

MEREDITH, C.J.C.P., in a written judgment, said that the plaintiffs' claims comprised five different causes of action, namely: (1) for damages for deceit; (2) to set aside the transactions evidenced by the writings set out in the pleadings, on the ground of actual fraud; (3) to set them aside on the ground of misrepresentation without actual fraud; (4) to enforce them; and (5) for money payable by the defendant company to the plaintiffs, for money lent by the plaintiffs to the defendant company: but on none of these claims were the plaintiffs entitled to recover against the defendant company; though the judgment against the defendant Siemon might be supported under the fourth.

As to the first: actual fraud had not been proved; it had been disproved. The sincerity of the defendant Siemon was shewn in his action in becoming personally bound to resell or purchase the shares of the capital stock of the defendant company which were transferred to the plaintiffs. And, if that were not so, yet must the plaintiffs fail on this ground, because they had taken final judgment, against the other defendant, upon the contracts in respect of the shares, and could not both affirm and repudiate them. If obtained by fraud, they were voidable at the plaintiffs' instance, but they were valid until rescinded; and, not only had that not been done, but the plaintiffs had obtained judgment, and issued executions, upon them. The judgment was entered in default of appearance to a specially endorsed writ, which judgment could be entered, if at all, only upon the claim upon the contracts.

As such a judgment could not have been entered upon a claim for damages, the interesting question, referred to in several cases, but actually decided in none, whether a claim for damages for deceit, against several defendants, was merged in a final judgment upon it against one of them, did not arise: it was difficult to see how it could arise in such a case, though in some actions against joint contractors it had arisen: see *Dueber Watch Case Manufacturing Co. v. Taggart* (1899), 26 A.R. 295, and (1900) 30 S.C.R. 373; *Morel Brothers & Co. Limited v. Earl of Westmorland*, [1904] A.C. 11; and other cases. In speaking of a judgment, a final judgment was referred to.

The second cause of action also failed, for the like reasons.

The third also failed, first, for want of proof of misrepresentation. And the election of the plaintiffs to affirm and enforce the contracts defeated any action to set them aside: see *Morel Brothers & Co. Limited v. Earl of Westmorland*, [1904] A.C. 11; *Scarf v. Jardine* (1882), 7 App. Cas. 345; and *Keating v. Graham* (1895), 26 O.R. 361.

As to the fourth, *Helwig v. Siemon* (1916), 10 O.W.N. 296, was