

There was no satisfactory evidence that the defendant made independent inquiries and relied solely, or even principally, upon them. The remarks of Lord Halsbury, L.C., in *Aaron's Reefs Limited v. Twiss*, [1896] A.C. 273, at p. 284, seemed applicable: "You may use language in such a way as, although in the form of hope and expectation, it may become a representation as to existing facts, and if so, and if it is brought to your knowledge that these facts are false, it is a fraud."

The disposition made by the trial Judge of the action, as between the appellant company, the respondent, and the third parties before the Court, although only on a third party notice, was right and proper: *Strathy v. Stephens* (1913), 29 O.L.R. 383. The presence of the third parties was clearly necessary to enable the Court effectually and completely to adjudicate upon the questions involved in the action; for without them the lands could not be released from all claims. They ought, however, to be formally added as defendants, and the pleadings amended, before the order on this appeal is issued.

As to *Medcalf*, the plea of *res judicata* could not be established. The former action was dismissed as against the present appellant, on the ground that *Medcalf* had not bought from it, but from *Newsom*. As against him it was dismissed because his representations were not then proved to be untrue; so that, as to both the appellant company and the respondent, there was no estoppel in the present action, and the principle of *res judicata* had no application.

The appeal should be dismissed with costs as to the respondent and third parties—the latter to tax one bill only.

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FIRST DIVISIONAL COURT.

JANUARY 10TH, 1916.

McFARLAND v. CARTER.

*Limitation of Actions—Possession of Land—Acts of Ownership*  
*—Conflicting Evidence—Overhanging Eaves—Bay Window*  
*—Gas-pipe—Limitations Act.*

Appeal by the plaintiffs from the judgment of the County Court of the County of Welland, in so far as it was against the appellants, in an action to recover possession of land in the village of Colborne, to which the appellants asserted title by length of possession.