

through want of care falls far short of, and is a very different thing from fraud, and the same may be said of false representation honestly believed, though on insufficient grounds. As to the judgment of Lord Justice Lopes, Lord Bramwell agrees with what he says: 'I know of no fraud which will support an action of deceit to which some moral delinquency does not belong,' and thinks that shows the meaning of what he says, 'fourthly,' though that is made doubtful by what he says elsewhere. With all respect, he thinks that in all the judgments there is a confusion of unreasonableness of belief as evidence of dishonesty and unreasonableness of belief as of itself a ground of action. He thinks it most undesirable that actions should be maintainable in respect of statements made unreasonably perhaps, but honestly, and it would be disastrous if there was 'a right to have true statements only made,' and suggests that in this, as in some other cases, Courts of equity have made the mistake of disregarding a valuable general principle in the desire to effect what is, or is thought to be, justice in a particular instance. What Lord Justice Lopes said 'fourthly,' was that the statement would be fraudulent if it were made recklessly, or if it were made without any knowledge of the subject one way or another, or if it was believed in by those who made it without any reasonable grounds for such belief. If the last clause of these alternatives were omitted, the decision of the House of Lords would be well represented by that passage, and, no doubt, as Lord Herschell observed, that last alternative is an extension of previous cases not justified, as the Court of Appeal thought by anything said by Lord Cairns in *The Reese River Mining Company v. Smith*, 39 Law J. Rep. Chanc. 849, or by Mr. Justice Maule in *Evans v. Edmonds*, 22 Law J. Rep. C. P. 211, or by what Lord Justice Bowen said in *Edgington v. Fitzmaurice*, 55 Law J. Rep. Chanc. 650.

The extension attempted from giving the effect of fraud to statements made in reckless ignorance of their truth or falsehood to mistaken statements honestly made, ignores the element of intention in fraud. A mistaken statement honestly made may give a

ground for the rescission of a contract, but not for affixing to the whole contract the ill-savour of fraud. Upon the rescission of a contract the rights of the parties can be adjusted, but fraud cuts down everything and exposes those guilty of it to the stringent and, if successful, degrading remedy by an action of deceit. Commercial morality is better forwarded by following a level standard than by setting up the unattainable in everyday life, and calling things by names which would be scouted by the social opinion of honourable business men.—*Law Journal (London)*.

## SUPREME COURT OF CANADA.

OTTAWA, April 30, 1889.

Exchequer.]

KEARNEY v. THE QUEEN.

*Expropriation of Land—Severance—Damages.*

On the hearing of a claim referred to the Exchequer Court by the Minister of Railways, for compensation to the claimant for land taken by the Crown for Railway purposes, the learned judge awarded a certain sum for the value of land so taken and a further amount as damages for the severance from land not taken in lieu of a crossing. There was evidence that the claimant made money by selling ballast, and seaweed for manure, and collecting driftwood for fuel, on the remaining land.

*Held*,—Gwynne, J., dissenting, that as the sum allowed for severance did not include future damage, and the evidence showed that the consequences of the severance would remain even if a crossing was made, the amount of compensation should be increased.

Appeal allowed.

T. J. Wallace, for appellant.

OTTAWA, April 30, 1889.

Manitoba]

GREEN v. CLARK.

*Appropriation of payments—Evidence—Satisfaction of Judgment.*

G. and the firm of C. & P. were respectively judgment creditors of one J., and G. accepted in satisfaction of his claim notes of J. indorsed by C. & P. for 60 per cent and J's unindorsed notes for 20 per cent more, and G'