

defendant intended to sell. There is no evidence that defendant herself knew until after examination of both deed and mortgage that there was anything wrong. I find that defendant was not guilty of any fraudulent misrepresentation or concealment in regard to this description, or the quantity of land she was selling. Defendant did not, in fact, own any of the westerly part of lot 129. As to title, defendant supposed she owned, and represented to plaintiff that she did own, land which is in fact lot 127.

I find that there was no mutual mistake of fact.

I am not able to find upon the evidence that there was any such express agreement as to title, or as to the covenants to be inserted in the deed, as is alleged by plaintiff in his amended statement of claim.

Fraud having been negatived, and the deed of conveyance having been executed, plaintiff is not entitled to a rescission or to the relief asked for. This is unquestionably a hard case for plaintiff. He has agreed to pay what, upon the evidence, is a large price for property about which there is question as to title and possession. In accepting the conveyance without investigation of title, and in consenting, merely because a law suit was threatened, to hastily complete, without legal advice, a transaction upon which he rashly entered, he made a great mistake, but in deciding thus upon the evidence I am bound by cases. . . .

[Reference to *Cameron v. Cameron*, 14 O. R. 561; *Bell v. Macklin*, 15 S. C. R. 576; *Brownlee v. Campbell*, 5 App. Cas. 925; *McCall v. Farthorne*, 10 Gr. 324; *Redgrave v. Hurd*, 20 Ch. D. 1; *Follis v. Porter*, 11 Gr. 442; *Seddon v. North-Eastern Salt Co.*, [1905] 1 Ch. 326; *Thomas v. Crooks*, 11 App. Cas. 579.]

It was conceded by defendant that plaintiff might be entitled to succeed if in this case there was an entire failure of consideration, as there would be if no title in defendant to the property she assumed to sell. I cannot find that nothing passed by the conveyance to plaintiff. . . .

[Statement as to the title.]

In the view I take of the case, I am unable to give plaintiff any relief, and must dismiss the action, but, considering all the facts in regard to the sale and to the present complication, and that possession is at least claimed by Mrs. Fones, I do not allow costs.

Action dismissed without costs.