in general must be viewed and if an occasional hardship occurs it is not the duty of the court to invalidate the law on that ground as long as the means adopted have a reasonable relation to the end to be attained. *In re People*, 264 N.Y. 69, 190 N.E. 153, 96 A.L.R. 297 (1934); *Nebbia* v. *People of New York*, 291 U.S. 502, 78 L. Ed. 940, 54 Sup. Ct. Rep. 505 (1933).

The Ohio legislature had before it during a recent session a bill substantially the same as the one now in effect in Indiana, 91st G. A., H.B. No. 170. This was rejected. The decision in the principal case will, no doubt, be helpful to the legislature should a similar bill be presented in the future. It seems as if the Ohio courts should have no more difficulty upholding such a law than did the New York court. The same constitutional problems that would arise here were discussed and passed upon in the principal case.

PHILIP J. WOLF

# DECEIT

DECEIT — NECESSITY OF SCIENTER OR NEGLIGENCE IN ADDITION TO FALSITY

In December, 1929, the plaintiff purchased from Willis F. Walker, a farm represented to contain 87.883 acres and described in the deed as containing 87.883 acres "more or less." It had been known for years as an 88-acre farm, was on the tax duplicate as such and had been so recorded in an old atlas for the county. The plaintiff discovered after living on the premises for more than four years, that they contained 25 acres less than his grantor had supposed and brought action for damages for the deficiency. The court held that in order to recover, the purchaser must prove either actual fraud upon the part of the vendor, or that the vendor's representations were of a character which from their nature showed that he must have known them to be untrue, or that he was guilty of culpable negligence amounting to fraud. *Fillegar* v. *Walker*, 54 Ohio App. 262, Ohio Bar, March 8, 1937.

The courts in this country are not in accord as to whether the plaintiff, in order to maintain an action of deceit, must show that the false statement was made with knowledge of its falsity, or whether a false statement negligently made will constitute a basis for the action, or whether a false statement, without either scienter or negligence, will be sufficient. The majority of the states follow the view of the English case, *Peek* v. *Derry*, 14 App. Cas. 337 (1889), in holding that knowledge, by the one making the statement, of its falsity is an essential

element of a deceit action; that is to say that the problem is one of ascertaining the actual belief of the one making the representation. *Griswold* v. *Gebbie*, 126 Pa. 353, 17 Atl. 673, 12 Am. St. Rep. 878 (1889); *Colorado Springs Company* v. *Wight*, 44 Colo. 179, 96 Pac. 820, 16 Ann. Cas. 644 and note (1908); *Hindman* v. *Louisville National Bank*, 112 Fed. 931, 50 C.C.A. 623, 57 L.R.A. 108 (1902); *Endsley* v. *Johns*, 120 Ill. 469, 12 N.E. 247, 60 Am. Rep. 572 (1887); *Sallis* v. *Johnson*, 85 Conn. 77, 81 Atl. 974, Ann. Cas. 1913 A. 386 (1911). Another line of cases have held that the statement of a fact which the party has no reasonable ground to believe true is fraudulent, even though in fact believed. *Howe* v. *Martin*, 23 Okla. 561, 102 Pac. 128, 138 A.S.R. 840 (1909); *Linscott* v. *Orient Insurance Company*, 88 Me. 497, 34 Atl. 405, 51 A.S.R. 435 (1896); *Erie City Iron Works* v. *Barber*, 106 Pa. 125, 5 Am. Rep. 508 (1884). There is authority for the doctrine that a falsity alone, without either knowledge or negligence is sufficient. *Palmer* v. *Golberg*, 128 Wis. 103, 107 N.W. 478 (1906); *Walters* v. *Eaves*, 105 Ga. 584, 32 S.E. 609 (1899).

Ohio's position on the question is by no means clearly defined, nor is the problem often met directly and discussed in the cases. An accurate interpretation of the language used in the opinions is thus rendered more difficult. In some cases, confusion results from a failure to distinguish between that which is evidence of fraud and that which constitutes it.

One group of the cases holds that a fraudulent purpose must be shown to have been entertained, though not designating the same degree of conscious motive. In *Miller* v. *Forest City Motor Co.*, 23 Ohio App. 266, 153 N.E. 905 (1926), it is said a knowledge of "guilt" must be proved. An early case after stating the requirement of fraudulent purpose to be proved by direct evidence or at least knowledge of the falsity, says in qualification: "Indeed it is not necessary to show he knew the fact represented to be untrue if no reasonable grounds for the belief exist." Apparently, in the latter statement the court is referring to method of proof and not the ultimate test; if not, the statement seems to be contradictory. *Nugent* v. *Cincinnati H. & I. Straight Line Railway Co.*, 2 Disn. 302, 13 Ohio Dec. Rep. 185 (1858). Another decision is to the effect that one who makes representations founded on information from persons having direct knowledge and after he has made direct inquiry, with implicit belief in the statements is not liable. *Belmont Mining Co.* v. *Rogers*, Ohio C.C. 305, 6 Ohio C.D. 619 (1895). Frequently a knowledge of the falsity is recited in dicta as an

essential element. *Bank of St. Clairsville* v. *Beebe*, 6 Ohio 497 (1834); *Spencer* v. *King*, 3 Ohio N.P. 270, 5 Ohio D.N.P. 113 (1896); *State ex. rel. Ireton* v. *Dolle*, 5 Ohio N.P. (N.S.) 248, 17 Ohio D.N.P. 307 (1907).

Something less than conscious purpose to defraud has been deemed sufficient in most of the Ohio cases. *Taylor* v. *Leith*, 26 Ohio St. 428 (1875), while saying bad faith must be shown, clearly indicates belief would be insufficient to exonerate if the facts were not such as to justify the belief. It is necessary to establish that defendant knew the representations to be false or by the exercise of reasonable care, ought to have known it. *Mason* v. *Moore*, 73 Ohio St. 275, 4 L.R.A. (N.S.) 597, 76 N.E. 932, 4 Ann. Cas. 240 (1906); *Hellesheimer* v. *Swisher*, 7 Ohio L. Rep. 629, 56 Bull. 71; *Atkinson* v. *Braddock*, 14 Ohio App. 205, 32 Ohio C.A. 58 (1920). The court says in the Braddock case, *supra*, the test is not the abstract belief or state of mind of the person charged with such knowledge but the objective one of what a reasonably prudent man would have believed under all the circumstances.

Approval may be found, also, for the third view, if a possible construction is placed on certain words of the court in *Gleason* v. *Bell*, 91 Ohio St. 268, 110 N.E. 513 (1915), after which they quote Bigelow on Fraud saying: "A positive statement implies knowledge and if the party who makes it has no knowledge on the subject, he has told scienter what is untrue." Probably the court meant to base its decision on defendant's negligence in failing to know what he should have known, but the former interpretation is evidently placed on it in *Fries* v. *Gannon*, 9 Ohio App. 387 (1918), where it is regarded as authority for a decision in which reasonable care under the circumstances is not made an issue. Statements of a similar character are made in another case which, however, is usually cited for the proposition that gross negligence may constitute fraud. *Aetna Insurance Co.* v. *Reed*, 33 Ohio St. 283 (1877). Liability is clearly predicated on falsity alone in *Douglas* v. *Plotkin*, 13 Ohio C.C. 461, 7 Ohio C.D. 159 (1897).

The principal case, since the evidence indicated the defendant could not by ordinary care have known of the mistake, amounts to a holding that a deceit action cannot be maintained without proof of knowledge or negligence. This is to be distinguished from actions for rescission or breach of warranty where a material false representation is sufficient. *Mulvey* v. *King*, 39 Ohio St. 491 (1883); *Carr* v. *Miller*, 2 Ohio App. 430, 19 Ohio C.C. (N.S.) 324 (1914); *Gallipolis Furniture Co.* v. *Symmes*, 19 Ohio C.C. 659, 10 Ohio C.D. 514 (1900). If the plaintiff had refused to accept the land or pay the purchase price, a

different problem would have been presented but inasmuch as he has continued in possession of the premises for four years, his action is clearly deceit. Most of the cases are in agreement that falsity alone is insufficient; *Douglas* v. *Plotkin, supra,* a lower court case, is *contra.*

The decision sheds little light on the problem of whether a negligently false statement will be sufficient for deceit. There are cases that say that the statement must be made with knowledge of the falsity; a larger number in Ohio, that a negligently false statement is sufficient. Between these views are assertions that the statements must have been knowingly false or grossly negligent. The principal case says that to establish liability defendant must be shown to have been guilty of "culpable negligence." The expression is unfortunate. Is culpable negligence more than ordinary negligence? Is it equivalent to gross negligence? Are degrees of negligence to be recognized in deceit cases in Ohio? The leading English case of *Peek* v. *Derry, supra,* holds flatly that a false statement negligently made is not sufficient for an action of deceit and a majority of the American cases purport to follow this view. With numerous statements in the Ohio cases both for and against the doctrine, a new authoritative statement by the Supreme Court that would definitely align Ohio with or against the majority American view that knowledge of the falsity is essential to an action in deceit, would be helpful.

ANNA FAYE BLACKBURN

# DEFAMATION

## LIBEL AND SLANDER — ORAL STATEMENTS HELD TO BE LIBEL INSTEAD OF SLANDER

The plaintiff was an electrical contractor in the city of Elyria, Ohio. Being a strong proponent of municipal ownership, he, both voluntarily and by request, advised public officials in northern Ohio against accepting the rate proposals of the defendant company. In September of 1932 the company received an anonymous letter attacking the plaintiff's character and reputation. This was forwarded to the defendant's general manager in Cleveland who selected certain statements from the letter and deleted all portions favorable to the plaintiff. A short time later the citizens of Amherst were considering the sale of their local distributing system to the company, and, on October 13, arranged a public discussion meeting at which the general manager was to speak. The plaintiff spoke in opposition to the proposal. Following his remarks the general manager arose and announced to the