

The defendant said that the contract was signed by her on the false and fraudulent representations of the purchaser, and by way of counterclaim asked that it should be set aside.

The action and counterclaim were tried without a jury at a Toronto sittings.

W. A. Henderson, for the plaintiff.

J. E. Lawson, for the defendant.

ORDE, J., in a written judgment, said that the plaintiff was a voluntary assignee of her husband's interest, and it was not suggested that she stood in any better position than he would if he were suing.

Harry Wilson, the defendant's nephew, acted as her agent in respect of the property which was the subject of the contract. The defendant lived in Detroit. The price named in the contract was \$2,600. The plaintiff's husband went to Detroit, taking with him a letter from Wilson to the defendant, in which it was said that Smith, the plaintiff's husband, had made an offer for the property, and "the offer that he has made is a very good one," but no sum was mentioned. Smith had told Wilson that he would be willing to give about \$2,800. The defendant and her son, who was present at the interview between the defendant and Smith, said that Smith said that the offer he had made to Wilson was \$2,600. Smith denied that he ever stated to the defendant that the offer he made to Wilson was \$2,600. The defendant said that the statement of Smith that he had offered Wilson \$2,600 was a false and fraudulent representation of fact entitling her to resist specific performance and to have the contract set aside.

Counsel for the plaintiff relied on *Turner v. Green*, [1895] 2 Ch. 205, in which it was held that mere silence as regards a material fact which one party is not bound to disclose to the other is not a ground for rescission or a defence to an action for specific performance. He also referred to *Chadwick v. Maning*, [1916] 1 A.C. 231, 238. Had the question here been simply whether or not Smith should have disclosed to the defendant the fact that he had offered \$2,800 to Wilson, this principle might have some application. But the charge was that, with Wilson's letter referring to the "offer" before them, he deliberately told the defendant that that offer was \$2,600. ■■■■■■

The learned Judge found that the defendant's version of what took place was the true one; that she was induced to enter into the contract upon the faith of Smith's false and fraudulent statement that his offer to Wilson was \$2,600; that she repudiated the contract as soon as she discovered that she had been misled; and that she did nothing afterwards to prejudice her position.