

Ct. Appeal.]

NOTES OF CANADIAN CASES.

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an action for the recovery of land of which the plaintiff had never been in possession, and the statement was put in two or three ways, so as to give what Lord Bramwell speaks of as alternative rights to relief; but no deed or documents under or by virtue of which the plaintiff derived or deduced his title were stated, and the plaintiff confined himself to general averments. These were so worded that it was not possible to demur to the pleadings, because demurrers, which were then allowable, would have admitted so much as to put the demurring party out of Court. . . . It was held by the whole Court unanimously that the pleading was an embarrassing pleading because it did not state that which the defendant was entitled to have stated for his own protection, and that, therefore, the pleading must be struck out; and this although it was not possible to demur to it successfully. . . . The case seems to me to be absolutely identical in point of principle with *Philipp v. Philpps*. I can see no kind of distinction between them.

NOTES OF CANADIAN CASES.

PUBLISHED IN ADVANCE BY ORDER OF THE
LAW SOCIETY.

COURT OF APPEAL.

WALMSLEY V. GRIFFITH.

Vendor and purchaser—Misrepresentation by purchaser.

The plaintiff negotiated with the defendants Griffith for the purchase of the lands in question and at different times obtained from them writings giving him the option to purchase for \$20,000. Defendants Griffith set up that these negotiations were had with plaintiff as their agent with the view of effecting through him a sale to the Independent Order of Odd Fellows at the same or a higher price for the defendants Griffith—after these options had been given plaintiff on forenoon of 17th February, 1883, agreed to sell to the Odd Fellows for \$25,000, afterwards on same day he went to defendants Griffith and offered to purchase for \$19,500 in lieu of the \$20,000 previously named, he was asked by Griffith whether the sale to the Odd Fellows was off, to which he

replied that it was, and in the same conversation informed Griffith that he could not sell the property for \$20,000 as a reason why he should get it for \$19,500, and the Griffiths themselves agree to sell to plaintiff for \$19,500. The same day afterwards plaintiff entered into a contract in writing to sell to the Odd Fellows for \$25,000.

Held, that without reference to the question of agency to sell, the evidence showed that a sale to the Odd Fellows was in contemplation of both parties and was the foundation of the transaction, and (reversing the judgment of Proudfoot, J.) that the misrepresentation by plaintiff in regard to the sale to the Odd Fellows was such as disentitled him to a decree for specific performance.

BURTON, J. A., dissentiente.

Moss, Q.C., and *Arnoldi* for the appellants (Griffiths).

Robinson, Q.C., McCarthy, Q.C., and J. A. Paterson, for the appellants, the Odd Fellows.

S. H. Blake, Q.C., Maclellan, Q.C., and W. Foster, for the respondent.

McGregor, for other parties.

ELLIS V. ABELL.

Steam threshing machine—Warranty—Defective construction—Verdict of jury—Parol evidence.

The defendant was a manufacturer of steam threshing machines, which were recommended in his advertisements as being safe from fire; that the smoke stack would not throw out sparks and the separator, which was sold and used with the steam threshing machine, did not throw out grain in the chaff and that altogether these were the best thresher and separator in the world. His agent also in going through the country extolled these machines in like manner when soliciting orders therefor. The plaintiff after hearing these recommendations sent an order to the defendant for a steam thresher and separator which, on being used, were said to be defective, the steamer throwing out sparks and the separator wasting the grain by throwing it out with the chaff.

Per HAGARTY, C. J., and ROSE, J.:—That the recommendations of the defendant amounted to a warranty and plaintiff was entitled to damages for the defects in the structure of the machines: and also that the plaintiff was at