

DAVISON V. FORBES—KELLY, J.—SEPT. 13.

Trust—Share of Proceeds of Sale of Farm—Account—Contract—Counterclaim—Fraud and Misrepresentation—Costs.—In substance, the plaintiff's claim was for an accounting by the defendants for the proceeds of the sale of about 154 acres of land, part of lot 26 in the 3rd concession from the bay, in the township of York, to the British and Colonial Land and Securities Company Limited, and for payment to him of his share of such proceeds. The defendant Haines counterclaimed for \$75,000 on the ground that in 1905 he was induced by the plaintiff's false and fraudulent representations to purchase an interest in certain mining property in the Yukon. The plaintiff was the owner of the farm in the township of York, and on the 5th June, 1907—it being then subject to a mortgage for \$30,000—he entered into an agreement with the two defendants for the conveyance to them of a two-thirds undivided interest therein, they agreeing to assume and pay off the mortgage. The action was tried by KELLY, J., without a jury, at Toronto. The learned Judge examines the evidence, in a carefully considered opinion, and reaches a conclusion favourable to the plaintiff upon the matters in dispute. Judgment declaring that from the 28th October, 1908, until the sale to the British and Colonial Land and Securities Company Limited in 1911, the defendant Forbes held an undivided one-third share in the farm lands in trust for the plaintiff; setting aside the documents dated the 15th July, 1910, executed by the plaintiff; directing an accounting by the defendants to the plaintiff for his one-third share of the proceeds of the sale to the said company, with interest from the time of completion of that sale; debiting him with whatever moneys were paid to him or on his account on the so-called sale to Forbes in July, 1910, with interest; and for payment by the defendants to the plaintiff of the amount thus remaining due, subject, as to the liability of the defendant Haines, to the disposition made of his counterclaim. During the argument, counsel for the defendant Haines abandoned his counterclaim, except to the extent of \$5,000*, and KELLY, J., now holds that the defendant Haines is entitled to recover \$3,750 and interest, to be set off against what is found due by him to the plaintiff. The plaintiff is also entitled to the costs of the action, except to the extent that they have been increased by the counterclaim as proved. W. N. Tilley and J. T. White, for the plaintiff. Wallace Nesbitt, K.C., J. W. Bain, and Christopher C. Robinson, for the defendant Forbes. R. McKay, K.C., and G. W. Adams, for the defendant Haines.