

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

T. Mercer Morton, for the appellant.

J. H. Rodd, for the defendants, respondents.

MACLAREN, J.A., read the judgment of the Court. After stating the facts, he said that it was well-settled law that to entitle a purchaser to rescission in a case like the present, subject to certain qualifications none of which were applicable, he must shew that the transaction was brought about by a misrepresentation of a material fact, and that the representation complained of was not a matter of mere opinion or intention: Pollock on Contracts, 8th ed., p. 598 et seq. In this respect, the plaintiff's own testimony fell far short of what was required. The whole circumstances and the plaintiff's conduct throughout tended to throw discredit on his testimony. The real ground of the plaintiff's action was, that another purchaser of some of the adjoining lots succeeded in an action of rescission in the summer of 1916; but the trial Judge inquired into the matter, and found that the facts and evidence were entirely different in that case.

*Appeal dismissed with costs.*

FIRST DIVISIONAL COURT.

JUNE 12TH, 1917.

\*ROBLIN v. VANALSTINE.

*Promissory Note—Death of Payee on Date of Maturity—Dishonour—Renewal by Note in Favour of Husband of Payee—Delivery up of Original Note—Action on Renewal Note—Delivery to Plaintiff after Maturity and Dishonour—Title to Note—Fraud—Bills of Exchange Act, sec. 138—Right to Transfer Note—Warranties—Equities—Onus—Disposition of Original Note.*

Appeal by the defendant from the judgment of the Judge of the County Court of the County of Lennox and Addington in favour of the plaintiff in an action for the balance due upon a promissory note made by the defendant on the 26th June, 1912, for \$300, payable three months after date, to the order of one W. H. Davis and endorsed by him. The judgment was for the recovery of \$231.58.