

Richards, J.]

[Dec. 12, 1904.]

HOPKINS v. FULLER.

Contract—Mutual mistake—Innocent misrepresentation—Rescission of contract—Damages—Costs when fraud charged.

Action for rescission of a contract for the sale of land and repayment of the instalments of purchase money already paid by the plaintiff, and for damages, based on the allegation that defendants had misrepresented the locality of the land, and had fraudulently shewn the plaintiff other and better land not belonging to defendants as being the land owned by him, and, which he was offering to sell. The trial judge found as facts that the misrepresentation alleged had actually been made, but had been innocently made in the belief that it was true.

Held, that, under the circumstances, plaintiff was entitled to have the contract rescinded and to repayment of all moneys paid by him under it with interest, but not to damages: *Adam v. Newbigging*, L.R. 13 A.C. 308, followed.

Held, also, that appearances having justified the charge of fraud, though this was not proved, costs should be allowed.

Daly, K.C., and *Crichton*, for plaintiff. *Aikins*, K.C., *Graham*, and *Robson*, for defendants.

Perdue, J.]

EMES v. EMES.

[Dec. 16, 1904.]

Alimony—Desertion—Offer to receive wife back—Bona fides.

Action for alimony. The trial Judge was satisfied upon the evidence that plaintiff had sufficiently proved desertion but defendant in his statement of defence had, for the first time since the separation, offered to "receive the plaintiff as his wife at any time when she is prepared to come and reside with him and accept the home he is able to provide for her and conduct herself as a wife reasonably should." Plaintiff, however, contended that this offer was not honestly made, but solely for the purpose of avoiding a judgment for alimony, and the trial Judge, having come to the conclusion upon the evidence that this contention was correct,

Held, following *Rae v. Rae*, 31 O.R. 321, that the offer, under the circumstances, was not sufficient to defeat the plaintiff's claim.

H. E. Henderson, for plaintiff. *G. R. Caldwell*, K.C., for defendant.