

full amount was paid. This agreement was carried out by the defendants by the payment of \$25 on the 22nd January and \$25 on the 8th February. Before the next payment became due, the plaintiffs brought this action to recover the whole amount. The defendants also alleged that the goods covered by the contract of the 26th August, 1914, were to be delivered at a price now much below the present market-price. The Master said that he could not decide the disputed questions of fact involved in this case on an interlocutory motion. That was the function of the trial Judge. See judgment of Middleton, J., in *Canada Steamship Lines Limited v. Steel Co. of Canada Limited* (1915), 7 O.W.N. 832. Motion dismissed; costs to the defendants in the cause. Grayson Smith, for the plaintiffs. E. F. Singer, for the defendants.

PEPPIATT V. REEDER—LENNOX, J.—MARCH 13.

Fraud and Misrepresentation—Sale of Theatre—Findings of Fact of Trial Judge—Rescission of Contract of Sale and Return of Money Paid—Deduction of Rent—Account—Reference.—This action arose out of a sale by the defendant to the plaintiff of a moving picture theatre, in July, 1914, carried out by a bill of sale from the defendant to the plaintiff, a chattel mortgage for \$2,600 from the plaintiff to the defendant, and a lease from the defendant to the plaintiff. The plaintiff paid \$900 in cash and an additional \$1,000 in cash in consideration of the making of the lease or as security for the carrying out of its terms. The plaintiff alleged that the defendant was guilty of fraudulent misrepresentations in connection with the sale, and sought to have it rescinded. See the note of the decision of SUTHERLAND, J., upon an interlocutory motion: *Peppiatt v. Reeder* (1915), 7 O.W.N. 753. The action was tried by LENNOX, J., without a jury. He reserved judgment, and now delivered a written opinion in which he set forth his findings upon the evidence, which are all favourable to the plaintiff. Judgment declaring that the execution of the lease, bill of sale, and chattel mortgage, and the \$1,900 paid by the plaintiff were obtained by false and fraudulent representations made to the plaintiff by the defendant, and that the plaintiff is entitled to recover the \$900 he paid, with interest at 5 per cent., and the \$1,000, with interest at 3 per cent., from the 28th July, 1914, less any sum found to be owing for rent when the accounts are taken; setting aside the three instruments referred to and directing that they