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APPELLATE DIVISION.

FIRST DIVISIONAL COURT.

FEBRUARY 21ST, 1916.

McKENZIE v. MORRIS MOTOR SALES CO.

Fraud and Misrepresentation—Mortgage of Land Assigned for Value—Representations as to Value of Land—Falsity—Materiality—Intent to Deceive—Counterclaim—Damages.

Appeal by the defendants from the judgment of MASTEN, J., at the trial without a jury, in favour of the plaintiff, in an action for damages for breach of an agreement whereby the defendants were to deliver to the plaintiff two motor cars, in consideration of an assignment by the plaintiff to the defendants of a mortgage of a farm.

The defendants alleged that the plaintiff had misrepresented the value of the farm, as they discovered after they had delivered one of the cars, and they refused to deliver the other. The defendants counterclaimed damages for false representations.

The appeal was heard by MEREDITH, C.J.O., GARROW, MACLAREN, MAGEE, and HODGINS, J.J.A.

Gordon Waldron, for the appellants.

G. T. Walsh, for the plaintiff, respondent.

GARROW, J.A., delivering the judgment of the Court, said that the material representation made by the plaintiff was, that he had recently sold the farm for \$4,500. The mortgage assigned was for \$2,306.10. The statement was not substantially supported by the proved facts. An exchange is not at all the same thing as a sale. The plaintiff also represented that the mortgage was worth the price of the two cars. The only possible conclusion upon the evidence was, that the plaintiff's opinion was not merely erroneous, but so grossly erroneous that it could not have been honestly held.