

such a case a Court of Equity would not only take the accounts and reappportion the purchase money among the purchasers, but would also compel the vendor to repay to the victim of the fraud any sum paid by the latter in excess of his proper proportion of the real price, and enjoin the vendor or any other holder of notes representing such excess, not being a holder in due course, from collecting such notes, there being to that extent a failure of consideration.

*Held*, that, although the evidence before the Court standing by itself might seem to warrant such a view of the rights of the parties, and suggested strongly a fraud such as was relieved against in *Beck v. Kautarowicz*, 3 K. & J. 242, yet no case for relief on that ground had been set up in the statement of defence, or at the trial, and it would not be proper to give effect to it now, or to allow any amendment of the pleadings at this stage, as the plaintiff might have made her case stronger at the trial if she had been called upon to do so.

*Held*, also, that the evidence showed that the sale impeached was one of the shares en bloc to three parties for a single consideration, and, following *Morrison v. Earles*, S.O.R. 434, that the purchase could not be avoided by the defendant alone as to some of the shares, but, if rescinded at all, it must be so as between all of the purchasers on the one side and Doll on the other, and as to the whole subject of the sale, and for this no case has been made.

*Martin and Mathers*, for plaintiff.

*Howell*, Q.C., and *Fough*, Q.C., for defendant

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TAYLOR, C.J.]

[May 6.

REID v. GIBSON.

*Pleading — Practice — Injunction — Queen's Bench Act, s. 39, sub-sec. 11, Rule 300.*

The plaintiff moved on notice for an interlocutory injunction. He had not asked for an injunction in his statement of claim, the cause of action in respect of which the injunction was sought having arisen since the filing of the statement. Plaintiff's counsel contended that, under sub-sec. 11 of s. 39 of the Queen's Bench Act, 1895, the Court might order an injunction if it appeared to be just and convenient to do so, although such relief had not been asked for in the statement of claim.

*Held*, that the Queen's Bench Act, 1895, has made no change in the practice as to the necessity of the prayer for an injunction, and that under Rule 300 no injunction can be granted where none has been prayed for in the statement of claim.

Motion refused with costs.

*Clark*, for plaintiff.

*Mulock*, Q.C., for defendant.