

a matter of regret that, in a case of this description, where alleged representations, conditions, and stipulations are set up and sought to be supported by verbal testimony as against an instrument in writing, the plaintiff and some of his witnesses—and in particular, Mr. Doty, the attorney, who, having first conducted the examination on behalf of the plaintiff, proceeded to add his own testimony to that already taken—were not present to testify before the trial Judge. It is too frequently the case that the taking of evidence under commission leads to loose, unsatisfactory testimony. Questions of the most leading and suggestive kind are allowed to be put “subject to objection,” and very rarely is any question or answer excluded. . . .

The onus was on the plaintiff to rid himself of the effect of an instrument in writing, signed by him, which he admits he had an opportunity of reading, and which he does not venture to say he did not read. . . .

The learned trial Judge . . . gave judgment for the plaintiff, on the ground that it was agreed between the plaintiff and one F. J. Webster, an employee or sub-agent of Messrs. Davidson & McRae—who, as appears from the agreement produced at the trial, were the exclusive agents of the defendants in respect of the selling of their unsold land grant, and to procure purchasers and collect all payments maturing for agreements for sale of the lands—that, if the plaintiff would subscribe for 960 acres and pay a deposit of 50 cents per acre, and it should turn out that 10,000 acres were not subscribed for, the money would be returned. . . . The agreement lends no support to this view. On the contrary, it appears to be directly opposed to it. The whole scope of the instrument evidences an intention to enable desiring purchasers, by forming a body, to obtain lands for a less price than if they each purchased separately. In no part do the defendants, either directly or by inference, give any pledge or undertaking as to the number of persons to subscribe or the aggregate of acreage to be subscribed for. As far as the defendants are concerned, each purchaser signs and contracts for himself alone—each is to select his own land, and, when he has done so and made certain specified payments, the defendants and he are to enter into a separate contract.

As regards the price, the agreement states that “the price of \$10 per acre and survey fee has been made for the reason only that the syndicate hereinbefore referred to as the purchaser have agreed to purchase an acreage of land amounting in the aggregate to not less than . . . acres of land, and, if the total lands purchased by the purchasers from the company under this