

the work was done by the McGuigan Co. and charged up to Wyse and deducted from the money coming to the plaintiff, this will be within the terms of the bond; and, provided notice was duly given, the plaintiff will be entitled to recover.

Owing to the lack of definite information, I am not able to deal with the question of notice. If the plaintiff desires to have a reference to ascertain what sum, if any, can be recovered under the above finding, this question will be open upon a reference.

At the hearing it was arranged that if I thought there was liability upon the bond, judgment should be entered for the penalty, and the case be referred to ascertain the sum for which execution should issue. I am not sure, in view of the doubt upon the evidence whether there is anything which the plaintiffs are entitled to recover, that this can be done; but the result can probably be accomplished by inserting appropriate declarations embodying the views expressed.

Costs should be reserved until the final result is known.

HON. SIR G. FALCONBRIDGE, C.J.K.B. MARCH 20TH, 1913.

MURRAY v. THAMES VALLEY G. L. CO.

4 O. W. N. 984.

Jury Notice—Motion to Strike Out—Action for Rescission of Land Purchase—Con. Rule 1322.

FALCONBRIDGE, C.J.K.B., struck out a jury notice in an action for rescission of contracts for the purchase of certain lands upon the ground of fraud and misrepresentation.

Motion to strike out a jury notice in an action to rescind certain contracts for the purchase of certain lands, on the ground of fraud and misrepresentation. See *ante*, p. 52.

N. F. Davidson, K.C., for the plaintiff.

W. J. Elliott, for the defendant.

HON. SIR GLENHOLME FALCONBRIDGE, C.J.K.B.:—
Neither I, nor I venture to say any other Judge on the Bench, would think of trying this case with a jury.