

. . . was, that the statements in the cable despatches found to be material and untrue, which formed the chief ground of complaint, were made, not from his personal knowledge as facts, but solely from reports received from his son Miles and from others whose names were given in the cable despatches, and that he had correctly given the substance of such reports. . . .

The learned trial Judge has found that the material untrue statements made by John P. Flynn purported to be made with knowledge, whereas they were made by him in ignorance of whether they were true or false, and holds him liable for his deceit. With great respect, I am unable to find any evidence that would justify a finding of deceit against John P. Flynn. In the cable messages he gave the source of his information, and there is no contradiction of his evidence on this point nor anything to indicate that he had any knowledge to the contrary before the examination of the claims by the plaintiffs' engineer and his report thereon. The defendant John P. Flynn had, however, sent the glowing reports he had received from his son to Charles B. Flynn with the intention that he should use them in his negotiations with the plaintiffs; and the contracts entered into in London and in Toronto were based upon these representations. Even if John P. Flynn was not aware, at the time he made them, that they were untrue, the plaintiffs would still be entitled to rescission and to the return of the money paid by them, as the contract was still executory.

Appeal dismissed with costs.

APRIL 26TH, 1915.

*ACKERSVILLER v. COUNTY OF PERTH.

Highway—Nonrepair—Injury to Traveller—Road Assumed by County Corporation—Highway Improvement Act, 7 Edw. VII. ch. 16, sec. 19 (O.)—Duty to Repair and Maintain—Negligence—Absence of Guard-rail at Dangerous Place—Contributory Negligence—Liability of County Corporation—Limits of Road Assumed—By-law—Construction.

Appeal by the defendant the Corporation of the County of Perth from the judgment of MEREDITH, C.J.C.P., 32 O.L.R. 423, 7 O.W.N. 435.

*This case and all others so marked to be reported in the Ontario Law Reports.