

salary and \$1,500 as bonus. No more than \$1,000 was paid to him; and the note for \$22,353.21 was not delivered to him.

The plaintiff sued for \$2,000 and also for \$22,353.61, the amount of the note.

The defendants alleged that they were induced to enter into the contract by false representations made by the plaintiff; and they counterclaimed for damages.

The action and counterclaim were tried without a jury at Peterborough.

Daniel O'Connell and G.N. Gordon, for the plaintiff.

R. A. Pringle, K.C., for the defendants.

LATCHFORD, J., in a written judgment, said that, unless the defendants were successful in their counterclaim, they must be declared liable to pay to the plaintiff the \$2,000 and the amount of the note. The defendants claimed \$85,000 damages, but at the trial they were content that the damages should be limited to whatever amount the plaintiff should recover against them.

The learned Judge, after reviewing the evidence, found that there was no fraud; that all the plaintiff's representations as to past events or as to existing facts were, on reasonable grounds, believed by him to be true; his promises as to the future were not false pretences; they were mere expressions of expectation; and the defendants knew that the realisation of these expectations depended on conditions other than the mechanical efficiency of the plant and the ability of the plaintiff as superintendent.

As a matter of law, a promise may amount to a representation, as where the agent of a bank promised that no portion of the proceeds of certain acceptances which he was procuring would be applied in the extinction of any obligation to his bank, and then, having secured the acceptances, applied some of them in payment of his own bank: *Clydesdale Bank v. Paton*, [1896] A.C. 381; or where the promise is based on what is stated to be an existing practice: *Kettlewell v. Refuge Assurance Co.*, [1908] 1 K.B. 545; *Refuge Assurance Co. v. Kettlewell*, [1909] A.C. 243. In the one case there was a false pretence; in the other a false representation of fact.

In the absence of fraud or false representation, an action for deceit cannot be maintained: *Derry v. Peek* (1889), 14 App. Cas. 337; *Gardner v. Merker* (1918), 43 O.L.R. 411.

The counterclaim should be dismissed with costs.

There should be judgment for the plaintiff for \$24,353.61 and costs, with interest on \$22,353.61 from the 31st December, 1917.