

The appeal was heard by MULOCK, C.J.Ex., CLUTE, RIDDELL, SUTHERLAND, and KELLY, JJ.

W. N. Tilley, K.C., and W. S. Herrington, K.C., for the appellant.

J. W. Payne, for the defendant, respondent.

SUTHERLAND, J., read a judgment in which he said that the agreement was entered into in November, 1912. The defendant made the cash payment and also paid instalments and interest in 1913 and 1914. This action was brought to recover the final instalment, payable in 1915. The defence was based upon alleged misrepresentations as to the situation of the land, its nature and characteristics, said to have been made by one Davis, the agent of the plaintiff.

After reviewing the evidence, the learned Judge said that he had come to the conclusion that the reasonable inference from it was that the defendant had failed to make good by proper proof the allegations of misrepresentation. It also seemed clear, from the payments made under the contract by the defendant and the length of time that elapsed during which the defendant might easily have obtained all necessary information about the property, that he acquiesced in and ratified the agreement in such a way as to cause one to hesitate to grant the relief sought by him. Even after he had suspicions and was put upon inquiry, he took no action. It was his duty, immediately on, or at least within a reasonable time after, the discovery of the alleged fraud or misrepresentation which had been practised upon him, to have elected to avoid the agreement and to have repudiated it: *United Shoe Machinery Co. of Canada v. Brunet*, [1909] A.C. 330, 338, 339.

In the end, his chief and only complaint was as to the failure of the agent to resell.

The judgment should be set aside, and judgment entered for the plaintiff for the amount sued for with interest and costs, and dismissing the counterclaim with costs.

MULOCK, C.J.Ex., and CLUTE, J., agreed with SUTHERLAND, J.

KELLY, J., read a judgment in which, after reviewing the evidence, he stated his conclusion that the defendant had failed to satisfy the onus that was upon him of proving the misrepresentations alleged.

RIDDELL, J., agreed with KELLY, J.

*Appeal allowed.*