

ROSE, J.

JANUARY 7TH, 1919.

HAIGHT & DICKSON LUMBER CO. LIMITED v.
McPHERSON.

Contract—Sale of Timber-rights—Evidence—Letters—Right of Vendor to Repudiate—Agent of Vendor Claiming as Purchaser—Failure to Disclose Intention to Purchase—Voidable Contract—Right to Rescind—Fraudulent Misrepresentation—Pleading—Defence—Amendment.

Action for damages for breach of an alleged contract on the part of the defendant to sell to the plaintiffs the defendant's rights to the timber (other than the white pine) on three berths, parts of the townships of Parkin, Hutton, and Creelman.

The action was tried without a jury at Sudbury.

G. E. Buchanan, for the plaintiffs.

M. B. Tudhope, for the defendant.

ROSE, J., in a written judgment, said, after stating the facts, that, in his opinion, the defendant had a clear right to repudiate any agreement that might be found in the words of the letters that passed between him and the plaintiffs.

The statement made by the plaintiffs in their letter of the 13th June, "We have lately run on to a party who, we think, we can interest in this proposition . . . and think we can induce him to pay \$6,000 cash which you asked," their request for an option, and their inquiry as to the payment of a commission, meant, and were evidently understood by the defendant to mean, that the plaintiffs, as agents for the defendant, would endeavour to make a sale to the purchaser whom they professed to have found. It was not true that they had found a purchaser. Apparently they were trying to arrange that the Canadian Copper Company should buy from them the cord-wood to be cut on the berths described, and should pay them for it as much as they would have to pay the defendant for the berths; but there was no intention on the part of the plaintiffs of turning over to the Canadian Copper Company everything that they bought from the defendant. This being so, the plaintiffs were in one of two positions, in neither of which could they successfully maintain this action. Either the correspondence made them the defendant's agents to effect a sale, in which case a purchase for themselves, without full disclosure to the defendant, was voidable at the defendant's option when he learned the facts—and he had not learned them at the time when he attempted to rescind the contract for other