

The actions were tried without a jury at Sandwich.
J. H. Rodd, for the plaintiff.
F. C. Kerby, for the defendant.

FALCONBRIDGE, C.J.K.B., in a written judgment, said that the defendant, being largely indebted to the plaintiff's firm, entered into an agreement on the 14th March, 1918, which contained the following clause: "And the party of the second part further agrees that he will from time to time renew said notes for the balance that is due after applying any moneys received by him." In the margin was written the following memorandum: "This clause is hereby cancelled." This was signed by the plaintiff and the defendant and witnessed by one Nickell.

The defendant contended that he was induced to sign the memorandum of cancellation by the representation made to him by the plaintiff that his solicitor approved of his so doing. He swears that what the plaintiff told him was, "The Colonel says it's O.K. to do it." The Colonel (Wigle, K.C.) said that what he did say was, "Whatever was satisfactory to Hedrick was O.K. to me."

The onus was, of course, upon the defendant to establish misrepresentation. The clause itself was unreasonable, because, if read literally, it would mean that, upon paying any sum, he could get renewals for all time; and, when it was taken into consideration that there was nothing actually requiring legal advice (like the construction of an agreement), it was after all a matter for the exercise of the defendant's own judgment.

The communication between the plaintiff and Colonel Wigle was by telephone, the defendant being present when the plaintiff telephoned.

The learned Chief Justice was not satisfied that any misrepresentation was made as to what was said; but in any event, in view of the above, it was not material.

There should be judgment for the plaintiff for the full amount claimed.

If there was any difference between the parties as to the amount of the judgment, the amount might be settled by the local registrar.

Judgment for the plaintiff with costs.