

The defendant could not escape liability by setting up that upon his own default the agreement became null and void.

There was no ground for the contention that the agreement as to the remaining lots was cancelled when it was arranged that 9 lots should be conveyed.

At the trial, before any evidence was taken, the defendant asked leave to amend by alleging that the plaintiffs were not in a position to convey or make a good title. Judgment was reserved upon this application. The learned Judge now said that the amendment should be allowed.

The defendant urged that, as the action was for specific performance, and the land was not in Ontario, the Supreme Court of Ontario had no jurisdiction. But the plaintiffs, by the institution of the action, had submitted themselves to the jurisdiction, and the defendant resided in Ontario. The Court had power to adjust and enforce the rights of all the parties to the action.

The principles to be followed and the method to be adopted to secure the relative rights of the parties is governed by such cases as: *Campbell v. Barrett* (1914), 32 O.L.R. 157, 169; *St. Denis v. Higgins* (1893), 24 O.R. 230; *Paisley v. Wills* (1890-01), 19 O.R. 303, 18 A.R. 210; *Montgomery v. Ruppensburg* (1900), 31 O.R. 433; *Leroux v. Brown* (1852), 12 C.B. 801; *In re Hoyle*, [1893] 1 Ch. 84. See also *Duder v. Amsterdamsch Trustees Kantoor*, [1902] 2 Ch. 132.

The plaintiffs were entitled to recover the amount sued for and the costs of the action down to and including the trial, if they could make a good title and convey. Reference as to title; costs of the reference and further directions reserved.

SUTHERLAND, J.

FEBRUARY 22ND, 1918.

DE LUCA v. HARE.

*Libel—Jury Trial—Verdict for Plaintiff “without Damages”—
Costs—Libel and Slander Act, R.S.O. 1914 ch. 71, sec. 5.*

Action for libel, tried with a jury at St. Catharines.

J. M. Godfrey and C. J. Bowman, for the plaintiff.

Irwin Hilliard, K.C., for the defendant Hare.

J. E. Hetherington, for the defendant Donovan.