

Fong & Co., three Chinamen who had formed a syndicate. On the 24th February, 1916, the purchasers being in default, an agreement was made by which the first agreement was reinstated and cut down to the purchase of one lot only. The purchasers again defaulted, and the new agreement was forfeited by reason of the default.

On the 6th March, 1917, the defendants sold this lot to one Ford, not a party to this action.

On the 5th February, 1918, Tung Tim Fong & Co., in consideration of \$250, sold their agreement to the plaintiff.

The plaintiff, before this purchase, made inquiry at the Windsor office of the defendants, and was told that the agreement was in force. This was an innocent error, arising from the fact that the cancellation and resale had not been reported by the Toronto office to the Windsor office of the defendants.

Assuming that all was right after the purchase of the agreement, the plaintiff paid the defendants \$250 on account of the balance assumed to be due.

When the error was ascertained, the defendants at once offered to return the money paid, but this was refused.

Specific performance could not be granted, as the right of a third person had intervened.

Damages might be recovered; the question was as to the measure of damages.

The relation of vendor and purchaser was not created between the parties, as the contract bought by the plaintiff was at an end by reason of its forfeiture.

The defendants unintentionally misled the plaintiff into paying money upon the faith of the contract being a valid and subsisting contract, and this they must recoup him. As to the \$250 paid to the Chinese syndicate, it must, on the evidence, be found that it was paid.

The plaintiff was not content to have his recovery so limited; he sought to have also the profit which he would have made had he been able to carry out the purchase. No authority was cited warranting this, and it seemed to be contrary to principle. The defendants must put the plaintiff in the position he would have occupied had they told him the facts as they were. Had they told him that the contract he was about to purchase had become forfeited and void, and the land had been sold to another, he would not have parted with his money, and so his money must be refunded, but he would not have made the profit on the land transaction, and he could not recover it.

An alternative claim was made by the plaintiff, as assignee of the syndicate, to recover the money paid by the syndicate. *Walsh v. Willaughan* (1918), 42 O.L.R. 455, shews that, when a contract