The appeal was heard by MULOCK, C.J.Ex., RIDDELL, SUTHERLAND, and MASTEN, JJ.

M. H. Ludwig, K.C., for the appellant.

J. F. Grierson, for the plaintiff, respondent.

RIDDELL, J., reading the judgment of the Court, said that it was admitted that the liability, if any, of the appellant, must be based upon estoppel in pais, on the principle of Pickard v. Sears (1837), 6 A. & E. 469, and similar cases. To found a liability on such estoppel, two things must concur: (1) conduct inducing the plaintiff to believe in a non-existing state of facts; and (2) action by the plaintiff to his damage, induced by such conduct.

In the present case there was no evidence that the plaintiff had in fact acted upon the alleged belief that the defendant Prack was liable. It was not necessary to consider whether there was conduct by Prack which might induce the alleged belief: the fact already stated was sufficient to shew that the action should not succeed.

The appeal should be allowed with costs and the action as against the defendant Prack be dismissed with costs.

Appeal allowed.

SECOND DIVISIONAL COURT. NOVEMBER 19TH, 1920

PATON v. FILLION.

Vendor and Purchaser—Agreement for Sale of Land—Default Made by Purchaser in Payment of Price—Action for Declaration of Forfeiture of Instalments Paid and Property Transferred in Part Payment—Counterclaim—Misrepresentations Made by Vendor—Fraud—Relief from Contract—Rescission—Appeal—Cross-appeal—Amendment—Costs.

Appeal by the plaintiff and cross-appeal by the defendant from the judgment of ROSE, J., 17 O.W.N. 305.

The appeal was heard by MULOCK, C.J.Ex., RIDDELL, SUTHERLAND, and MASTEN, JJ.

T. R. J. Wray and Helen Beatrice Palen, for the plaintiff.

F. D. Kerr, for the defendant, respondent.

MULOCK, C.J.Ex., in a written judgment, said that the purchase-price of the land (situated in Ontario) was $8,940, of which $4,940