

FIRST DIVISIONAL COURT.

MAY 17TH, 1918.

MCMILLAN v. PINK.

Vendor and Purchaser—Agreement for Sale of Land not in Ontario—Covenants for Payment of Purchase-money—Action upon—Defence—Fraudulent Representations and Promises—Failure to Prove—Equitable Defence—Hardship—Want of Mutuality—Relief against Enforcement of Agreement by in Effect Awarding Specific Performance—Modification of Judgment for Payment of Purchase-money by Providing that upon Payment Title must be Shewn.

Appeal by the defendant from the judgment of SUTHERLAND, J., at the trial, in favour of the plaintiff, for the recovery of \$1,118.04, principal and interest, upon the covenants in an agreement under seal for the sale of land in Manitoba.

The defence was, that the defendant was induced to enter into the agreement by fraudulent misrepresentations and promises of the plaintiff and his agent.

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

F. M. Field, K.C., for the appellant.

G. W. Morley, for the plaintiff, respondent.

FERGUSON, J.A., reading the judgment of the Court, said that the trial Judge had found against the defendant on all the questions raised by him in his defence, and had also found that the defendant had adopted and ratified the agreement sued upon, by making a payment on account of the agreement after he had, according to his own testimony, raised the issues set up by him.

The learned Justice of Appeal saw no reason to disagree with any of the conclusions of the trial Judge.

In addition to arguing the defences raised, the appellant now urged that the action was one for specific performance and one in which the Court should, in the exercise of its equitable jurisdiction, refuse to enforce the contract sued upon, contending that the defendant had been overreached in the making of the agreement, that there was hardship, and there was want of mutuality.

The plaintiff, however, was not asking for equitable relief. The action was one at common law to enforce the promises to pay set forth in the covenants. There was no want of mutuality in the agreement, and the defendant was not overreached in the making