

that by diligence he might have discovered the fraud earlier: *Rawlins v. Wickham*, 3 DeG. & J. 304.

It is not disputed that there was a representation by the defendant through his agents, and again by the defendant when he signed the contract and sent it to the plaintiff to be signed, that this house number 56 was on a 90-foot lot and that the northern boundary was the northern boundary of 21 Condor avenue. That the depth was material is manifest; and that it was material to the plaintiff, and induced him to contract, is distinctly sworn. That the conditions of to-day were the conditions at the time of the contract, as to the actual subdivision of this property, is shewn by the plans, abstract, and mortgages referred to. That the representations were false is also beyond dispute; in fact, there is neither a denial nor an explanation.

Was the representation fraudulently, that is, knowingly or consciously, made, and without believing it to be true? I have no doubt of it. There is no explanation attempted; but, if there were, it would invite rigorous scrutiny. The man who cut and carved the original lots, and had already mortgaged the parcels separately, must be taken to know what he was doing when he instructed the agents and signed the agreement. It would be dangerous if men could easily explain away an act such as this.

What motive could he have? Gain, I suppose; but motive is immaterial: *Derry v. Peek*, 14 App. Cas. 337, at p. 365; *Foster v. Charles*, 7 Bing. 105. I do not know the motive, or rather the method, by which the defendant hoped to succeed. The house was not nearly finished, but the deed was ready the day after the contract was signed. Difficulties arose which kept the matter open for some time. In the end the defendant stood behind the convenient bulwark of "executed contract" and the two-edged sword of "more or less."

The rights of third parties have intervened, so that the plaintiff's relief will be in the way of damages; and on this branch of the case, I think, \$200 will be a fair award. The house has not been finished according to agreement. I will allow the plaintiff \$25 under this heading.

There will be judgment for the plaintiff for \$225, with costs according to the tariff of the Ontario Supreme Court.