

of 11 2-10 acres of land in the city of Windsor. Plaintiffs endeavoured during eight years thereafter to sell off the property in small lots, with indifferent success, and they held an auction sale on the 17th July, 1900, which was advertised as a sale without reserve, and which proved wholly abortive. A day or two later plaintiffs professed to discover for the first time that a fraud had been practised on them by the alleged concealment by the vendors (the defendant company) of the fact that they were paying to defendant McMath a commission of \$1,000 on the sale of the property, and that there had been fraudulent misrepresentations by McMath of the value of the land, for which defendant company ought to be held responsible. By notice dated 10th August, 1900, plaintiffs assumed to rescind and repudiate the agreement, and demanded repayment of the moneys and interest paid and expended by them under the terms of the agreement. Defendant company did not recognize the attempted rescission, but continued to claim payment of the balance due to them under the agreement, and this action was not brought until 5th June, 1902.

J. L. Murphy, Windsor, and J. E. O'Connor, Windsor, for plaintiffs and some of the defendants.

R. F. Sutherland, K.C., for defendant company.

FALCONBRIDGE, C.J.—It cannot be found on the evidence that the alleged misrepresentation as to value was anything more than a statement of opinion, nor that any statement made by McMath reached the limit of exaggeration. The year 1892, was a "boom time" for Windsor. Prices were, no doubt, beyond actual values for any immediate purpose except to sell again, but still higher prices were looked for. The purchasers could have no ground for neglecting to examine for themselves property so accessible, and to ascertain its real condition. No fraudulent suppression of the fact that McMath was getting a commission from defendant company was brought home to any officer or member of the company. The amount of the commission was large in proportion to the amount of the purchase money, \$11,500, but this was explained by the fact that defendants (who were interested in other adjoining properties) thought they were securing purchasers who would advertise, develop, and "boom" the property. It is a fact that defendant company, being moved by these considerations, refused an offer which would have netted them \$700 more than plaintiffs agreed to pay. If plaintiffs ever had any rights, they have lost them by delay and acquiescence.