

The appeal was heard by BOYD, C., CLUTE and LATCHFORD, J.J.
W. A. Proudfoot, for the plaintiff.
R. McKay, for the defendant.

BOYD, C.:—Representations alleged to be made were, that on land was a barn 30 x 50, and that there was a stone stable underneath the whole of the barn, and that 100 acres were cleared, and that machinery could be run over any part of such 100 acres.

It is not clearly made out that the acres cleared were no more than 40 or 50, but the evidence of Arnott goes to shew that the plaintiff was told by the defendant that he would not vouch for the number of acres cleared, and that he had better go and see for himself. It is proved, however, that the statement as to the stone stable underneath the barn is not according to the fact, and this is a misstatement which must have been known to the defendant, who twice visited the place and went into the stable. He told the plaintiff that he had been on the place and could speak of it personally. There is no doubt that the defendant gave a typewritten statement to the plaintiff as to the acres cleared and as to the stone stable underneath, and that, at the time, he knew it was incorrect as to the stone stable. The onus is on the defendant to get rid of the effect of this misstatement, and I do not think it is accomplished by his saying that it was made pursuant to information derived from a former owner, Edwards. This is explicitly denied by the plaintiff, and it was known to the defendant, when the option was signed by the plaintiff, that he had not been to see the place—and the defendant had told the plaintiff that it was a difficult place to get to (in the winter.)

Upon the evidence, it seems to me manifest that the defendant had made representations as to the clearing and stable apart from the typewritten paper, and that these were of such a nature as to trouble him. At p. 59, the defendant says (at the time when Arnott was there): "I told the plaintiff plainly that any representations that had been made by myself or any person else in reference to the farm, that I did not know anything at all about them, or that I would not vouch for them, and I told him to go and see the property himself." According to Arnott, the plaintiff said he would take the defendant's word for it: pp. 52 and 48. According to the defendant, he made no statement to the plaintiff (i.e., on the 9th November): p. 74.

The matter is considerably confused, but I have no doubt that misstatements were made knowingly by the defendant and relied on by the plaintiff, which (at all events) as to the stone stable were not effectively displaced.