

## Laidlaw et al. v. Organ

Supreme Court of The United States  
15 U.S. 178 (1817)

[The plaintiff Organ purchased tobacco from defendant Laidlaw. Laidlaw then repossessed the tobacco by force. The dispute went to trial where the jury found for Organ and ordered the tobacco returned to the purchaser. Laidlaw is now appealing the decision of the jury that was in favor of the plaintiff. Laidlaw claims that the contract was not valid because of a misrepresentation by the plaintiff.

Immediately preceding the purchase, the purchaser, Organ, had been informed that the Americans and the British had signed the Treaty of Ghent. This would have a positive impact on the price of tobacco. Not knowing the treaty had been signed; the defendant, Laidlaw, sold the tobacco at the lower pre-treaty price. Was this fraud? Given the unilateral information is there a valid contract? Did the plaintiff have the duty to inform the defendant of the recent news?]

### PRIOR HISTORY:

[The circumstances surrounding the transaction were as follows.]

... on the night of the 18th of February, 1815, Messrs. Livingston, White, and Shepherd brought from the British fleet the news that a treaty of peace had been signed at Ghent by the American and British commissioners, contained in a letter from Lord Bathurst to the Lord Mayor of London, published in the British newspapers, and that Mr. White caused the same to be made public in a handbill on Sunday morning, 8 o'clock, the 19th of February, 1815, and that the brother of Mr. Shepherd, one of these gentlemen, and who was interested in one-third of the profits of the purchase set forth in said plaintiff's petition, had, on Sunday morning, the 19th of February, 1815, communicated said news to the plaintiff; that the said plaintiff, on receiving said news, called on Francis Girault, (with whom he had been bargaining for the tobacco mentioned in the petition, the evening previous,) said Francis Girault being one of the said house of trade of Peter Laidlaw & Co., soon after sunrise on the morning of Sunday, the 19th of February, 1815, before he had heard said news. Said Girault asked if there was any news which was calculated to enhance the price or value of the article about to be purchased; and that the said purchase was then and there made, and the bill of parcels annexed to the plaintiff's petition delivered to the plaintiff between 8 and 9 o'clock in the morning of that day; and that in consequence of said news the value of said article had risen from 30 to 50 per cent. There being no evidence that the plaintiff had asserted or suggested any thing to the said Girault, calculated to impose upon him with respect to said news, and to induce him to think or believe that it did not exist; and it appearing that the said Girault, when applied to, on the next day, Monday, the 20th of February, 1815, on behalf of the plaintiff, for an invoice of said tobacco, did not then object to the said sale, but promised to deliver the invoice to the said plaintiff in the course of the forenoon of that day; the

court charged the jury to find for the plaintiff. Wherefore, that justice, by due course of law, may be done in this case, the counsel of said defendants, for them, and on their behalf, prays the court that this bill of exceptions be filed, allowed, and certified as the law directs.

DOMINICK A. HALL,

District Judge.

New-Orleans, this 3d day of May, 1815."

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LAWYERS' EDITION HEADNOTES:

The vendee is not bound to communicate to the vendor of goods the intelligence of extrinsic circumstances, which might influence the price of the commodity, and which is exclusively within the knowledge of the vendee, particularly where the means of intelligence are equally accessible to both parties.

At the same time, each party must take care not to say or do anything tending to impose upon the other.

The question, whether any imposition was practised by the vendee upon the vendor, ought to be submitted to the jury.

COUNSEL:

Mr. C. J. Ingersoll, for the plaintiffs in error.

1. The first question is, whether the sale, under the circumstances of the case, was a valid sale; whether fraud, which vitiates every contract, must be proved by the communication of positive misinformation, or by withholding information when asked. Suppression of material circumstances within the knowledge of the vendee, and not accessible to the vendor, is equivalent to fraud, and vitiates the contract. ... The parties treated on an unequal footing, as the one party had received intelligence of the peace of Ghent, at the time of the contract, and the other had not. This news was unexpected, even at Washington, much more at New-Orleans, the recent scene of the most sanguinary operations of the war. In answer to the question, whether there was any news calculated to enhance the price of the article, the vendee was silent. This reserve, when such a question was asked, was equivalent to a false answer, and as much calculated to deceive as the communication of the most fabulous intelligence. Though the plaintiffs in error, after they heard the news of peace, still went on, in ignorance of their legal rights, to complete the contract, equity will protect them.

...

Mr. Key contra, ...

The judge's charge was right, there being no evidence of fraud. The vendee's silence was not legal evidence of fraud, and, therefore, there was no conflict of testimony on this

point: it was exclusively a question of law; the law was with the plaintiff; and, consequently, the court did right to instruct the jury to find for the plaintiff. ... The only real question in the cause is, whether the sale was invalid because the vendee did not communicate information which he received precisely as the vendor might have got it had he been equally diligent or equally fortunate? And, surely, on this question there can be no doubt. Even if the vendor had been entitled to the disclosure, he waived it by not insisting on an answer to his question; and the silence of the vendee might as well have been interpreted into an affirmative as a negative answer. But, on principle, he was not bound to disclose. Even admitting that his conduct was unlawful, in foro conscientiae, does that prove that it was so in the civil forum? Human laws are imperfect in this respect, and the sphere of morality is more extensive than the limits of civil jurisdiction. The maxim of caveat emptor could never have crept into the law, if the province of ethics had been co-extensive with it. There was, in the present case, no circumvention or maneuver practiced by the vendee, unless rising earlier in the morning, and obtaining by superior diligence and alertness that intelligence by which the price of commodities was regulated, be such. It is a romantic equality that is contended for on the other side. Parties never can be precisely equal in knowledge, either of facts or of the inferences from such facts, and both must concur in order to satisfy the rule contended for. The absence of all authority in England and the United States, both great commercial countries, speaks volumes against the reasonableness and practicability of such a rule.

Mr. C. J. Ingersoll, in reply.

Though the record may not show that any thing tending to mislead by positive assertion was said by the vendee, in answer to the question proposed by Mr. Girault, yet it is a case of maneuver; of mental reservation; of circumvention. The information was monopolized by the messengers from the British fleet, and not imparted to the public at large until it was too late for the vendor to save himself. The rule of law and of ethics is the same. It is not a romantic, but a practical and legal rule of equality and good faith that is proposed to be applied. The answer of Boorman & Johnston denies the whole of the petition, and consequently denies that payment was to be in bills of exchange; and their taking the bills out of court, ought not to prejudice them. There is nothing in the record to show that the vendors were general merchants, and they disclosed their principals when they came to plead. The judge undertook to decide from the testimony, that there was no fraud; in so doing he invaded the province of the jury; he should have left it to the jury, expressing his opinion merely.

#### OPINIONBY: MARSHALL

The question in this case is, whether the intelligence of extrinsic circumstances, which might influence the price of the commodity, and which was exclusively within the knowledge of the vendee, ought to have been communicated by him to the vendor? The court is of opinion that he was not bound to communicate it. It would be difficult to circumscribe the contrary doctrine within proper limits, where the means of intelligence are equally accessible to both parties. But at the same time, each party must take care not to say or do any thing tending to impose upon the other. The court thinks that the

absolute instruction of the judge was erroneous, and that the question, whether any imposition was practiced by the vendee upon the vendor ought to have been submitted to the jury. For these reasons the judgment must be reversed, and the cause remanded to the district court of Louisiana, with directions to award a venire facias de novo.

Venire de novo awarded.

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## Questions

1. Did purchaser commit fraud? Did the court arrive at an efficient solution to the problem of unilateral information?
2. Do speculators like the purchaser provide a socially useful function?
3. Should it make a difference whether the information obtained by the purchaser was the result of effort and not gratuitous chance?
4. Under what circumstances might failure to disclose be a valid reason for abrogating a contract?
5. In the context of a bargain, provide an example of unilateral information that enhances welfare versus unilateral information that simply redistributes welfare.