, if the situation is such that, by the exercise of its powers, including the power to take accounts of profits and to direct inquiries as to allowances proper to be made for deterioration, it can do what is practically just between the parties, and by so doing restore them substantially to the status quo." [224]

Full Text

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