

The trial Judge found that the defendants' allegations were substantially true; but found also that the plaintiff, on reasonable grounds, honestly believed his representations to be true.

His representations were not the result of wicked indifference and recklessness. The most that could be said against him was, that he did not investigate, check up, and verify the information that he had received in the way that a prudent, careful man ought to do before undertaking to make representations such as those complained of. The Court could not, on the evidence, interfere with the finding of honesty made by the trial Judge; and that finding, on the authorities, defeated the appellants' claim: *LeLievre v. Gould*, [1893] 1 Q.B. 491, 500; *Derry v. Peek* (1889), 14 App. Cas. 337.

For these reasons, the counterclaim for damages for deceit failed.

As to the alternative claim for rescission on the ground of innocent misrepresentation: the plaintiff accepted the defendants' agreement to pay \$22,353.61 in substitution for the liability of the Dickson company therefor. When entering into the contract, the plaintiff held the promissory note of the Dickson company for the amount claimed. The note was endorsed by the National Manufacturing Company. This note the plaintiff delivered to the defendants, and they in turn delivered it to the National Manufacturing Company, in pursuance of an agreement. It was conceded that the note could not now be returned to the plaintiff.

The defendants had put it out of their power to restore the plaintiff to the position he occupied when the contract was entered into, and were thus unable to fulfill one of the well-established conditions on which relief by way of rescission may be granted: *Halsbury's Laws of England*, vol. 20, p. 750, para. 1768.

Representations expressed in the form of hope and expectation may in some circumstances become representations as to existing facts: *Aaron's Reefs Limited v. Twist*, [1896] A.C. 275, 284.

In regard to the \$2,000 awarded to the plaintiff as salary and bonus: by the contract between the parties the plaintiff agreed to work for the defendants for such time as his services were required by the defendants, not to exceed 12 months, and the defendants agreed to pay him as salary \$250 each month during such time as they required his services, and also agreed to pay him an additional sum of \$250 per month for every month during which he remained in their employment, by way of bonus, and to become payable upon the termination of his employment. The plaintiff did not serve the full term of 12 months—owing to ill-health he was unable to continue after early in September, 1917. The \$2,000 was made up of arrears of salary and bonus. It was