

company and its agents, having clothed themselves in garments of falsehood, cannot be heard to complain when it is found that the fraud and misstatements did in truth bring about the contracts in question.

This is not the first time that this matter has been in Court.

[Reference to *Medcalf v. Oshawa Lands and Investments Limited* (1914), 5 O.W.N. 797.]

The judgment in that action is relied upon as in some way constituting a defence of *res judicata*. I cannot see that it in any way determines or precludes investigation of the issues raised in this action. The issue there was whether fraud had been practised on Medcalf. The issue here is whether fraud was practised upon Newsom.

I think the action fails, and ought to be dismissed with costs. The contracts should be directed to be cancelled, and the moneys paid under them should be directed to be repaid.

As there cannot be rescission except upon the terms of restitution, the defendant must relieve the plaintiff company from all embarrassment by reason of his assignment of the contract. The assignees were all before the Court, and were only too anxious to disclaim any interest under the contract. As the money which is to be repaid was in truth the money of the third parties, I think I am justified in directing repayment to be made direct to the third parties. The defendant, on his part, must do all that may be necessary, by signing any assignment or direction, in order that this may be worked out.

I have had much difficulty in making up my mind as to the proper incidence of costs between the defendant and the third parties. I am not sure that the defendant's practice has been entirely right. Possibly he ought to have made the third parties defendants by counterclaim. Details do not appear to be important, when all the parties are before the Court in one capacity or another. On the whole, justice will probably be done by giving the defendant his costs against the plaintiff company and making no award of costs as between the defendant and the third parties.