

Judgment for plaintiff against defendant Alice J. Weller in the usual form, with costs. Action as against defendant D'Arcy L. Weller dismissed with costs.

MACTAVISH, Co. J.

MAY 16TH, 1903.

TRIAL.

ANDERSON PRODUCE CO. v. NESBITT.

*Foreign Judgment—Action on—Defence—Fraud—Evidence to Sustain.*

Action upon a foreign judgment.

Trial at Cobourg before MACTAVISH, Co.J., sitting for FALCONBRIDGE, C.J.

I. F. Hellmuth, K.C., and D. W. Saunders, for plaintiffs.

W. B. Northrup, K.C., for defendant.

MACTAVISH, Co.J.—Defendant's contention is, that the judgment in question was obtained by the fraud of plaintiffs upon false evidence adduced in the County Court of Winnipeg on behalf of plaintiffs and by the fraudulent concealment from the Court of the true motive of the transaction between plaintiffs and defendant. . . . This would be an answer to the action: *Hollender v. Ffoulkes*, 26 O. R. 61; *Abouloff v. Oppenheimer*, 10 Q. B. D. 295; *Vadala v. Lawes*, 25 Q. B. D. 310. The evidence must be of that clear and convincing character that the conclusion from it is irresistible that the foreign Court was not merely mistaken, but was actually misled, by the fraud practised upon it, into pronouncing a wrong judgment.

The evidence adduced before me falls far short of this, and I must therefore find the issues in favour of plaintiffs.

Judgment for plaintiffs for amount claimed with costs.