

FIRST DIVISIONAL COURT.

OCTOBER 10TH, 1919.

DAWSON v. QUINLAN & ROBERTSON LIMITED.

Contract—Purchase by Defendants of Shares and Assets of Manufacturing Company—Employment of Plaintiff as Superintendent of Works—Agreement to Assume and Pay Claim of Plaintiff against Company — Misrepresentations — Honest Belief — Failure of Claim for Deceit—Claim for Rescission on Ground of Innocent Misrepresentations—Impossibility of Restoring Parties to Former Position—Claim for Salary and Bonus—Construction of Agreement—Time for Payment of Monthly Bonus Postponed.

Appeal by the defendants from the judgment of LATCHFORD, J., 15 O.W.N. 352.

The appeal was heard by MEREDITH, C.J.O., MACLAREN, MAGEE, HODGINS, and FERGUSON, J.J.A.

W. N. Tilley, K.C., for the appellants.

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

FERGUSON, J.A., reading the judgment of the Court, said that the trial Judge directed that the plaintiff recover against the defendants \$24,353.61 and dismissed the defendants' counter-claim for damages for deceit and for rescission of the contract sued upon. The amount awarded was made up of \$22,353.61, the amount of a claim which the plaintiff had against the Dickson Bridge Works Company and which the defendants contracted to assume and pay, and \$2,000 salary and bonus.

Counsel for the appellants urged that the contract sued upon was induced by the statement that the Dickson company's plant, for the purchase of which the appellants were negotiating, and of which company the plaintiff had been vice-president and superintendent of the works, could and would turn out, each working day, 300 six-inch shells, and that the shells could and would be manufactured under his superintendence at a cost not exceeding \$3.58 per shell, and with some additional plant the cost could and would be reduced to \$3.50 per shell.

The evidence was that the plaintiff's representations influenced the defendants in making the contract to purchase and the contract sued upon; that the plant did not, either while the plaintiff was superintending its operation or subsequently, turn out anything like 300 shells per day; that the cost of the shells manufactured was more than \$9 per shell; and that the defendants consequently suffered a great loss.