

Moss, C.J.O.:— . . . The present appellants are parties to the action because of an agreement entered into between defendant Lye, through one R. A. Ruttan his agent, and defendant Jones, dated 4th July, 1904, whereby Lye agreed to sell to Jones and Jones agreed to buy the same lands. The latter agreement was assigned by Jones to the appellants on 4th July, and registered on 21st July, 1904.

The main defence set up by defendant Lye was, that before the making of the agreement with Jones, plaintiff had repudiated and abandoned the agreement with him, and had therefore left defendant Lye free to re-sell the lands. The other defendants, besides urging that defence, rely upon their agreement and its registration, and claim the benefit of the registry laws.

Plaintiff alleged that Jones and the other defendants had notice of his agreement at the time of entering into the agreement under which they claim.

The trial Judge dealt with the case as one substantially between plaintiff and Lye; the question being whether Lye was relieved of his obligation to carry out the contract by reason of plaintiff's conduct; and he held that, in the circumstances appearing, Lye had not been relieved of his obligation to perform his contract with plaintiff, and he pronounced judgment in the latter's favour.

After the argument of this appeal it appeared to us, in considering the evidence, and more especially the correspondence between the solicitors for defendant Lye and his agent R. A. Ruttan, that it would be proper to hear the testimony of the latter and of defendant Jones, with a view to the elucidation of the circumstances attending the making of the agreement of 4th July, 1904. We therefore directed that Ruttan should be examined before the Court, with liberty to defendants to examine defendant Jones at the same time. Plaintiff produced and examined Ruttan, but defendants did not produce Jones, and their counsel stated that they did not desire to examine him or any other of the parties.

The testimony of Ruttan established beyond question that at the time of entering into the agreement in question Jones and his associates, or some of them, were fully aware of the agreement between plaintiff and Lye and of the existence of the latter's action to enforce it. They very probably derived