

This, however, would not avail the plaintiff, as, in the opinion of the majority of the Court, the contracts by the defendants were not, and none of them was, within the terms of the agreement so as to entitle the plaintiff to commission.

The learned Judge would have been content to accept the opinion of the defendants' president that the contract in respect of which the \$17,000 commission was paid was within the agreement, and to have awarded a further sum of \$17,000 upon the ground that the agreement to reduce the commission to one-half of one per cent. was obtained by an untrue statement—the contract having been actually arranged before the request to reduce the commission was made.

The appeal should be allowed.

LENNOX, J., in a written judgment, after reviewing the evidence and the authorities, said that he found nothing to suggest that there was either an effort or a purpose to deceive, mislead, or entrap any servant of the Crown, or to induce him to swerve from the path of public duty. This ground of defence had not been made out.

Upon the second branch of the case, the learned Judge discussed the evidence, and found in favour of the plaintiff.

The judgment below should be set aside, and judgment should be entered for the plaintiff for \$17,639.66, with interest thereon from the 5th September, 1917, with costs to the plaintiff in the Court below and without costs of the appeal to either party.

Appeal dismissed (MIDDLETON and LENNOX, JJ., dissenting).

SECOND DIVISIONAL COURT.

FEBRUARY 25TH, 19 .

OSBORNE v. LEATHER.

Fraud and Misrepresentation—Sale of Motor-truck—Representations as to Earning Power—Warranty that "Contract" for Work to Go to Purchaser of Truck—Breach—Evidence—Damages—Return of Money Paid—Cancellation of Sale-agreement—Pleading.

Appeal by the defendants from the judgment of the County Court of the County of Wentworth in favour of the plaintiff in an action (tried by a jury) for the recovery of \$300 paid on account of the purchase of a motor-truck, for the cancellation of the agreement of purchase, and the return of a promissory note.