

Wilks v. Smith, 10 M. & W. 355. I do not regard this case as in conflict with Laird v. Prim, 7 M. & W. 474; see Mattock v. Kingslake, 10 A. & E. 50. . . .

Judgment for plaintiffs for \$33,556.70 with costs.

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BOYD, C.

JUNE 10TH, 1907.

TRIAL.

LAMONT v. WINGER.

*Fraud and Misrepresentation—Purchase of Property—False Representations as to Business—Findings on Evidence—Dismissal of Action—Suspicious Circumstances—Costs.*

Action to rescind an agreement for the purchase of a creamery, etc., upon the ground of misrepresentations.

BOYD, C.:—The decisive issue upon the record is raised by the 6th paragraph of the claim: "The plaintiffs, relying on the statements contained in said book prepared by Fred. Smith, as agent for the defendant, and upon the further assurance by the defendant to the plaintiffs that the statement so prepared and delivered was correct, agreed to purchase the said properties and plant." The evidence in support of this charge is given by one witness only, viz., the plaintiff Lawrence, in these words: "Mr. Mitchell and I went to see Mr. Winger and took that book with us and shewed it to Mr. Winger, and I asked him if that statement was correct, and he said to the best of his belief it was." He says further about this conversation: "We want your assurance that we are perfectly safe in buying the creameries on that statement, and that that statement is correct." Mr. Winger said: "You are perfectly safe in buying the creameries on that statement." . . . Mr. Mitchell was not examined—he is said to be in Scotland. Mr. Winger negatives giving any such assurance or vouching for the accuracy of the statement. He did not know personally as to the output of the business in the years covered by the statute, and could only speak from information derived from the Smiths. He kept himself, therefore, as he says, from pledging his own word as to the correctness of the statement,