

The action was for breach of a contract, reduced to writing and dated the 31st October, 1916, whereby the defendant agreed to sell and the plaintiffs agreed to buy 1,500 cords of pulpwood, at prices and on terms set out in the document.

The defendant pleaded that the contract was induced by misrepresentation, which entitled him to repudiate, and that he did repudiate, the contract; in the alternative, that the plaintiffs suffered no damage.

The appeal was heard by MACLAREN, MAGEE, HODGINS, and FERGUSON, J.J.A.

W. S. Maguire, for the appellants.

Grayson Smith, for the defendant, respondent.

FERGUSON, J.A., reading the judgment of the Court, said that he was of opinion that the representations alleged by the defendant to have been made by the plaintiffs' manager, and found by the trial Judge to have been innocently made, were made to induce and did induce the defendant to enter into the contract sued upon; that the representations were in part statements of fact; that, in so far as they might be construed to be expressions of opinion, they must be taken as representations made by the manager in reference to matters in respect of which he had a special knowledge or which he specially guaranteed as accurate; and that the representations were untrue.

On learning that the representations were untrue, the defendant repudiated the contract; and that he was entitled to do: Halsbury's Laws of England, vol. 20, p. 737.

The trial Judge did not give effect to the defence of misrepresentation, taking the view that the defendant was not entitled to repudiate on account of innocent misrepresentations, and being also of opinion that the representations were statements of opinion rather than statements of fact; but he dismissed the action on the ground that the plaintiffs had not sustained any damage.

After entering into the contract sued upon, the plaintiffs, by writing dated the 25th November, 1916, agreed to sell all their pulpwood to the Diamond Pole Piling Company, at prices and on terms stated in the document.

Other buyers appeared in the market, with the result that the prices of pulpwood advanced, and it was impossible to secure pulpwood at the prices fixed in the contract sued upon. Thereupon the plaintiffs entered into negotiations with the Diamond Pole Piling Company and secured from them a modification of their contract, whereby they reduced the minimum amount of pulp which they had agreed to supply, and obtained an increase in the price of such pulp as they did actually supply; in this