

\$256.50. The option further provided that the owner was to "have a farm-crossing on each lot," but made no reference to drainage. It appeared that the lots were, at the time of the option, subject to a mortgage, and that the company's solicitors had partly arranged with the mortgagee to pay off a portion of the mortgage-moneys and obtain a release therefrom of the strip taken for the railway. The matters of title had been arranged, when the owner declined to execute a conveyance or accept the money; this motion was made in consequence.

In answer, Buckley filed an affidavit in which he set up an oral agreement with the company's engineers and officials as to the manner in which the crossings should be made, as to non-interference with his drainage, damage from overflow of water, the filling in of a natural watercourse, and damage from blasting.

The learned Judge was of opinion that the compensation stipulated for in the option was compensation within sec. 210; but that the matters in dispute, such as farm-crossings and drainage, were properly the subject of consideration and determination by the Railway Board.

Order made allowing the company to pay the money into Court as asked, without prejudice to any application which the owner might make to the Board or any action he might otherwise take with reference to the matters referred to in his affidavit and the alleged collateral agreement; the amount paid in to be subject to the terms of sec. 213 of the Act. No costs of the application.

PERSOFSKY V. FINKELSTEIN—SUTHERLAND, J.—OCT. 18.

Fraud and Misrepresentation—Sale of Business—Representations as to what was Included—Evidence—Costs.]—Action by Persofsky, Weiner, and Berman against Finkelstein and Dobinsky for a declaration that nothing was due upon a certain mortgage made by the plaintiffs and for damages for misrepresentations upon the sale of a moving picture theatre business and plant. The plaintiffs alleged that the defendants falsely represented to the plaintiffs Weiner and Berman that the defendants had paid for the leasehold interest and chattels \$1,970, and that they were the owners of the moving picture machines, goods and effects, consisting of lamps, fixtures, machinery, office furniture, and more than 400 theatre chairs, and that the net profits of the business had never been less than \$25 weekly, and that they also falsely and fraudulently represented to the plaintiff Persof-