

FIRST DIVISIONAL COURT.

APRIL, 2ND, 1918.

\*YOST v. INTERNATIONAL SECURITIES CO. LIMITED  
AND MACPHERSON.

\*DANNACKER v. INTERNATIONAL SECURITIES CO.  
LIMITED AND MACPHERSON.

*Fraud and Misrepresentation—Agreements to Purchase Land—  
Evidence—Rescission of Agreements—Return of Money Paid—  
Damages for Deceit—Judgment against one of two Joint  
Wrongdoers—Release of other—Judgment Pronounced on  
Motion—Return of Moneys Paid—Rules 35, 220, 354-358.*

Appeals by the defendant MacPherson in each case from the  
judgment of SUTHERLAND, J., 12 O.W.N. 410.

The appeals were heard by MACLAREN, MAGEE, HODGINS,  
AND FERGUSON, J.J.A.

R. T. Harding, for the appellant.

R. S. Robertson, for the plaintiffs, respondents.

FERGUSON, J.A., reading the judgment of the Court, said, after stating the facts, that the appellant, with the intention of inducing the plaintiffs to purchase certain lots, and so that he might earn a commission of 20 per cent. of the purchase-price, took upon himself either to make statements that he knew to be untrue or to assert his belief and knowledge in reference to matters on which he had no real belief or knowledge; in other words, these representations were made with a reckless disregard as to whether they were true or false, and without caring whether they were true or false, so long as they served the purpose of securing the plaintiffs' contracts to purchase. Viewing the appellant's conduct in the most favourable light, he took upon himself to warrant his own belief in that which he asserted, in reference to which he was entirely ignorant, and he should be held as responsible as if he had asserted that which he knew to be untrue: *Derry v. Peek* (1889), 14 App. Cas. 337, and cases in *Halsbury's Laws of England*, vol. 20, pp. 688 to 694.

It was argued that the judgments recovered by the plaintiffs against the defendant company precluded the prosecution of these actions against the defendant MacPherson, the appellant—that the recovery was upon the claim for deceit, and that the taking

\* This case and all others so marked to be reported in the Ontario Law Reports.