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No. 18

APPELLATE DIVISION.

FIRST DIVISIONAL COURT.

JULY 10TH, 1919.

MASSON v. SHAW.

Vendor and Purchaser—Agreement for Sale of Land—Assignment of another Agreement—Exchange—Misrepresentation as to Value of Security—Fraud—Finding of Trial Judge—Right to Rescind—Inability to Make Restitution in Integrum—Estoppel—Judgment and Final Order of Foreclosure in Foreign Action—Bar to Present Action—Delay to Allow of Proceedings to Set aside Judgment and Order—Leave to Apply.

Appeal by the plaintiff from the judgment of LATCHFORD, J., 15 O.W.N. 438.

The appeal was heard by MEREDITH, C.J.O., MACLAREN and MAGEE, J.J.A., and MIDDLETON, J.

M. L. Gordon, for the appellant.

H. J. Scott, K.C., for the defendant, respondent.

MEREDITH, C.J.O., read a judgment in which he said that the action was brought to enforce the specific performance of an agreement entered into between the parties on the 8th May, 1913, by which the appellant agreed with the respondent to assign to him the money due by one Easton to the appellant in respect of the purchase by Easton of lots 5 and 6, block A3, plan A 955, Saskatoon, and to pay to the respondent, as was alleged in the statement of claim, \$6,200, in consideration of a release of the money due by the appellant to the respondent under an agreement between one Blain and the appellant for the sale by the latter of lot 18, block 176, plan 3, Saskatoon, which had been assigned to the respondent, and a transfer to him of that lot.

After setting out the facts, the learned Chief Justice said that it was clear, upon the correspondence, that, subject to what should