

LOGIE, J.

JULY 9TH, 1919.

## MAIZE v. McFARLANE.

*Partnership—Fraud and Misrepresentation Inducing Plaintiff to Enter into—Rescission of Partnership Agreement—Repayment of Sum Paid by Plaintiff—Lien on Assets of Partnership—Payments Made to Creditors of Partnership—Subrogation—Indemnity—Reference—Costs.*

Action for rescission of a partnership agreement and for repayment of moneys put in by the plaintiff, and for a declaration that the plaintiff was entitled to a lien, etc.

The action was tried without a jury at Goderich.

Charles Garrow, for the plaintiff.

William Proudfoot, K.C., and J. L. Killoran, for the defendant.

LOGIE, J., in a written judgment, said that he had no difficulty in arriving at the conclusion that the plaintiff was entitled to the relief claimed.

The defendant fraudulently represented to the plaintiff that the trade-debts of the business carried on by the defendant, which were to be assumed by the new partnership, amounted to \$2,782.60. In fact they exceeded this amount by nearly \$1,500.

This representation was of a fact, it was untrue, the untruth was material; the representation was relied on by the plaintiff and induced him to go into partnership with the defendant. The defendant knew that the representation was untrue. At the very date of the negotiations with the plaintiff to enter into partnership with him, the defendant was being threatened by creditors whose accounts he omitted from the list given to the plaintiff.

If there is a fraudulent misrepresentation as to any part of that which induces a party to enter into a contract, such party may repudiate the contract.

Moreover, the utmost good faith is due from every member of a partnership towards every other member, and his obligation to perfect fairness and good faith is not confined to persons who actually are partners but extends to persons negotiating for a partnership—and between whom no partnership as yet exists: Lindley on Partnership, 7th ed., p. 342; Glaeser v. Klemmer (1914), 7 O.W.N. 14.

The plaintiff repudiated the contract as soon as he became aware of the fraud practised on him.

There should be judgment for the plaintiff for: (1) rescission of the partnership agreement; (2) repayment by the defendant