

In the view I take of the case, the notes must be cancelled, except so far as the signature of R. E. Kinsman to the \$1,000 note is concerned.

There was, indeed, no fraud on the part of Homer Kinsman, nor was there any threat of criminal prosecution, nor anything in the way of wilful misrepresentation such as is stated in the pleading; but there is no doubt, I think, that he represented the taking of the notes as an integral part of the scheme for securing \$18,000 for the shareholders.

Of course, fraud—fraudulent intent—must be proved in an action for deceit: *Derry v. Peek* (1889), 14 App. Cas. 337; *Smith v. Chadwick*, 9 App. Cas. 157, 190; a principle which has been reiterated by the Judicial Committee in *Tackey v. McBain*, [1912] A.C. 186. And an executed contract induced by misrepresentation cannot be set aside unless the misrepresentation be fraudulent: *Angel v. Jay*, [1911] 1 K.B. 666, and cases cited; *Abrey v. Victoria Printing Co.* (1912), ante 868. But the rule does not extend to executory contracts: *Reese River Co. v. Smith* (1869), L.R. 4 H.L. 64; *Angus v. Clifford*, [1891] 2 Ch. 449; *Adam v. Newbigging* (1888), 13 App. Cas. 308.

E. Palmer Kinsman, is consequently relieved from liability; but Emily Kinsman should pay the amounts for which Maria Kinsman counterclaims.

There will be no costs to any party.

DIVISIONAL COURT.

APRIL 3RD, 1912.

EMERSON v. COOK.

Trial—Jury—Questions Left to Jury—Disagreement as to Certain Questions—Unsatisfactory Findings—New Trial.

Appeal by the defendant and cross-appeal by the plaintiff from the judgment of the Judge of the County Court of the County of Halton.

Action by a farmer against his former farm-servant for damages for injury to a horse by the defendant's negligence, as alleged. Counterclaim for wages and wrongful dismissal.

The action was tried by the Judge with a jury, who answered some questions, but disagreed as to others. The trial Judge treated this as a disagreement upon the whole case, and directed that no judgment be entered, leaving the case to be tried again.

Each party claimed judgment upon the findings.