

loss by making the purchase of the property he could recover no damages in an action of deceit based on false representations as to its value.

Peck v. Derry, 37 Ch.D. 541, 14 A.C. 337; *McConnell v. Wright* (1903), 1 Ch. 546, and *Steele v. Pritchard*, ante, infra, followed.

A. B. Hudson, for appellant. *Managhan and Blackwood*, for plaintiff.

Full Court.]

STEELE v. PRITCHARD.

[Nov. 25, 1907.]

Action of deceit—False representation—Damages.

Appeal from decision of Mathers, J., noted vol. 43, p. 258, allowed with costs on the following grounds:—

1. The evidence shewed that the plaintiffs Powell and Buell had not made any independent contract with the defendants for the purchase of the lands in question, but had only acquired an interest with the plaintiff Steele in the option which he had secured from the defendants before the making of the alleged false representation and that, if the defendants had made any false representations to the said Powell and Buell at the time they acquired such interest, the only remedy Powell and Buell could have would be an action of deceit based upon the alleged fraud of the defendants in inducing them to enter into the agreement with Steele to acquire an interest with him in the option, to which action Steele would not be a proper party. The deceit alleged in the pleadings and urged at the trial was in negotiating a contract between the three plaintiffs and the Land Company, the defendants acting as agents, and not in the negotiations of a contract between Steele and the other plaintiffs, in which the defendants were not required to take any part and in which, perhaps, they had no interest.

The issues and evidence in the two cases might be widely different and an amendment of the pleadings setting up such new case, asked for first at the hearing of the appeal, should not be allowed: but Powell and Buell might, if so advised, notwithstanding the dismissal of the present action, being a new action on the grounds now urged.

2. Per PHIPPS, J.A.:—After discovering the alleged fraud the plaintiffs might, if the facts they alleged were true, have sued the company for the return of their \$5,000 deposit or brought an action of deceit against the defendants, laying their