

thing might even, not unreasonably, in the circumstances, be said about the alleged improvidence, or, as I would prefer to call it, inadequacy of the consideration. The claim was by no means admitted; on the contrary, it was, honestly and on quite sufficient grounds, stoutly contested. The female plaintiff was willing to accept \$200; and, in considering the question of inadequacy, that sum, and not the sum subsequently awarded by the jury, should alone, I think, be regarded. But, however that may be, improvidence or inadequacy of consideration alone is not sufficient to justify setting the settlement aside. "Mere inadequacy of consideration is not a ground even for refusing a decree for specific performance of an unexecuted contract. And still less can it be a ground for rescinding an executed contract. The only exception is where the inadequacy of consideration is so gross as of itself to prove fraud or imposition on the part of the purchaser. Fraud in the purchaser is of the essence of the objection to the contract in such a case." *Borell v. Dann*, 2 Hare 440, at p. 450. See also for other illustrations, of which there are many, *Harrison v. Guest*, 6 DeG.M. & G. 424; *Middleton v. Brown*, 47 L.J.Ch. 411.

It must be made to appear not only that there was inequality or incapacity of some kind, but that advantage was taken of the circumstance; and, in my opinion, nothing of the sort appears in this case.

I would allow the appeal and dismiss the action, both with costs, if demanded.

MEREDITH, J.A., gave reasons in writing for the same conclusion.

MOSS, C.J.O., MACLAREN and MAGEE, J.J.A., also concurred.

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NOVEMBER 15TH, 1911.

STEVENS v. CANADIAN PACIFIC R.W. CO.

*Railway—Injury to Person Crossing Track at Highway Crossing—Heel Caught between Rail and Plank—Negligence—Findings of Jury—Unsatisfactory Evidence—New Trial.*

Appeal by the defendants from the judgment of BOYD, C., in favour of the plaintiff, upon the findings of a jury, for the recovery of \$2,000 damages, in an action for injury sustained by the plaintiff at a highway crossing.