

RIDDELL, J.:—In this action, tried before me without a jury at Toronto, the defendant J. A. Adams was discharged at the trial and the action dismissed without costs as against him.

As to the other defendants I gave counsel an opportunity of putting in authorities; and, these now having been furnished, I proceed to dispose of the matter.

The question was raised and has been much discussed whether an innocent misrepresentation will avoid a subscription for stock made upon the faith of such misrepresentation, when followed by an allotment of stock and acceptance of the stock so allotted. The following and other cases may be looked at: Reese River Mining Co. v. Smith, L.R. 4 H.L. 64; Re London and South Staffordshire R.W. Co., 24 Ch.D. 149; Smith's Case, L.R. 2 Ch. 604, at p. 615; Mathias v. Yetts, 46 L.T. 502; Kennedy v. Panamer, L.R. 2 Q.B. 580; Sedden's Case, [1905] 1 Ch. 326; Derry v. Peek, 14 App. Cas. 359; etc., etc.

I think, upon this evidence, there was fraud—the misrepresentations were not innocent, and the claim for rescission must be given effect to. That there were misrepresentations as alleged by the plaintiff is clear beyond any doubt, and I so find—as also that the misrepresentations induced the contract.

There is nothing in the allegation of laches or any of the other grounds of defence of the company.

The subscription for and allotment of the shares will be set aside with costs—and the money paid therefor returned with interest.

I retain the action in respect of the individual defendants until the cancellation of the stock and payment of the costs of the action or until further application.

It is probable that the plaintiff, upon the stock being cancelled, his money returned, and his costs paid, will not seek further relief.

DIVISIONAL COURT.

JANUARY 18TH, 1911.

*RE McCracken AND TOWNSHIP OF SHERBORNE.

Municipal Corporations—By-law Limiting Number of Tavern Licenses in Township to One—Liquor License Act, secs. 18, 20—Municipal Act, sec. 330—Trade—Monopoly—Bona Fides.

Appeal by the Corporation of the United Townships of Sherborne, McClintock, Livingstone, Lawrence, and Nightingale, from

*This case will be reported in the Ontario Law Reports.