

upon a false affidavit, money paid for his discharge was recovered as paid under duress. No distinction is to be observed as to the fraud being in the false statement as to debt existing, and fraud and false statement in any other requisite to the issue of process, or in the concealing of the true facts and circumstances connected with the defendant's movements and intentions.

The duress which gives a right to recover money paid affords ample defence to an action upon the cheque here given.

Action dismissed with costs.

MIDDLETON, J.

SEPTEMBER 24TH, 1918.

*LONDON AND WESTERN CANADA INVESTMENT CO.
v. DOLPH.

Fraud and Misrepresentation—Agreement to Purchase Interest in Land—Material Misrepresentation by Vendor—Equity of Purchaser to Rescind Agreement—Assignment of Agreement by Vendor to Third Person—Chose in Action—Assignment Subject to Equity—Defence to Action by Assignee on Agreement—Costs.

Action by the assignees of an agreement for money due thereon.

The action was tried without a jury at a Toronto sittings.

J. W. Bain, K.C., and J. S. Duggan, for the plaintiffs.

J. E. Jones, for the defendant.

MIDDLETON, J., in a written judgment, said that Sylvester Moyer agreed with the defendant to sell him a one-fifth interest in certain lands, for \$3,200. The lands had been conveyed to the plaintiffs and the agreement assigned to them.

Two defences were raised. The defendant paid \$1,000 on account of the purchase-price and covenanted to pay the balance in three instalments. He now said that "as a condition precedent to his advancing the \$1,000, and upon the signing of the alleged agreement, it was understood that the limit of the defendant's liability was the advance of the said \$1,000." This was not true in fact and meaningless in law.

Moyer and Dolph were friends, and Dolph gave Moyer \$1,000 to invest for him; and Dolph then said he would not put in any