

laid asleep by the promise. Though this be not in writing, nor mentioned in the written evidence of the contract, it may be relied upon to protect the purchaser when sued for the price: *Dobell v. Stevens*, 3 B. & C. 623. See also, per Burton, J.A., in *Ellis v. Abell*, 10 A.R. 226 at pp. 256, 257; and *Ontario Ladies College v. Kendry*, 10 O.L.R. 324. In brief, this contract was induced by material representations which were untrue to the knowledge of the plaintiff, and he has no locus standi to enforce a contract so obtained.

*Wemple v. Knopf*, 15 Minn. 440, cited by Mr. Raney, is distinguishable.

The judgment should be affirmed with costs.

TEETZEL, J.

JANUARY 23RD, 1911.

LABELLE v. BERNIER.

*Vendor and Purchaser—Contract for Sale of Land—Vendor Seeking Specific Performance—Dwelling-houses Infested with Cockroaches—Misrepresentation by Vendor—Reliance on by Purchaser—Means of Knowledge.*

Action for specific performance of an agreement for the sale by the plaintiff to the defendant of two houses in Ottawa. The defendant refused to complete the purchase, on the ground that, before signing the agreement and in reply to a specific inquiry by the defendant, the plaintiff represented that the houses were free from cockroaches, whereas, in fact, the houses were, to the knowledge of the plaintiff, infested with cockroaches.

J. B. T. Caron, for the plaintiff.

T. A. Beament, for the defendant.

TEETZEL, J.:—There is no doubt, upon the evidence, that the houses were both infested with cockroaches, which are a disagreeable pest not easily got rid of, and, in consequence, the houses were to some extent impaired in value.

Although the defendant had heard a rumour that the pest existed in the houses, he implicitly relied upon the plaintiff's assurances to the contrary. The plaintiff was fully aware of this fact; and, although I cannot say that he made the statement fraudulently, it does appear that he knew some years before that