

wood avenue, city of Toronto. The defendant produced to the plaintiff, before the agreement was signed, a surveyor's plan of the land. Both parties believed—but were mistaken—that the survey was correct; and, relying upon the plan, the defendant conveyed to the plaintiff by deed, in June, 1913, the west half of lot 82 on the north side of Glenwood avenue, as shewn on the plan. By a subsequent survey it plainly appeared that house No. 144 was so built as to encroach 4 feet on the next lot to the west of 82. The owner of the next lot offered to sell the plaintiff 4 feet, but the plaintiff preferred to remove his house, and did so, at an expense of \$125.

Upon the undisputed facts, the house and lot which the plaintiff bought was house and lot 144. Had the deed followed the agreement, the plaintiff would have been entitled to succeed in an action for reformation of the deed to make it comply with the agreement; but, as the transaction had been completed, the plaintiff was entitled to damages to compensate for the loss.

The deed was made in pursuance of the Short Forms of Conveyances Act, R.S.O. 1914 ch. 115, according to which the defendant covenanted that he had the right to convey the lands and premises thereby conveyed or intended so to be. The undisputed facts brought the case strictly within this covenant; and an action lay for breach of covenant for title.

The proper measure of damages was the difference between the value of the property as it purported to be conveyed and the value as the vendor had power to convey it: *Turner v. Moon*, [1901] 2 Ch. 825; *Great Western R. W. Co. v. Fisher*, [1905] 1 Ch. 316; *Eastwood v. Ashton*, [1915] A.C. 900.

The damages to which the plaintiff would be entitled under this rule would be much more than the cost of removing the house; but no evidence was given upon which the damages could be ascertained according to the rule; and the damages would be at least the cost of the removal.

The judgment below should be set aside, and judgment should be entered for the plaintiff for \$125 with costs of the action and of the appeal.

MULOCK, C.J. Ex., agreed with CLUTE, J.

RIDDELL, J., agreed in the result, for reasons stated in writing.

SUTHERLAND, J., agreed in the result.

Appeal allowed.