

by a pine tree. In an action of trespass brought by plaintiff against defendant for piling logs on a portion of the land bargained for, it appeared that the boundary of G.'s property was not marked by the pine tree, but that the tree fell several rods short of it, and that the title to the land between the tree and the line of G.'s property, and in respect of which the action was brought, remained in plaintiff. The evidence showed that defendant was induced to complete the purchase by the false and fraudulent representations of plaintiff that the whole lot was being conveyed up to G.'s line, plaintiff intending at the time to reserve for his own use the portion of the lot intervening between the tree and G.'s line.

*Held*, HENRY, J., dissenting, that defendant was not entitled under these circumstances to have his deed rectified on the ground of mutual mistake but that his only remedy was against plaintiff for the fraud.

*F. B. Wade*, Q.C., for appellant. *W. B. A. Ritchie*, Q.C., for respondent.

Full Court.]

CRAVEN v. WILLIAMSON.

[May 23.

*Breach of promise of marriage—Order for arrest of defendant under O. 44, R. 1—Affidavit for.*

In an action for breach of promise of marriage an order for the arrest of defendant was obtained from a commissioner under O. 44, R. 1, which authorizes the making of such an order upon proof, to the satisfaction of the commissioner, that the plaintiff has a good cause of action. The order was obtained on an affidavit of plaintiff's father, stating that plaintiff had a good cause of action, but not giving the date of the contract, or showing that a time was fixed when the marriage was to take place, and that such time had elapsed, or that it was to take place within a reasonable time, and that such time had expired. No material was placed before the commissioner upon which he could exercise his judgment in determining for himself that there was a contract and a breach.

*Held*, affirming the judgment of MEAGHER, J., discharging the order for arrest, that the affidavit was insufficient, and not in conformity with the requirements of the order regulating the practice. *Detwyl v. Vinea*, 1 N. S. R. 26, questioned.

*Henry*, for appellant. *Rowlings*, for respondent.

Full Court.]

HICKMAN v. BAKER.

[May 23.

*Money had and received—Evidence—Change of position—Application for leave to adduce further evidence.*

Plaintiff shipped a quantity of fish by the schooner "Gleaner," of which J. was master, with the understanding that the fish was to be sold by J., and the balance, after deducting freight and expenses, remitted to plaintiff. The fish was sold by J. and the defendant B., and at the request of J. the money was paid over to B., who sought to retain it in satisfaction of an amount due him by J. The evidence showed that B. was twice informed by J. that he had the fish on freight, and he had means of ascertaining, by the exercise of due