

was paid by the conveyance by the defendant to the plaintiff of certain lands in the Province of Saskatchewan, and the balance, according to the terms of the contract, was payable in annual sums of \$500, with interest, on the 7th of each month of April thereafter until fully paid.

When the contract was entered into, the defendant was residing in the Province of Saskatchewan, and had never seen the plaintiff's lands. During the negotiations which resulted in the contract, the plaintiff represented such lands as containing a large quantity of valuable timber.

Relying on these representations, the defendant entered into the contract, and conveyed to the plaintiff his Saskatchewan lands, receiving therefor credit for \$4,940 on the purchase-price. Until the 17th October, 1917, the defendant had never seen the land in Ontario. He was not a lumber expert, nor was he competent to form a correct estimate of the quantity of timber on the property. After this action was begun, he employed experts to make an examination, and they reported to him, and he then for the first time learned, that the representations of the plaintiff to him, on the faith of which he had purchased, was materially false.

The plaintiff played a fraudulent part in thus bringing about the contract, and the defendant, if he so elected, was entitled to be relieved therefrom.

During the argument on the appeal, leave was given to the defendant to appeal *munc pro tunc* and to set up a claim to set aside the contract, and the defendant had entered an appeal. Apparently this leave was misunderstood; for, in lieu of asking for rescission, the defendant in his notice of appeal asked for an increase in the amount of damages awarded to him at the trial. If he desired rescission, leave should be given to him to amend his notice of appeal by asking therefor. If he did so, the contract was to be set aside and mutual restitution made by the parties. During the argument it was stated that the plaintiff had sold the lands conveyed to him by the defendant, and, therefore, was not in a position to reconvey. If that was the case, and the defendant was willing to accept the contract-price, \$4,940, in lieu of the lands, the plaintiff should be ordered to pay to him that sum, and also the value of the chattel property delivered by the defendant to the plaintiff on account of the purchase-money. The timber cut by the defendant on the lands in question, not being ornamental but commercial timber, was the subject of compensation: Sugden, 14th ed., p. 644; *Marker v. Marker* (1851), 9 Ha. 1; *Webster v. Donald* (1865), 34 Beav. 451. In the adjustment of the account, the defendant should be chargeable with the market value of timber cut by him, less proper allowances for cutting and marketing.