

HASLIP V. HUGHES—LATCHFORD, J.—APRIL 3.

Fraud and Misrepresentation—Sale of House—False Representations as to Renewal of Ground-lease—Rescission—Damages.—Action by purchasers for rescission of a contract for the sale and purchase of a house, or for damages. The action was tried without a jury at a Toronto sittings. LATCHFORD, J., in a written judgment, said that, when the defendant instructed her agent to sell the house, she knew that her ground-lease, which was to expire in a little more than 3 months, would not be renewed. Her knowledge that in that event she would meet with a severe loss was the motive actuating her in endeavouring to make a sale, and not the suggestion by her that her husband was unable to attend to the heating of a second house. The plaintiffs were misled by the representation that the owner of the land was not in the city of Toronto, where the property was situated. The defendant was aware that, while the owner was at times away from the city, her daughter, who acted for her, was in the city all the time. When the plaintiffs inquired of the defendant's agent whether the lease, which they knew was about to expire, would be renewed, they were told by the agent, after he had consulted with the defendant, that there was absolutely no doubt the lease would be renewed. This statement was false. The defendant had no ground for believing it to be true. She made it to her agent with a knowledge that it was false, and the plaintiffs were induced to purchase the house—a lodging-house—by this false representation. The plaintiffs' remedy, however, was not rescission. They entered into possession of the property and accepted a lease of it from the defendant. They continued to occupy the property after they knew of the fraud and until the expiry of the term on the 31st January. They were entitled to damages. They paid \$1,200 to the defendant and her agent. They had the furniture, which was probably of far less value. They had also a profit of about \$180, being the difference between the rent paid and the amounts received from lodgers. Against this, however, should be set a reasonable sum for management. If the parties could agree upon such a sum and upon the value of the furniture, there might be no necessity for a reference. Otherwise there must be a reference. The plaintiffs' costs of the action and reference should be paid by the defendant. S. W. McKeown, for the plaintiffs. Peter White, K.C., and J. S. Duggan, for the defendant.