

For these reasons, the action fails and must be dismissed with costs.

Mr. Masten asks that I should insert in the judgment some provision shewing that this judgment does not preclude the taking of any future proceedings if the building is found to constitute a nuisance, and that it should not interfere with any proceedings properly taken under the Police Commissioners' by-law, if it is applicable.

Manifestly this judgment can have no effect upon any such proceedings, but I do not think it proper to incumber the formal decree with any such provision.

MIDDLETON, J.

FEBRUARY 19TH, 1915.

*TORONTO GENERAL TRUSTS CORPORATION v.
GORDON MACKAY & CO. LIMITED.

Contract—Construction—Sale of Stock and Assets of Mercantile Company—Ascertainment of Amount Payable—Evidence—Acts and Conduct of Parties—New Agreement—Estoppel.

Action by the executors of Joseph Mickleborough, deceased, to recover the sum of \$10,000, in the circumstances mentioned below.

The action was tried without a jury at Toronto.

C. J. Holman, K.C., and J. D. Bissett, for the plaintiffs.

I. F. Hellmuth, K.C., and J. H. Fraser, for the defendants.

MIDDLETON, J.:— . . . Joseph Mickleborough, in his lifetime of the city of St. Thomas, owned or controlled all the stock of a mercantile company called "J. Mickleborough Limited." This company had apparently carried on a successful business in that city, and negotiations took place looking to the sale of the entire undertaking to the defendant company, wholesale merchants carrying on business in Toronto. These negotiations eventuated in the agreement in question, which bears date the 16th February, 1912. It was prepared after much negotiation and after many drafts had been prepared and revised by the solicitors for the contracting parties.

Mr. Hellmuth tendered evidence of the negotiations antecedent to the making of this contract, to aid in its interpretation.

*To be reported in the Ontario Law Reports.