

The action was tried without a jury at Toronto.

W. N. Tilley, K.C., for the plaintiff.

G. H. Sedgewick, for the defendant.

CLUTE, J., read a judgment in which he stated his finding that the defendant made no objection to the title, on account of building restrictions or otherwise. Had the plaintiff seen fit, he was entitled to enforce specific performance of the agreement.

The defendant took the position that the plaintiff cancelled the contract and sold the property as his own, and contended that, while the plaintiff was entitled to retain the \$2,000 deposit, he was not entitled to claim under the contract, which was put an end to by his own rescission: *Halsbury's Laws of England*, vol. 25, pp. 397, 398, para. 680.

The learned Judge finds that the contract was not in fact rescinded; that the plaintiff did not sell the premises as his own; but that, having a lien upon the property for the unpaid purchase-money, he sold the property, realising what he could out of it; and, not having realised sufficient after applying the \$2,000 to reimburse him for the defendant's breach of contract in not carrying out the sale, he had a right to sue the defendant for that breach and to recover such damages as would arise naturally from the breach; this principle being applicable in the case of a sale of land where the contract is broken by the purchaser: *Halsbury's Laws of England*, vol. 25, p. 409, para. 703; *Laird v. Pim* (1841), 7 M. & W. 474. On a resale at a lower price, he could recover the difference in price and the expenses of the resale: *Noble v. Edwardes* (1877), 5 Ch. D. 378; *Dart on Vendors and Purchasers*, 6th ed., p. 185, 7th ed., p. 179; article in 43 Sol. J. 601, 602; *Davidson's Precedents*, 4th ed., pp. 568-570, 5th ed., p. 476.

There was also strong evidence of acquiescence on the part of the defendant.

The resale was sufficiently advertised and properly conducted, and a reasonable price was obtained.

As to damages, the plaintiff was entitled not only to \$700 paid to agents as commission on the resale, but to charges for interest, insurance, taxes, and solicitor's fees.

Judgment for the plaintiff for \$1,447.03 with costs.