

MAY 16TH, 1902.

DIVISIONAL COURT.

CLARK v. GRAY.

*Fraud and Misrepresentation—Sale of Shares—Action for Deceit—
Sole or Material Cause of Purchase.*

Motion by plaintiff to set aside nonsuit entered by LOUNT, J., at the trial at Woodstock, of an action for damages for deceit, inducing the plaintiff to purchase from defendant a block of shares in the Bear Creek Mining Co. of British Columbia.

The motion was heard by BOYD, C., and MEREDITH, C.J.

A. B. Aylesworth, K.C., for plaintiff.

G. H. Watson, K.C. for defendant.

MEREDITH, C.J.:—In order to entitle the defendant to have his case submitted to the jury, it was incumbent on him to give evidence that the representations upon which he relied were in fact made; that they were false in fact; that the defendant knew them to be false, or made them recklessly, not caring whether they were true or false; and that the representations were the sole cause of the plaintiff's act of purchasing the shares, or materially contributed to his purchasing them. As to all of the alleged representations, except that as to the \$40,000 stated to have been in the treasury for the purpose of developing the mine, there was no reasonable evidence that they were false to the knowledge of the defendant, or that they were made by him recklessly, not caring whether they were true or false. The plaintiff knew that the information which the defendant communicated to him was the result of what had been reported to him from British Columbia as to the property; and the circumstance that, after discovering the true state of matters, the plaintiff attributed blame for the false statement to Best, from whom the defendant derived his information, and not to the defendant, is an important circumstance to be considered in dealing with this branch. As to the representation as to the \$40,000, the testimony of the plaintiff was somewhat vague and unsatisfactory, but, assuming that it was shewn to have been made as charged by plaintiff, his case fails for lack of any evidence that the representation caused or materially contributed to his act of purchasing the shares. Nothing can be found in the plaintiff's testimony in the nature of a statement of that effect. He did testify that he relied on the defendant's representations as to the property; but that means as to the mining property, its character, richness, etc., and not as to the financial position of the company or the extent to which it had succeeded in disposing of its shares. Motion dismissed, with costs, without prejudice to any action that the