

ing the giving of evidence, it was evident that the rights and liabilities of the defendants might possibly not be identical; but counsel for the defence conducted it throughout as one of identical interest and liability.

When the evidence was all in, I referred to this united line of defence. Counsel thereupon informed me that they desired no distinction to be made between defendants, and that they were content to be all treated on the same basis, a judgment for all or against all.

The case was then adjourned for argument in Toronto, and was taken up on the 19th of September last. At the opening of the argument Mr. McKay appeared, instead of Mr. Tucker, as counsel for the defendants Maxwell and Smith, and asked leave to call evidence to shew the relations existing between these two defendants and the other two defendants, with the view of ultimately arguing that even if these other two defendants were liable his clients were not. All the other parties objected to this. Having regard to the conduct of the case, and the very great inconvenience and injustice involved in the admission of this evidence, I refused to admit it.

In the view I take of this case, it is not necessary for me to determine whether the representations complained of by the plaintiff in connection with the proposed sale were honestly, or fraudulently, made; or whether the agreement in question should be treated as an executed or an executory contract. If I had to come to a judgment upon the representations, I would have difficulty in coming to the conclusion that they were *bona fide* and innocent.

The formal contracts, exhibits 5 and 6, are dated April 1st, 1911, but it is said were not signed until about the 19th of April. Nothing turns on the date. Those contracts are with Maxwell and Smith. Before they were presented to the plaintiff for execution, the plaintiff had made an application to the defendants, Robertson and White for the purchase of these lands, through an agent, W. J. Winter.

The plaintiff knew nothing whatever about the property; and, to induce the application, the statements afterwards incorporated in exhibit 3, were made by Winter, and relied upon by the plaintiff. Whether this application would have amounted to a contract or not is immaterial, as the parties abandoned it by mutual consent—in fact, never treated it as binding—and substituted the formal contracts, exhibits 5 and 6 and exhibit 3, in place of it.