

Appeal by the plaintiff from the judgment of ROSE, J., at the trial (14th February, 1920), dismissing an action for damages for fraudulent misrepresentations alleged to have been made by the defendant whereby the plaintiff was induced to buy the goodwill, lease, plant, machinery, cars, and general business of the White Swan Laundry Company, in Chatham, Ontario.

The appeal was heard by RIDDELL, SUTHERLAND, KELLY, and MASTEN, JJ.

I. F. Hellmuth, K.C., for the appellant.

R. L. Brackin, for the defendant, respondent.

RIDDELL, J., in a written judgment, said that the action was for damages for deceit—a simple common law action, based upon alleged fraud.

The plaintiff must, in such cases, prove his case beyond reasonable doubt. Here the learned trial Judge was not convinced, on the evidence adduced, that the plaintiff had been wronged. An appellate Court does not abdicate its right and duty to reverse the judgment of a trial Judge in a proper case; but, to do so, it must be satisfied that he was wrong.

In the present case, RIDDELL, J., was not only not convinced that the trial Judge was wrong, but a perusal of the evidence led him (RIDDELL, J.) to the same conclusion as that of the trial Judge.

A few articles, said to have been claimed by a third person, should have passed to the plaintiff in the sale, as was made to appear by an affidavit filed since the trial. The dismissal of this appeal was not to prejudice the plaintiff in any action he might be advised to bring against the defendant upon the contract, express or implied, that the plaintiff should have these articles.

KELLY, J., agreed with RIDDELL, J.

MASTEN, J., was also of opinion, for reasons given in writing, that the appeal should be dismissed with costs.

SUTHERLAND, J., agreed with MASTEN, J.

*Appeal dismissed with costs.*