

but they can make contracts, sue and be sued, and the township must provide money and pay it upon the order of the board or any two members. The mandamus order should be as in *Re Derby and Local Board of Health of Plantaganet*, 19 O. R. 51, directing all the members to sign the order asked for. It is a case for High Court costs. The letter of defendant Dainard, who met with the board and acted as one of them, though not a member, might well lead plaintiff to suppose he could recover the larger amount.

McKay & Sampson, Owen Sound, solicitors for plaintiff.

Lucas, Wright, & McArdle, Owen Sound, solicitors for defendants.

BRITTON, J.

MARCH 12TH, 1902.

TRIAL.

FERGUSON v. ARKELL.

Sale of Goods—Stallion—Warranty—Breach.

Action for a rescission on the ground of fraud of a contract for purchase by plaintiffs of a stallion called Whitby for the price of \$1,400, and for an injunction.

S. G. McKay, Owen Sound, for plaintiffs.

H. L. Drayton and J. J. Stevens, Teeswater, for defendant.

BRITTON, J.—The defendant employed one Ferguson and one Armstrong to assist him in selling the horse to a syndicate, the plaintiffs, and the sale was effected on 14th May, 1901, for \$200 in cash and three notes of \$400 each. The sale was upon the representation by the defendant that the "horse was good and sound, not more than ten years old, and a sure foal-getter." Each of the plaintiffs relied upon practically the same representation made by defendant or one or both of his agents, and he and they intended the representations to be relied on, and knew they were false. I find that at the time they were made and on the sale that the horse was unsound, over ten years old, and not a sure foal-getter. The defendant left his former home so as to avoid a tender of the horse, but the plaintiffs, I find, elected on discovering the fraud to rescind the contract and are entitled to do so. The defendant is entitled to the horse and may take him away at any time; if he refuses, plaintiffs may sell him and apply proceeds on account of their claim. The plaintiffs are entitled to indemnity against payment of any of the notes, and need not pay the \$200, which, for some reason, was not paid in cash. Judgment for plaintiffs for