

HON. MR. JUSTICE MEREDITH:—If the defendants were entitled to a nonsuit on the first ground upon which this action is based, they ought to have had it at the first trial; or upon the appeal to this Court against the ruling refusing a nonsuit at that trial; I cannot therefore look upon this question otherwise than as settled adversely to the defendants, so far as this Court is concerned, by its judgment in the former appeal. It cannot be said that the case in this respect was less favourable to the plaintiff, on the whole evidence, at the later than at the earlier, trial.

There was too, I think, evidence to go to the jury upon the other branch of the case: evidence upon which reasonable men might find, as the jury in this case did find, that the accident was caused by a defect in the controller which proper inspection would have discovered in time to have prevented the accident.

The other questions were also all questions for the jury, and have now been twice found adversely to the defendants.

HON. MR. JUSTICE SUTHERLAND. NOVEMBER 20TH, 1912.

TRIAL.

PRUDHOMME v. LABELLE.

4 O. W. N. 388.

Vendor and Purchaser—Cancellation of Agreement—Default in Instalment—Whereabouts of Vendor—Purchaser bound to make Enquiry—Payment.

Action for a declaration that an agreement dated November 1st, 1910, for the sale of certain lands was binding on defendant. Plaintiff was the assignee of the purchaser under such agreement. The agreement provided for the sale of the lands in question for \$700, payable eight years after the making thereof, with interest at 6%, payable half-yearly. If default were made in payment of instalments of interest, defendant was to be at liberty to cancel the agreement, and purchaser was to lose all he had paid thereon. Defendant had to put the collection of the first instalment of interest in a lawyer's hands, and when the purchaser defaulted in the payment of the second instalment for over three months, he cancelled the agreement by notice. Plaintiff claimed to have been anxious to make payment, but to have been unaware of defendant's whereabouts, though the evidence did not shew he had made any serious effort to discover them.

SUTHERLAND, J., dismissed action, with costs.

Action for a declaration that defendant was the beneficial owner of certain lands, and that a certain agreement