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No. 10

APPELLATE DIVISION.

NOVEMBER 17TH, 1913.

*ONTARIO ASPHALT BLOCK CO. v. MONTREUIL.

Vendor and Purchaser—Contract for Sale of Land—Mistake as to Vendor's Title—Life Estate in Lieu of Fee in Land—Improvements Made by Purchaser—Action for Specific Performance—Part Performance with Abatement in Price—Inquiry as to Title—Rights of Remaindermen—Vendor's Breach of Trust—Damages for Breach of Contract so far as not Performed.

Appeal by the defendant from the judgment of LENNOX, J., 4 O.W.N. 1474.

The appeal was heard by MEREDITH, C.J.O., MACLAREN, MAGEE, and HODGINS, J.J.A.

M. K. Cowan, K.C., and J. W. Pickup, for the defendant.

D. L. McCarthy, K.C., and J. H. Rodd, for the plaintiff company.

The judgment of the Court was delivered by MEREDITH, C.J.O. (after setting out the facts):—Upon the argument of the appeal, it was contended by counsel for the appellant that specific performance to the extent to which it has been adjudged ought not to have been awarded, because: (1) it was not in the contemplation of the parties, when the lease was made, that anything but the whole of the land should be sold, and that, as it is impossible for the appellant to convey anything but his life estate and such interest as he has in the water lot, the contract should have been held to have been entered into owing to a

*To be reported in the Ontario Law Reports.