

Lewis v. Clay, 67 L. J. N. S. at p. 227, per Lord Russell. On the whole case I do not think it necessary to decide whether the plaintiffs were put on inquiry as to the condition on which the note was handed over, as the case turns on the point that there was no value given, or, in other words, that the plaintiffs hold it without consideration and for a purpose other than defendant intended when he signed it. Action is dismissed with costs.

Barwick, Aylesworth, Wright, & Moss, Toronto, solicitors for plaintiffs.

McMurrich, Hodgins, & McMurrich, Toronto, solicitors for defendant.

JANUARY 7TH, 1902.

DIVISIONAL COURT.

GIRARDOT v. CURRY.

Deed—Reformation of—Mistake.

Appeal by plaintiff from judgment of County Court of Essex in action to reform or rescind an assignment of certain moneys, under the following circumstances:—Prior to November, 1900, plaintiff owned certain land and had made an agreement with McKee, allowing him to remove gravel on payment of \$1,500 upon certain terms. Plaintiff sold the land in November, 1900, to one B., who resold to defendants, to whom plaintiff conveyed. Plaintiff, also, assigned, as they supposed, at defendants' request, the money to become due to plaintiff by McKee under his agreement. By mistake, however, plaintiff alleged, the assignment included principal money, \$109, and interest, \$58.42, accrued due.

F. A. Anglin, for appellant.

R. F. Sutherland, K.C., for defendants.

Judgment of the Court (FALCONBRIDGE, C.J., STREET and BRITTON, J.J.), was delivered by STREET, J., dismissing the appeal, and holding that, as it was shewn in evidence that the defendants purchased on the faith of their vendor's statement that \$1,195 was due under the contract with McKee, defendants were entitled to that sum, but that certain sums amounting to \$62 were due from McKee in addition to the \$1,195, and therefore the plaintiff was entitled to it, and the appeal should be dismissed with costs, but the order should contain a declaration that defendants must account and pay over to plaintiff, out of the first moneys they collect from McKee, the sum of \$62, with interest from November 9th, 1901.

Murphy, Sale, & O'Connor, Windsor, solicitors for plaintiff.

Cleary & Sutherland, Windsor, solicitors for defendants.