

entitled to recover compensation in damages for the loss of his bargain. *Bain v. Fothergill*, L.R. 7, H.L. 158, and *Flureau v. Thornhill*, 2 Wm. Bl. 1078, referred to.

This exceptional rule is confined to cases of contract for the sale of lands, or an interest therein, and does not apply where the conveyance has been executed and the purchaser has entered under covenants, express or implied, for good title, or for quiet enjoyment. *Williams v. Burrell*, 1 C.B. 402, and *Lock v. Furze*, L.R. 1 C.P. 441, referred to.

The authorities are not agreed, but it is probable that this exceptional rule as to the measure of damages for the breach of a contract of sale of real estate does not apply where the vendor is able to make a good title and refuses or wilfully neglects to do so. *Engel v. Fitch*, L.R. 3 Q.B. 314, and *Robertson v. Dumaresq*, 2 Moore P.C.N.S. 84, 95, referred to.

An agreement to issue and to renew from year to year at the will of the lessee or licensee a lease or license to take exclusive possession of a tract of land and to cut the merchantable timber thereon is an agreement in respect to an interest in land, and not merely a sale of goods.

The claimant applied to the Government of Canada for license to cut timber on certain timber berths situated in the territory lately in dispute between that Government and the Government of Ontario. The application was granted on the condition that the applicant would pay certain ground rents and bonuses, and make surveys and build a mill. The claimant knew of the dispute, which was at the time open and public. He paid the rents and bonuses, made the surveys, and enlarged a mill he had previously built, which was accepted as equivalent to building a new one. The dispute was determined adversely to the Government of Canada, and consequently they could not carry out their promises.

Held, that the claimant was entitled to recover from them the moneys paid to them for ground rents and bonuses, but not the losses incurred in making the surveys, enlarging the mill, and other preparations for carrying on his business.

McCarthy, Q.C., and *A. Ferguson*, Q.C., for the suppliants.

Robinson, Q.C., and *Hogg*, Q.C., for the Crown.

SUPREME COURT OF JUDICATURE FOR ONTARIO.

COURT OF APPEAL.

IN RE PRYCE AND THE CITY OF TORONTO.

[Dec. 24.]

Municipal corporations—Ways—Damages—Benefit—Set-off—R.S.O., c. 184, s. 483.

In an arbitration under the Municipal Act, R.S.O., c. 184, s. 483, it is proper to allow, as against the amount of damages sustained by an owner of property by reason of the work in question, any enhancement in value to the