

Being of opinion, therefore, in this case, that the misrepresentation, whether known to be false or not, was of matter material to the contract, and upon which the purchaser relied, and by which he was misled to his injury, the sale must be rescinded, unless the purchaser since the sale has done, or forborne to do, some act essential to the assertion of his rights, or unless he is attempting to vindicate them in the wrong forum.

The rule as laid down in the books is, that where goods are discovered not to answer the order given for them, or to be unsound, the purchaser ought in a reasonable time to return them to the vendor, or to give him notice to take them back, and thereby rescind the contract, or he will be presumed to acquiesce in their quality. And in the case of a breach of warranty, he may sue upon it without returning the goods; or rescind the contract by returning them, or the offer to return them in a reasonable time, so that the seller is placed in *statu quo*; and sue for, and recover back the purchase money, in an action for money had and received. 2 *Kent*, 480; *Franklin and Armfield vs. Long*, 7 *G. & J.*, 407.

What is a reasonable time, within which the purchaser must rescind the contract, by a return of, or offer to return, the thing purchased, does not appear to be stated in the books. The time, however, is to be computed from the period when the unsoundness of the chattel is discovered, and not from the date of the contract.

The bill in the case alleges, that so soon as the purchaser discovered the slaves to be unsound, that is, about one month after the sale, and before the death of the infant, he complained thereof to the vendor, John Mitchell, and required him to cancel the sale and take back the negroes, and return the consideration which had been paid for them, which he refused to do.

The proof upon this point is, that in or about one month after the sale; that is, about the 1st of June, 1848, the complainant went to the defendant, John Mitchell, to get him to take the negroes back, which the defendant said he could not do—the court would not allow him. Afterwards, on or about the 20th of September, 1848, the complainant again went to the same