

mortgagees, who applied it in reduction of their mortgage debt. At the time the plaintiff paid he did not know of Baechler's connection with the matter.

Held, that the plaintiff was entitled to recover against both defendants for the amount paid as money paid at their request.

This judgment was reversed by the Court of Appeal, 15 A.R. 244, but was affirmed and restored by the Supreme Court of Canada.

Moss, Q.C., for plaintiff.

S. H. Blake, Q.C., for defendant, Baechler.

Chancery Division.

FERGUSON, J.]

[Jan. 18.

NELLES v. ONTARIO INVESTMENT SOCIETY.

Corporations—Shareholder—Misrepresentation—Rescission of contract for shares.

Action by a shareholder of the Ontario Investment Association to have it declared that his subscription for shares had been obtained by fraud and misrepresentation, and that it was not binding upon him, and for other relief.

It appeared that in 1882 the said Association had amalgamated with the Superior Loan and Savings Society, and under the terms of the amalgamation the shareholders in the latter became entitled, on payment of a premium of 17 per cent., to an equivalent number of shares of the former.

It was thus the plaintiff became entitled to his shares in the Association, having previously been a shareholder in, and manager of, the Superior Loan and Savings Society; and he was an assenting party to the amalgamation, which he now attacked as *ultra vires*, and brought about by misrepresentation and fraud. It was proved that there were many material misrepresentations in a certain report of the Association, dated December 31st, 1881, which had been an important factor in bringing about the assent to the amalgamation by the Society, and in inducing the plaintiff to subscribe for the shares in the Association, and that the plaintiff had not become aware of their falsity until shortly before bringing this action. It was not shown that the Association was insolvent or on the eve of insolvency.

Held, that the plaintiff was entitled to a rescission of the contract made by his subscription for stock in the Association.

Practice.

FALCONBRIDGE, J.]

[March 6.

In re NELSON.

* *Costs—Taxation—Appeal under rule 854.*

The practice upon appeals from pending taxations of costs to the Master in Chambers or the Master in Ordinary under rule 854 should be simple and inexpensive; there is no necessity for a formal order or a counsel fee upon such an appeal.

It is not desirable that any taxation should come more than once by way of appeal before a judge; and where there was an appeal pending the taxation to the Master in Ordinary, and an appeal from his order to a Judge in Chambers, the latter was ordered to stand over till after the close of the taxation.

Haverson, for appeal.

Nelson, *contra*.

Q.B. Div'l Ct.]

[March 7.

BUNBURY v. MANUFACTURERS' INS. CO.

Jury notice—Second trial—Rules 670, 671.

This action was entered for trial at the Toronto Autumn Assizes, 1888. Before it was reached the solicitors agreed that the trial should be put off until the January Assizes, and at their request the clerk of assize struck the case off the list for the Autumn Assizes. No notice for jury had been given, and the assent of the Court was not obtained to the postponement of the trial.

Rule 670 provides that where an action has been entered for trial, it may be withdrawn by either the plaintiff or defendant upon producing to the proper officer a consent in writing signed by the parties, but not otherwise except by order.

Held, that the object of this rule was to entitle the defendant to insist upon the trial of a case which the plaintiff had entered being proceeded with, unless the Court should give the plaintiff leave to withdraw it; and what took place here was not a with-