

land where the contract presents a hardship on one side or the other (Davis v. Covey, 40 Ch.D. 601), or where there is a real dispute as to the area covered (see Earl of Durham v. Lepard, 34 Beav. 11, and Rudd v. Lascelles, [1900] 1 Ch. 815, 819); and I think the original defendants are not entitled at present to such a judgment against the plaintiff. No evidence was given, and only the options or contracts and letters put in; and the statements in the correspondence are not, as I read the evidence, admitted as proved. There is a question as to what was represented as the thing to be sold. After a careful reading of what has been filed, I am unable to say that there is no binding contract. I do not find any definite acceptance, but much money has been paid, and letters written on behalf of the plaintiff treat the matter as more than an unaccepted option. But it would not be fair at this stage to decide the matter in favour of one side or the other.

The parties must be left to work out their rights in some other way upon the basis of the present judgment or in case of appeal, when the question between the plaintiff and Gauthier is finally settled. I do not think, however, that, if they fail to arrange their differences, this judgment should be a bar to another action by either party at any time if it is necessary to bring this long-standing transaction to an end one way or the other. But, even if the plaintiff was entitled to possession, he is not entitled to mesne profits under the circumstances appearing in evidence. The judgment as to the defendant Gauthier declares that his license of occupation is void and should be cancelled. This is based upon what is called a deliberate fraud on his part. I have always understood that a charge of fraud should be clearly and specifically made when it is relied upon by any of the parties to an action. In this case it is not made at all in the pleadings, and was not supported before us; nor, in reading the evidence, can I see that attention was directed to it.

No doubt in certain cases the Court can, as pointed out by the learned trial Judge, in the absence of the Attorney-General, set aside a grant by the Crown if procured by fraud. But this remedy appears to be confined to cases where, if the patent is voided, the land reverts to the Crown. See remarks of Moss, C.J.O., in Florence Mining Co. v. Cobalt Lake Mining Co. (1909), 18 O.L.R. at p. 284.

It does not seem to have been extended to claims where the Crown has already parted with the *locus in quo* to another