

FALCONBRIDGE, C.J.K.B.

AUGUST 24TH, 1914.

BARKER v. NESBITT.

*Fraud and Misrepresentation—Sale of Plant and Business—
Action for Balance of Price—Evidence—Failure of Defen-
dants to Prove Misrepresentations.*

Action to recover \$14,000, in the circumstances mentioned below.

The action was tried without a jury at Belleville.

I. F. Hellmuth, K.C., and T. Walmsley, for the plaintiff.

E. G. Porter, K.C., and W. Carnew, for the defendants.

FALCONBRIDGE, C.J.K.B.:—The plaintiff is a manufacturer carrying on a foundry and stove business in the town of Picton. The defendants are business men, residing in the village of Brighton, in the county of Northumberland. By memorandum of agreement bearing date the 5th May, 1913, the plaintiff sold to the defendants and the defendants purchased all the machinery or appliances used or owned by the plaintiff, for the sum of \$15,000, payable \$1,000 cash on or before the 15th May, 1913, and the balance on the removal or taking over of the said machinery. The plaintiff also sold to the defendants and the defendants purchased, for a company to be formed, the goodwill, trade marks, patents, etc., for \$10,000, to be paid for in or with \$10,000 stock in the company to be formed under the Ontario Companies Act, with a provision for the defendants redeeming such \$10,000 stock at par, if desired within three years by the plaintiff. The said plaintiff was to give assistance towards the planning of the building to be erected, etc., and assist the general manager in the operation of the company for a period of at least six months. There were other stipulations in the agreement, one of which was a covenant by the plaintiff that he would not, directly or indirectly, either by himself or in partnership, etc., engage in any business similar to the one now carried on by him, for a period of ten years. The defendants were to form the new company at once and have suitable buildings erected in Brighton, and proceed to remove the machinery, plant, etc., not later than the 1st December. The defendants paid the sum of \$1,000 to the plaintiff, but refused to pay the balance of \$14,000; hence this action.