

an unregistered instrument as against a registered instrument that effects the same estate or interest in lands. Judgment for plaintiffs with costs.

*Hoskin*, for plaintiffs. *Hudson*, for defendants.

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Macdonald, J. ]

[Feb. 26.

MCLAREN v. McMILLAN.

*Contract — Rescission — Misrepresentation — Fraud — Right of some only of a number of joint contractors to rescind.*

The plaintiffs and a number of other persons had been induced by an agent of the defendants to agree to take each one share in a horse valued at \$3,000 and to sign two promissory notes for \$1,500 each in payment for the horse. The plaintiffs complained that they had been induced to sign said notes by fraud and misrepresentation on the part of the defendant's agent, and one of the plaintiffs also claimed that he was too drunk at the time of signing the notes to know what he was doing, but the trial judge found against him on this point. The plaintiffs brought this action for a declaration that the notes were fraudulent and void and to have them delivered up to be cancelled and for an injunction to prevent the negotiating or dealing with the notes.

*Held*, that the plaintiffs were not in a position by themselves to rescind the contract as in fact a partnership had been formed in the making of the contract and all the partners were not asking for rescission. *Morrison v. Earls*, 5 O.R. 434, followed. The plaintiffs' only remedy would be by cross-action or counterclaim for damages, and they could not succeed in this action.

*Noble and Card*, for plaintiffs. *Barrett*, for defendants.

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Macdonald, J.]

[Feb. 26.

SMITH v. AMERICAN ABELL ENGINE CO.

*Charge on land created by assignment separate from order for chattel — Caveat.*

Section 4 of the Lien Notes Act, R.S.M. 1902, c. 99, forbids the registration, in any registry office or land titles office in Manitoba, of any lien notes, hire receipts, orders for chattels or documents on instruments containing as a portion thereof or