

what had accrued to him out of the business between 1st and 12th February, a thing which, of course, was not either done or thought of . . . There was no representation to plaintiff Stewart by defendant as to the exact amount of his interest in the business, and there was no false suggestion or concealment to lead plaintiff Stewart to believe that no change, either as to payments on account of defendant or as to credits to which he was entitled, had occurred between 1st and 12th February.

It was suggested for plaintiffs that defendant had committed a virtual fraud by the manner in which the items now in dispute were dealt with during the period between 1st and 12th February, but there is really no ground for any such conclusion upon the evidence. The actual bargain and the real transaction between the parties was a sale by defendant and the purchase by plaintiff Stewart of the interest of defendant as it existed on 12th February.

Plaintiffs do not seek to set aside the sale, nor ask to have matters restored to their former position. They adhere to the sale, but seek by inference rather than by evidence to change the nature of the transaction and to deprive defendant of the position which he held as a partner between 1st and 12th February. And no case has been made for altering or reforming (as was said in argument) the instrument of agreement entered into by defendant, and that instrument standing, plaintiffs' claim fails.

The appeal should be allowed, and the judgment of the trial Judge restored, with costs throughout.

OSLER, J.A., gave reasons in writing for the same conclusion.

GARROW and MACLAREN, JJ.A., also concurred.

MEREDITH, J.A., dissented, for reasons stated in writing.