

from the defendant Douglas, to whom it had been conveyed by the defendant Bumstead, and which covenant applied to the assumption by the plaintiff and payment of a mortgage on the last mentioned land, previously given thereon by the defendant Douglas to his father.

W. H. Wright and J. A. Horning, for the plaintiff.

Wallace, for the defendant Douglas.

I. B. Lucas, K.C., for the defendant Bumstead.

SUTHERLAND, J.:—At the trial I came to the conclusion that there had been misrepresentation in writing by the defendant Douglas as to the character of the last-mentioned property when he was negotiating for its sale to the plaintiff, and by the defendant Bumstead, when, at the request and acting for the defendant Douglas, he shewed the plaintiff over the property in the winter when it was covered with snow. I thought then, and find now, that the defendants were in collusion in effecting a sale of the lands to the plaintiff at a price which, upon the evidence, I also find was greatly in excess of its value, to their knowledge. They misrepresented both the character and value of the property. At the conclusion of the argument, therefore, I expressed myself as follows:—

“My intimation is that the transaction can hardly stand. I am not committing myself definitely to that; I am not sure that, if I determined that finally, the plaintiff is entitled to very much consideration on the question of damages if he is reinstated; because, while he may have been misled, people have to pay a little attention to common sense about these things and not come into Court as children; so that, if that view were to be finally given effect to by me, it would be more a question of how the parties would be reinstated, and my determining whether the plaintiff should get any damages, and, if so, what comparatively small sum for damages. As to the question of costs; if it is worth while, I will leave that open for three or four days, as I shall be away for a week or ten days. I would suggest to all the counsel to try and work that out if it can be accomplished. I tell them that so that their clients may know that I think it is a very desirable and proper thing to do under the circumstances, without determining the matter finally.”

Since the trial, the defendants have arranged to have the first-mentioned property reconveyed to the plaintiff. This has simplified matters, as, in the absence from the record of the father of the defendant Douglas, who is to make such recon-