

a municipality not then in existence, and the second part affects land which may be built on in the future. Why, then, is the "rate" to be confined to the then existing rate? Clearly the "land tax," which is a government tax, would extend to any future land tax whether on the improved or unimproved value, and my opinion, on the whole, is that the argument is unsustainable, and the appeal should be allowed.

H. C. OF A.
1915.
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SYDNEY
HARBOUR
TRUST COM-
MISSIONERS
v.
BALMAIN
COUNCIL.

Appeal allowed. Order appealed from discharged. Appeal to the Supreme Court allowed with costs. Respondents to pay costs of appeal to this Court.

Solicitor, for the appellants, *J. V. Tillett*, Crown Solicitor for New South Wales.
Solicitors, for the respondents, *Pigott & Stinson*.

B. L.

[HIGH COURT OF AUSTRALIA.]

JEROME APPELLANT;
DEFENDANT,

AND

WARD RESPONDENT.
PLAINTIFF,

ON APPEAL FROM THE SUPREME COURT OF
NEW SOUTH WALES.

Principal and Agent--Vendor and purchaser--Employment as agent to purchase land--Contract of sale by agent to principal--Signature of principal procured by fraud of agent--Rescission--Recovery of deposit--Evidence.

The plaintiff employed the defendant to purchase a certain property stating that he was willing to pay £18,000 for it, and he promised to pay the defendant a certain amount of commission on the purchase. The defendant

H. C. OF A.
1915.
—
SYDNEY,
Dec. 6.
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Griffith C.J.,
Isaacs and
Rich JJ.

H. C. OF A.
1915.

JEROME
v.
WARD.

purchased the property on his own account for £17,000, and by his solicitor presented to the plaintiff for his signature a contract purporting to be made between the defendant himself as vendor, and the plaintiff as purchaser, for the sum of £18,000. On inquiry why the contract was drawn up in that form, the solicitor said that the owners of the property insisted upon their contract of sale being formally made in that way. Relying on that statement, the plaintiff signed the contract, and paid a deposit to the defendant. In an action by the plaintiff to recover the amount of the deposit,

Held, that, whether the defendant was or was not acting as the agent of the plaintiff, there was evidence upon which a jury might properly find that the plaintiff was induced to sign the contract by the false representations of the defendant that he had given £18,000 for the property and that the reason why the document was drawn up in the form in which it was drawn up was a personal wish of the vendors; and that the plaintiff was entitled to rescind the contract and recover the deposit.

Decision of the Supreme Court of New South Wales affirmed.

APPEAL from the Supreme Court of New South Wales.

An action was brought in the Supreme Court by Hugh Joseph Ward against Armand Jerome to recover the sum of £2,500 as money received by the defendant to the use of the plaintiff. That sum had been paid by the plaintiff to the defendant as a deposit upon a contract for the purchase by the plaintiff of a certain piece of land. The defence was that the defendant was never indebted as alleged.

The land in question belonged to Sarah Greig and Rachel Stirling. By a contract in writing dated 11th August 1913 the defendant purported to purchase the land from the owners for £17,000. On or about 12th August a contract in writing was presented to the plaintiff by Arthur Deery, the solicitor for the defendant, for signature. By that contract, which was dated 12th August 1913, the defendant purported to sell and the plaintiff to buy the property for £18,000. The plaintiff signed this contract, and paid a deposit of £2,500 in accordance with its terms.

* On the hearing of the action the following questions were put to the jury, each of which they answered in the affirmative:—

1. Did the defendant agree with the plaintiff that he would endeavour to obtain for the plaintiff the property at the price of £18,000 or such lower price as the vendors might agree to accept?

2. Was the purchase of the property by the defendant made in pursuance of such agreement? H. C. OF A.
1915.

3. Was the contract of 12th August 1913 between the plaintiff and the defendant made in pursuance of such agreement? JEROME
v.
WARD.

4. Did the defendant fraudulently represent to the plaintiff that the cost of the property to him (the defendant) was £18,000?

5. Did the plaintiff believe and act on such representation when he signed the contract of 12th August?

6. Did the plaintiff himself or by Allen, his attorney, within a reasonable time after he knew the real facts repudiate the contract of 12th August?

7. Did Deery before the plaintiff signed the contract of 12th August represent either to the plaintiff or to Allen that the defendant had purchased for £18,000?

8. If question 7 is answered in the affirmative, had Deery authority from the defendant to make such representation?

The jury gave a verdict for the plaintiff for £2,500.

A motion by the defendant by way of appeal to set aside the verdict, and to enter a nonsuit or a verdict for the defendant, or for a new trial, was dismissed by the Full Court.

The defendant now appealed to the High Court from that decision.

The other material facts are stated in the judgment of Griffith C.J. hereunder.

Clive Teece (*Broomfield* with him), for the appellant. On the evidence the relation between the parties was that of vendor and purchaser, and not that of principal and agent. If there is an instrument of purchase it cannot be shown by outside circumstances that the relationship was that of principal and agent and not vendor and purchaser. The signing of the contract of purchase by the respondent is inconsistent with the relationship of principal and agent. There is no evidence that the respondent was induced to sign the contract by the fraud of the appellant.

Rolin K.C. and *Pitt*, for the respondent, were not called upon.

H. C. OF A.

1915.

JEROME

v.

WARD.

Griffith C.J.

GRIFFITH C.J. The facts in this case as found by the jury are very simple, and show a very clear case in favour of the plaintiff. Some other views of the law upon which the plaintiff might have succeeded were also put before the Supreme Court. The facts are these:—The plaintiff desired to buy a piece of land which the defendant also wished to buy. In order to avoid competition, the plaintiff offered to pay the defendant a large commission if he would act as his agent and buy the land for him. The defendant agreed to do so. The price specified by the plaintiff as that which he was willing to pay was £18,000, and the defendant gave him to understand that he could get the property for that sum. Subsequently the defendant's solicitor brought to the plaintiff for signature a contract purporting to be made between the defendant himself as vendor and the plaintiff as purchaser, for sale at the price of £18,000, and, on inquiry why it was drawn up in that form and not in the form of a contract of sale from the owners of the land directly to the plaintiff, the explanation given was that the owners insisted upon their contract being formally made in that way. I think this amounted to a distinct representation by the defendant that the price which he had agreed to pay to the vendors was £18,000, and that the only reason why the document was drawn up in the form in which it was drawn up was a personal wish of the vendors. Relying on these representations, the plaintiff signed that contract. The defendant had, in fact, only agreed to pay £17,000, and probably the document was drawn up in the way it was in order to enable the defendant to deceive the plaintiff. The plaintiff did not discover the truth for some two or three months. He gave the defendant an opportunity to act honestly, but, on the defendant's refusing to do so, the plaintiff rescinded the contract, as he was entitled to do unless he had in the meantime either affirmed the contract or allowed a reasonable time to elapse before disaffirming it. There is no evidence that I can discover that the plaintiff had allowed a reasonable time to elapse or that he had affirmed the contract. Under these circumstances the plaintiff was entitled to rescind the contract and to recover the deposit which he had paid upon it. That was what the action

was brought for, and in my opinion the plaintiff was clearly entitled to succeed in it.

H. C. OF A.
1915.

JEROME
v.
WARD.
—
Isaacs J.

ISAACS J. I quite agree with what the learned Chief Justice has said. I would add this: that, even disregarding the position of principal and agent in the first instance, or at all, and treating the contract of 12th August as a contract between vendor and purchaser, there still was evidence of a fraudulent misrepresentation by Deery, as the defendant's agent, that the amount to be paid under the prior contract into which the defendant, who for this purpose is to be assumed to have been a principal, had entered was £18,000. That representation was untrue, and fraudulently untrue, and gave the plaintiff a perfect right to disaffirm the contract unless he had lost that right by his own conduct. It was a question entirely for the jury whether the plaintiff disaffirmed the contract within a reasonable time having regard to all the circumstances. Portion of those circumstances consisted of a very generous attempt on his part to get the defendant to acknowledge the true relation between them as it existed in fact, which the defendant declined to do. Then the plaintiff, within a reasonable time as the jury found—and their finding cannot be displaced,—took the more drastic course which he was entitled to take, of obtaining justice, by disaffirming the contract.

RICH J. I agree.

Appeal dismissed with costs.

Solicitor, for the appellant, *W. Arnott.*

Solicitors, for the respondent, *Allen, Allen & Hemsley.*

B. L.