The action was tried without a jury at Sandwich.

W. G. Bartlet and H. S. Barnes, for the plaintiff.

F. C. Kerby, for the defendant.

FALCONBRIDGE, C.J.K.B., in a written judgment, said that in considering the weight of testimony it was extremely unsafe necessarily to prefer the evidence of three witnesses as against one, when two out of the three were members of one party's family. More particularly was this the case when the same story was told with absolute exactitude. It gave rise to the suspicion that the matters in question had formed the subject of frequent discussion —that they had been "learned and carried by rote," so that the deponents should be letter-perfect in their tale. The learned Chief Justice had no adverse criticism to make as to the demeanour of the plaintiff, on the one side, and of the defendant and his wife and son, on the other. It was to be noted in favour of the wife that she admitted that she has talked it over with her husband.

Upon the branch of the case as to the alleged misrepresentations regarding the Manitoba farm, the learned Chief Justice did not feel bound to pass, because he found that the purchaser (the defendant) chose to judge for himself. The defendant was a practical farmer, and the plaintiff was not. The plaintiff told the defendant to go out and look at the property, which he did, and sent a telegram to the plaintiff to come out to Winnipeg and close the transaction. The defendant had visited the farm once before sending that message, and he visited again before closing, accompanied by the plaintiff. The defendant said at the trial that there was too much snow on the ground to permit him to inspect properly; but this was denied—at any rate he said nothing about it at the time. He was five or six days at Winnipeg, waiting for the plaintiff to come out. He made no inquiries from any one, neighbours or municipal officers or weed inspector.

Thus he did not avail himself of all the knowledge and means of knowledge open to him, and he could not now be heard to say that he was deceived by the alleged misrepresentations of the plaintiff: Attwood v. Small (1838), 6 Cl. & F. 232; Fry on Specific Performance, 5th ed., paras. 677-8; Crooks v. Davis (1857), 6 Gr. 317; Hannah v. Graham (1908), 17 Man. R. 532.

Upon cross-examination the defendant said: "I went out to verify his statements. I would not have bought if I had not gone out." The defendant further said that he discovered the noxious weeds (thistles etc.) on or before the 18th April, but his family did not leave Windsor to join him until the 28th April. He said nothing to his solicitor about alkali or gumbo when giving instructions for his defence.