

came to Ontario and spent some time in inspecting the farm which he finally purchased on B.'s terms and entered into possession. Shortly after he leased the orchard for ten years and within a day or two discovered that the farm contained over forty acres less than, and the contents of the orchard only half of, what had been represented; also that the farm was not in the condition stated, but badly overrun with noxious weeds. He, therefore, procured the cancellation of the lease of the orchard and brought action to have the sale rescinded.

*Held*, that the lease of the orchard was not, under the circumstances, an affirmation of the contract for sale which would disentitle S. to rescission; that if it were an affirmation as to the orchard the subsequent discovery of the other misrepresentations would entitle him to a decree. *Campbell v. Fleming*, 1 A. & E. 40, distinguished.

Appeal dismissed with costs.

*Anglin*, K.C., for appellant. *McKay*, K.C., for respondent.

Alb.]

CROSS v. CARSTAIRS.

[Feb. 21.

RE EDMONTON (PROVINCIAL) ELECTION.

*Appeal—Provincial election—Preliminary objections—Judicial proceedings—Final judgment.*

*Held*, per DAVIES, IDINGTON and ANGLIN, JJ., that under the provisions of the Alberta Controverted Elections Act, the judgment of the Supreme Court of the province in proceedings to set aside an election to the legislature in final and no appeal lies therefrom to the Supreme Court of Canada.

*Held*, per DUFF, J., that a proceeding under said Act to question the validity of an election is not a "judicial proceeding" within the meaning of sec. 2(e) of the Supreme Court Act.

*Held*, per BRODEUR, J., that the judgment of the Supreme Court of Alberta on appeal from the decision of a judge on preliminary objections filed under the said Controverted Elections Act is not a "final judgment" from which an appeal lies to the Supreme Court of Canada.

Appeal quashed with costs.

*Laflaur*, K.C., and O. M. Biggar, for appellant. *Ewart*, K.C., for respondent.