

The facts as to this are not developed, and we express no opinion upon this point; but the plaintiff may, if he is so advised, set up in his amended pleadings a new contract entered into at that time.

If this option be not accepted, the appeal should be allowed and the action dismissed, both with costs.

That an action lies for fraud, even when the contract is not set aside, appears from such cases as *S. Pearson & Son Limited v. Dublin Corporation*, [1907] A.C. 351.

MULOCK, C.J.Ex., and SUTHERLAND, J., agreed in the result.

LEITCH, J., agreed with RIDDELL, J.

Order accordingly.

HIGH COURT DIVISION.

MIDDLETON, J., IN CHAMBERS.

DECEMBER 22ND, 1913.

JOLICOUR v. TOWN OF CORNWALL.

Costs—Taxation—Rules of 1913—New Tariff—Frame of Bill—Estoppel—Appeal—Witness Fees—Surveyors—Quantum of Allowance—Conflict between Rules and Statute.

Appeal by the plaintiff from the taxation of his costs of the action against the defendants by the local officer at Cornwall.

Featherston Aylesworth, for the plaintiff.

H. S. White, for the defendants.

MIDDLETON, J.:—First, it is said that part of the work was done before the Rules of 1913 came into force, yet the taxation has been upon the tariff appended to those Rules.

The plaintiff brought in for taxation a bill framed upon the present tariff, and the defendants did not object to taxation upon that tariff. The plaintiff now seeks to withdraw the bill which he has taxed and substitute for it a bill based upon the old tariff for all the work done up to the 1st September; contending that, notwithstanding the foot-note to the tariff, it does not apply to that work. I do not think it necessary to determine this ques-