

HIGH COURT DIVISION.

MIDDLETON, J.

APRIL 3RD, 1915.

OSHAWA LANDS AND INVESTMENTS LIMITED v.
NEWSOM.

Fraud and Misrepresentation—Sale of Land — Misrepresentation by Vendor-company—Evidence—Rescission — Return of Purchase-money—Restitution—Assignees of Purchaser—Third Parties—Indemnity—Agency Contract — Res Judicata—Practice—Costs.

Action to recover the purchase-price of land sold.

The first defence was, that the defendant was not a purchaser, but merely a selling agent; and the alternative defence was, that any contract obtained was obtained by false and fraudulent misrepresentations with reference to the property.

The defendant brought in three persons, Medcalf, Poutney, and Mackenzie, as third parties, and claimed from them indemnity, upon the ground that they had assumed any contract entered into by him with the plaintiff, and had undertaken to pay the purchase-price.

The action and claim for indemnity were tried without a jury at Toronto.

H. C. Macdonald, for the plaintiff company.

N. W. Rowell, K.C., for the defendant.

E. T. Coatsworth, for the third parties Medcalf and Poutney.

The third party Mackenzie, in person.

MIDDLETON, J. (after setting out the facts):—I do not think that the defendant ever was or intended to become the agent of the plaintiff company. He became a purchaser seeking to make a profit by turning the property over at an advance. In point of fact, he had in each case agreed with his purchaser before he contracted with the plaintiff company for the purchase.

I have then to consider the question whether there was fraud on the part of the plaintiff company in bringing about the sale to the defendant; and this task is made the more difficult because the defendant did not himself impress me favourably. Nevertheless I have come to the conclusion that he is entitled to relief.