

it, an assignment of the lease; but, on the contrary, while pretending this and putting it forward as an objection, secretly induced the landlord to withhold her consent.

The failure of the plaintiff to secure an assignment of the lease to the defendant, and to carry out his contract, is what is pleaded by the latter in his statement of defence as the ground on which he is relieved from liability in respect of the cheque in question. But the judgment of the County Court Judge does not, apparently, deal with this aspect of the case. This judgment is very short, as follows: "I am of opinion that the transaction by which defendant, Little, was induced to become the owner of the picture show was brought about by fraudulent representations of Baxter and others, acting for Bates, and that he was justified in repudiating his liability on the negotiable documents signed by him. I dismiss the action with costs; I direct the \$450 cheque and two notes referred to in the counterclaim to be returned by the clerk to the plaintiff."

It was not set up in the statement of defence that the contract was brought about by fraudulent representations. When, at the trial, evidence of this character was offered on behalf of the defendant, objection was taken on behalf of the plaintiff. . . . Some evidence was admitted as to Baxter's representations as to the weekly profits, etc.

I am of opinion that the sale by the plaintiff to the defendant of the chattels in question must be held to be binding upon the latter, the appeal allowed, and judgment in the action entered for the plaintiff for the amount of the cheque, namely, \$450, with appropriate interest and costs, together with the costs of this appeal.

OCTOBER 29TH, 1913.

WILSON v. SUBURBAN ESTATES CO.

Fraud and Misrepresentation—Sale of Land—Action for Damages for Deceit—Failure of Proof.

Appeal by the plaintiffs from the judgment of FALCONBRIDGE, C.J.K.B., 4 O.W.N. 1488, dismissing the action without costs.

The appeal was heard by MULOCK, C.J.Ex., RIDDELL, SUTHERLAND, and LEITCH, JJ.

J. P. MacGregor, for the plaintiffs.

Grayson Smith, for the defendants.

THE COURT dismissed the appeal with costs.