

EMPIRE LIMESTONE CO. v. CARROLL—KELLY, J.—APRIL 25.

Lease—Mutual Mistake—Reformation—Assignments of Lease—Knowledge of Assignees of Mistake—Reformation of Assignments.]—Action to restrain the defendants from entering on any part of the south-west 25 acres of lot 5 in the 1st concession of the township of Humberstone and from laying railway tracks thereon or removing sand or gravel therefrom and from interfering with the plaintiffs' rights under a lease of the 25 acres made in 1899 by Annie Benner and her husband to the defendant Samuel S. Carroll for a term of fifteen years. In 1902, Carroll assigned the lease to E. L. Fuller. In 1905, Annie Benner and her husband conveyed the land to Carroll, making no reference to the lease. In 1911, the personal representative of E. L. Fuller, who had died in 1909, assigned the lease to the plaintiffs. The only covenants in the lease on the part of the lessee were to pay rent and not to carry on any business on the premises that might be deemed a nuisance. But the lease contained this provision: "And the said lessee shall have the privilege of removing the whole of the sand bank situate on the northern portion of said demised premises, during said term, and for no other purposes." At the south end of the 25 acres, there was also a sandhill, the land between the two hills being described by a witness as a "plateau." The defendants counterclaimed for reformation of the lease, and, by amendment asked for at the trial and allowed, for reformation of the assignments of the lease. The learned Judge said that there was no doubt that the parties to the lease intended it to be a lease of the northerly sandhill only, and that there was a mistake in the lease, common to both parties. He also found that Fuller and the plaintiffs took their assignments with the knowledge and on the understanding that the lease was so limited; and he was, therefore, of opinion that the lease and the assignments should be reformed. Judgment dismissing the action with costs, and allowing with costs the counterclaim of the defendants. If the parties fail to agree on the manner of reforming these documents, there is to be a reference to the Local Master at Welland to settle the method. W. M. German, K.C., for the plaintiffs. H. D. Gamble, K.C., for the defendants.