

369, and Lake Erie and Detroit River R. W. Co. v. Sales, 26 S. C. R. 665, referred to.

Action dismissed.

MACMAHON, J.

NOVEMBER 25TH, 1903.

TRIAL.

YELLAND v. IRWIN.

*Contract—Action to Set aside—Misrepresentations—Purchase of Interest in Timber Limits—Costs—Parties.*

Action by Eliza Yelland, widow of the late Dr. Yelland, of Peterborough, and W. G. Yelland, brother of the deceased, the executors of his will, to set aside an option given by plaintiffs to defendants Stratton and Hall for the purchase by the latter of the plaintiff's interest as executors in certain timber limits, and for payment by defendant William Irwin to plaintiffs of \$2,211 now in his hands, being the share of plaintiffs as executors in the proceeds of the sale of the limits. The defendants Stratton and Hall by their defence claimed specific performance of the option. The executors' interest was one-twentieth, and the price agreed upon was \$1,275.

D. W. Dumble, K.C., for plaintiffs.

W. R. Riddell, K.C., and W. F. Johnston, Peterborough, for defendants Stratton and Hall.

L. M. Hayes, Peterborough, for defendant Irwin.

H. W. Hall, Peterborough, for infant defendant.

MACMAHON, J., without imputing to defendant Hall any desire to misstate what took place between himself and plaintiff Eliza Yelland, concluded that the former had forgotten some of the statements he made, and accepted the account given by the latter of the interview between them, and held that, by reason of the statements made, the option or agreement could not stand. *Walters v. Morgan*, 3 De G. F. and J. at p. 723, *Waters v. Donnelly*, 9 O. R. at p. 401, and *Margraf v. Muir*, 57 N. Y. 155, referred to.

Judgment for plaintiffs declaring that the agreement or option is null and void and should be delivered up to be cancelled, and directing defendant Irwin to pay to plaintiffs \$2,211 in his hands, being one-twentieth of the amount for which the limits were sold. Defendants Stratton and Hall