

tion for the jury, under appropriate instructions; and the charge in this respect was sufficiently favorable to the defendant.

*Judgment on the verdict.*

SMITH, J., did not sit: the others concurred.

---

DEMOREST v. EASTMAN & a.

No action can be maintained to recover the price of goods which the vendee has been induced to purchase through the fraudulent representations of the plaintiff, if the vendee, upon discovery of the fraud, seasonably offers to return them.

ASSUMPSIT, to recover for goods sold. Facts found by the court. The defendants, by means of the false representations of the plaintiff's agent, of which she had knowledge and subsequently ratified, were induced to purchase the goods in question. Subsequently, upon discovery of the fraud, they seasonably notified the plaintiff that they rescinded the contract of sale, and offered to return the goods, and afterwards kept them, subject to the plaintiff's order.

*Hobbs and Fife*, for the plaintiff.

*Pitman and Smith*, for the defendants.

STANLEY, J. The defendants had the right to rescind, and having notified the plaintiff to that effect, and offered to return the goods, no action can now be maintained against them to recover the price.

*Exception overruled.*

FOSTER, J., did not sit: the others concurred.

---

STATE v. BUZZELL.

The refusal of the court to repeat a ruling once distinctly made in a trial is no cause for a new trial.

One may be convicted of either of two felonies which have so merged that, if the proper plea were interposed, he could not be convicted of both.