

ant's counsel that the deceased was not competent to make a contract, and that without this the plaintiff could not recover. The law stated above as to the liability of a lunatic for necessaries was not presented to him.

The plaintiff was entitled to a reasonable allowance for the board and lodging of the deceased for the time she was at his house—\$5 a week.

The counterclaim should be dismissed.

The plaintiff should have costs throughout on the Supreme Court scale.

Appeal allowed.

FIRST DIVISIONAL COURT.

MARCH 19TH, 1920.

*MONTREUIL v. ONTARIO ASPHALT BLOCK CO.
LIMITED.

Improvements—Mistake of Title—Option to Purchase Land Taken from Life-tenant—Mistake as to Nature of Estate of Vendor—No Mistake as to Ownership—Improvements Made before and after Discovery of Mistake—Conveyancing and Law of Property Act, R.S.O. 1914 ch. 109, sec. 37—Want of Application to Case Made—Improvements Made before Mistake Discovered—Enhancement of Value of Land—Action by Remaindermen for Recovery of Possession—Compensation for Improvements—Equitable Decree—Parties—Addition of Plaintiffs in Representative Capacity without their Consent—Reversal of Order Made at Trial.

Appeal by the plaintiffs from the judgment of FALCONBRIDGE, C.J.K.B., 17 O.W.N. 32, 46 O.L.R. 136.

The appeal was heard by MEREDITH, C.J.O., MACLAREN, MAGEE, and HODGINS, J.J.A.

E. D. Armour, K.C., for the appellants.

J. H. Rodd, for the defendant company, respondent.

MEREDITH, C.J.O., read a judgment in which, after stating the facts, he said that the trial Judge founded his judgment on the case of *Young v. Denike* (1901), 2 O.L.R. 723, in which the decision was, as he thought, that a person having a contract of purchase was the owner of the land within the meaning of sec. 37 of the Conveyancing and Law of Property Act. But two conditions must exist to warrant the application of sec. 37: the person claiming the benefit of the section must have made lasting improve-