

I find it difficult to understand. A more glaring and palpable case of a fictitious assignment for a fraudulent purpose can scarcely be imagined than that disclosed before me at the trial of this action.

But I am not sitting in appeal from the judgment pronounced in the Division Court, and, since that judgment has "the same force and effect as a judgment of a court of record," with regret I am obliged to give effect to defendants' plea of *res judicata*.

Though not obtained in a direct proceeding between plaintiff and defendant as such, this Division Court judgment, disposing of proceedings taken under sec. 202 of the Division Courts Act, is, I think, clearly within the purview of sec. 7 of that statute, and therefore equivalent to a judgment of a court of record: see *Re Perras v. Keefer*, 22 O. R. 672; *Radford v. Merchants Bank*, 3 O. R. 529; *Dingwall v. McBean*, 30 S. C. R. 441.

Mr. Leitch strongly urged the fraudulent means taken by the present defendants to procure the judgment in the Division Court, as an answer to their plea of *res judicata*, the fraud consisting in perjury. I am not able to agree with his contention. . . . [Reference to *Kerr on Fraud and Mistake*, 3rd ed., p. 301; *Earl of Bandon v. Beecher*, 3 Cl. & F. 497; *Cole v. Langford*, [1898] 2 Q. B. 361; *Baker v. Wadsworth*, 67 L. J. Q. B. 300; *Flower v. Lloyd*, 6 Ch. D. 297, 10 Ch. D. 327; *Black on Judgments*, 2nd ed., p. 296.]

While constrained, therefore, giving effect to defendants' plea of *res judicata*, to dismiss this action, I mark my sense of their dishonesty by refusing to allow them costs.

TEETZEL, J.

DECEMBER 6TH, 1904.

TRIAL.

SCOTT v. SPRAGUE'S MERCANTILE AGENCY OF
ONTARIO, LIMITED.

*Fraud and Misrepresentation—Action for Damages for
Fraudulent Representations Inducing Contract—Failure
to Prove Actual Fraud.*

Action for damages for alleged fraudulent representations by defendants' agent by which plaintiff was induced to enter into a contract with defendants for collection of debts and to give his note for \$250 as a retainer fee, which, being transferred before maturity, plaintiff was compelled to pay.

J. H. Rodd, Windsor, for plaintiff.

M. K. Cowan, K.C., for defendants.