

DECEMBER 29TH, 1914.

*RE LORNE PARK.

Deed—Construction—Building Scheme—Conveyances of Building Lots in Park—"Access to Streets, Avenues, Terraces, and Commons"—Meaning of "Commons"—Unenclosed Spaces on Plan—Absence of Designation—Recreation Grounds—Representations of Vendors—Quasi-dedication to Purchasers of Lots—Easement—Implied Covenant—Estoppel—Co-operative Undertaking—Limitation of Rights of Purchasers—Registry Act—Purchaser for Value without Notice—Evidence.

Appeal by Sidney Small, petitioner, from the judgment of MIDDLETON, J., 30 O.L.R. 289, 5 O.W.N. 626.

The appeal was heard by MULOCK, C.J.Ex., CLUTE, RIDDELL, and SUTHERLAND, J.J.

J. Bicknell, K.C., for the appellant.

M. H. Ludwig, K.C., for A. R. Clarke and others, claimants, respondents.

CLUTE, J. (after setting out the facts):—Upon the argument, the question whether or not the petitioner was a bona fide purchaser for value without notice arose, and, by consent of counsel, Sidney Small, the petitioner, was called as a witness and examined in Court. He stated that he was a purchaser at the sale by public auction, and signed the contract to purchase. He did not remember any discussion or anything being asked as to the quantity of property sold or in respect of the vacant spaces, but would not like to contradict the witness Jephcott; he did not remember. The whole thing was just at large.

Mr. Bicknell's argument in substance was that his client's rights were governed solely by the terms of the deed, and it was purely a question of construction; that the purchase of a lot only gave a right to the necessary street fronting the lot; that a grant of "commons" is unknown to the law and cannot be defined; it is not an easement or restrictive covenant and does not run with the land; rights of amusement are unknown to the law; and that his client, shewing a chain of title in fee simple to the blocks X, Y, and Z, was entitled to be declared to be the owner in fee simple of the same.

*To be reported in the Ontario Law Reports.