

The appeal was heard by MEREDITH, C.J.C.P., BRITTON, RIDDELL, and LATCHFORD, JJ.

A. Cohen, for the appellant.

A. J. Anderson, for the defendants, respondents.

THE COURT did not see its way to disagree with the trial Judge on the question of fact; and upon the question of law preferred to follow *Kinzie v. Harper*, which should be approved, rather than *Carson v. Roberts*.

*Appeal dismissed with costs.*

SECOND DIVISIONAL COURT.

FEBRUARY 19TH, 1919.

WHITE v. BELLEPERCHE.

*Fraud and Misrepresentation—Agreements to Purchase Land—Action by Purchasers for Rescission—Fraud of Agents—Authority of Agents—Recovery of Moneys Paid and Interest—Costs.*

An appeal by the plaintiffs from the judgment of FALCONBRIDGE, C.J.K.B., ante 28.

The appeal was heard by MEREDITH, C.J.C.P., BRITTON, RIDDELL, LATCHFORD, and MIDDLETON, JJ.

T. Mercer Morton, for the appellants.

A. W. Langmuir, for the defendants, respondents.

THE COURT held that fraud on the part of the agents of the defendants was proved. The evidence also shewed that the agent Wanless was acting within the scope of his authority. But, even if he was not, the defendants could not take advantage of their own wrong.

The appeal should be allowed and the contracts rescinded; the plaintiffs should recover the moneys paid by them respectively, with interest; and the plaintiffs' costs (one set of costs on the Supreme Court seale) both of the action and appeal should be paid by the defendants.

*Appeal allowed.*