

was thus a representation that the company had, when the agreement was made, three distinct patents of invention for oil gas burners. The plaintiffs were induced to believe that the several appliances were covered at the time by Canadian patents. In that belief they paid the \$1,000 deposit and took steps to manufacture and sell the burners in New Brunswick. Difficulties arose between the parties, and ultimately the plaintiffs discovered that the defendant company at the date of the agreement owned and controlled no patent whatever even for one heater. The plaintiffs then repudiated the contract, and brought this action. The defendant company counterclaimed for breach by the plaintiffs of their contract to manufacture and sell the burners and asked for rectification of a clause in the contract. The learned Judge found as a fact, upon the evidence, that the plaintiffs on the 31st July, 1919, relied on the representation that the defendant company owned and controlled for Canada three separate patents of invention. The defendant company could not escape liability by shewing that an application for a patent was pending at the time and was actually granted in the following September. The plaintiffs were entitled to a return by the company of the \$1,000 deposit, with interest from the 31st July, 1919. The plaintiffs' claim for damages should be diminished by the sums paid for travelling expenses, etc., leaving it at \$1,533. There should be judgment for that sum against the defendants William Duffy and the company. The action failed as against the other defendants, and should be dismissed as to them, but without costs. The counterclaim of the company should be dismissed with costs. H. J. Scott, K.C., for the plaintiffs. Daniel O'Connell, for the defendants.