

HON. SIR JOHN BOYD, C.

FEBRUARY 27TH, 1914.

ASPDEN v. MOORE.

5 O. W. N. 971.

*Vendor and Purchaser—Action for Rescission — Misrepresentation
—Materiality—Representation by Words and Conduct—Rescission
of Contract—Damages—Occupation—Rent—Set-off—Costs.*

BOYD, C., ordered the rescission of a purchase of certain lands and premises and delivery up of the purchase price where the vendors by words and conduct had made misrepresentations to the plaintiff, on the strength of which he was induced to purchase.

Walters v. Morgan, 3 De G. F. & J. 724, referred to.

Action against two defendants, husband and wife, for rescission of a sale and conveyance of land by the defendants to the plaintiff, for a return of the portion of purchase-money paid, cancellation of the mortgage given for the balance and for damages by reason of false representations which induced the purchase.

F. D. Moore, K.C., for plaintiff.

T. Stewart, for defendants.

HON. SIR JOHN BOYD, C.:—Further consideration, after a perusal of the evidence, has confirmed the impression I had formed at the close of the trial. I then thought, as I now decide, that the plaintiff should obtain the relief sought.

The plaintiff is a large build of man, badly crippled with sciatica, yet able, aided by a stick, to move about slowly. He was advised by a doctor to move from Toronto and find a house where he would be near the water and where he might amuse himself in a canoe. His physical condition was such that he required in any such house the convenient use of a bathroom and water-closet. Not being able to go personally, he employed a land agent whom he knew to look out a suitable place, and this man, Probert, visited Lindsay for that purpose. He found two houses, Workman's and Moore's, that answered the local requirement; but, as the owner was temporarily absent from Moore's, he could not and did not inspect it. Having reported progress to the plaintiff, he returned next day with Mrs. Aspden, the wife of the plaintiff, in order to be satisfied as to suitability. They found Mrs. Moore, the owner of the house, at