

material if the case were still executory; and if the contract had been completed on the 1st of November.

But no contract was then made, and those representations were not made part of the contract of the 9th of November, 1907.

In the contract of the 9th of November an opportunity was given the defendants to verify or falsify the allegations contained in the schedule, as it is called. He could then have gone, or have caused his agents to go, to the limits and have them examined for his own information.

When the agreement of the 9th of November, 1907, was prepared, the schedule was not made a part of it so as to become a warranty. It is referred to, but only in the sense that the defendants are given an opportunity to send their agents to examine the limits, and if the agents' report shows the quantity of timber mentioned in the schedule, then the defendants are to increase their purchase money by delivering over certain shares, otherwise not.

Thus the schedule is referred to merely by way of description, but it not being made a part of the contract, the statements contained in it do not amount to a warranty.

That being the case, the defendants cannot recover for breach of warranty, and failing on both grounds, the appeal must be dismissed with costs.

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SUPREME COURT OF ONTARIO.

SECOND APPELLATE DIVISION.

MARCH 9TH, 1914.

SMITH v. RANEY.

6 O. W. N. 55.

*Deed — Rectification of — Action for Possession — Surplusage — Possession — Agreement for Definite Quantity — Rectification Refused — Appeal.*

SUP. CT. ONT. (2nd App. Div.) *held*, that in order that a deed may be reformed by the Court there must be at least two things established; namely, an agreement differing from the document, well proved by such evidence as leaves no reasonable doubt as to the existence and terms of such agreement; and a mutual mistake of the parties by reason of which such agreement was not properly expressed by the deed.

*McNeill v. Haines*, 17 O. R. 479, followed.

Judgment of VANCE, Co.C.J., reversed.

Appeal by the plaintiffs from a judgment of His Honour Judge Vance, County Court of Simcoe, dismissing an action