

and it would pay for itself in two years, and two men would not be able to do the work in connection with the business; that these representations were untrue to the defendant's knowledge, and it was upon the strength of them that the plaintiff entered into the agreement; that the plaintiff was an infant at the time the agreement was made, and that in June, 1915, he had repudiated it, both on that ground and on the ground of misrepresentation.

The plaintiff was still an infant when this action was commenced on the 29th June, 1915.

The defendant, inter alia, denied that he made any misrepresentation and that the plaintiff relied on anything but independent inquiries and investigations.

The appeal was heard by MEREDITH, C.J.O., MACLAREN, MAGEE, and HODGINS, JJ.A.

G. H. Watson, K.C., for the appellant.

R. McKay, K.C., for the plaintiff, respondent.

The judgment of the Court was delivered by MAGEE, J.A., who, after reviewing the evidence, said that it was clear that the misrepresentations alleged were not as to a business existing at the time of the sale, and could not have been so understood. But they did relate to a condition existing at the time of the defendant's carrying it on. In so far, they were representations as to matters of fact, and not merely of opinion, nor mere commendation; and, as the learned trial Judge found that they were untrue, and disbelieved the evidence offered for the defence, there did not seem to be any ground for disturbing the judgment. The circumstances were, in a small way, and especially as to changes in the identity of the stock in trade, much like those in *Adam v. Newbigging* (1888), 13 App. Cas. 308, in which relief was given to the purchaser.

It was not necessary to consider the question arising out of infancy.

On the argument, the contention of the appellant that the plaintiff's father was the real or intended purchaser, and the only one affected by or entitled to set up the alleged misrepresentations, was disposed of adversely to the appellant.

*Appeal dismissed with costs.*