

HON. MR. JUSTICE LENNOX.

MARCH 10TH, 1913.

WISHART v. BOND.

4 O. W. N. 931.

Vendor and Purchaser — Misrepresentation as to Depth of Lot — Acceptance of Deed—Estoppel—"More or Less"—View of Property—Boundaries Pointed Out by Agent—Rights of Third Parties—Damages.

Action for the rescission of a certain contract for the purchase of a certain house and lot or for damages upon the ground of misrepresentation. Defendant's agent had taken plaintiff to the property, had described it as being 90 feet in depth, more or less, and pointed out certain boundaries which if adhered to would have made the depth of the property 91 feet 7 inches. The deed which plaintiff accepted inadvertently gave only a depth of 75 feet, defendant having conveyed away the balance of the depth of the property subsequent to the making of the purchase agreement. When plaintiff subsequently discovered the shortage in depth, defendant refused to make any amends, relying upon the fact that the contract had been wholly executed and that the agreement of sale provided for a depth of 90 feet "more or less."

LENNOX, J., *held*, that defendant, through his agents had been guilty of material misrepresentation and that plaintiff had not lost his remedy by reason of the fact that he had not discovered the discrepancy until after the contract had been executed.

Wilson Lumber Co. v. Simpson, 22 O. L. R. 452; 23 O. L. R. 253, distinguished.

Judgment for plaintiff for \$225 with Supreme Court costs.

Action for rescission of a contract for the purchase of certain lands, or for damages upon the ground of misrepresentation and fraud.

A. F. Lobb, K.C., for plaintiff.

A. R. Clute, for defendant.

HON. MR. JUSTICE LENNOX:—In the evidence, a Mrs. Coutts is spoken of as being the owner of, or in occupation of lot 20 on the west side of Condor avenue, Toronto. On the 1st May, 1912, the defendant procured a conveyance of all the land between the southerly boundary of the Coutts property and Hunter street, that is to say, lots 21, 22, and 23, and the part north of Hunter street, of 24 west of Condor avenue—a block of land having a depth from south to north, that is, from Hunter street to the Coutts property, of 91 feet and 7 inches.

Before, and at the time of the negotiations and agreement, between the plaintiff and defendant, the boundary lines between the property of the defendant and the Coutts property, was fairly well defined upon the ground by the Coutts