

Province of Manitoba.

COURT OF APPEAL.

Full Court.] HARTT v. WISHARD LANGON Co. [Jan. 10.

Vendor and purchaser—Agreement of sale of land—Rescission for want of title in vendor—Pleading—Removal of objections to title after action begun for rescission.

The plaintiff asked for rescission of certain agreements for the sale of lands by the defendant company to him, and for the repayment of the money already paid upon his purchases, on two grounds: (1) misrepresentation by Wishard, who negotiated the sale for the company, and (2) that the company had not and never had a good title to the lands sold.

The only title the company had was under an agreement for purchase from the Quill Plains Land Co. of a large tract of land of which the lands in question were part. Under this no assignment of it was to be valid unless it should be for the entire interest of the purchaser. The only title the Quill Plains Company had was under agreement of sale from the Canadian Northern Ry. Co. covering the lands in question, which were a portion of the lands set aside by the Crown for that company, but had not yet been patented to it. These agreements expressly provided that the consent of the company must be procured in case of any assignment of them. Each agreement in the chain of title provided is the usual form for payment, partly in cash and the balance in yearly instalments and for a conveyance on completion of the payments, and each contained very strict clauses as to forfeiture for non-payment of purchase money.

The final payment on the lands in question would be due to the railway company until Dec. 9, 1911, the final payment to the Quill Plains Co. would be due on 1st October, 1911, while the final payment to be made by the plaintiff would be due Sept. 1, 1911. There was an indorsement on the contracts given by the railway company to the Quill Plains Co., giving the purchasers the privilege of anticipating payment for any quarter section, and in the contract by the Quill Plains Co., the purchasers could obtain title to any quarter section at any time. The agreement under which the Quill Plains Co. held, contained a reservation of coal and other minerals, also of rights