Hon. Mr. Justice Britton.   March 18th, 1913.

GARRETT et al. v. GIBBONS et al.

4 O. W. N. 981.

Fraud and Misrepresentation—Sale of Business—Representation as to Renewal of Lease—Findings of Jury—Counterclaim—Evidence.

Britton, J., gave plaintiff judgment for $515 damages upon the findings of a jury in an action for rescission of a contract for the purchase of a business and for damages and allowed defendant $111 upon his counterclaim.

Tried with a jury at Toronto.

Action for the rescission of a contract for the purchase by the plaintiffs from the defendant Gibbons, of a garage business formerly carried on by Gibbons, at Nos. 193 and 195 Roncesvalles avenue, Toronto, and damages. This purchase included chattels and good will, and also the tenant right of Gibbons to the premises which he held until 1st January, 1913, under a lease from Geo. H. Waller. The agreement in question, here, was in writing dated 23rd September, 1912, on which day $100 of the purchase price of $1,000 was paid, and the balance of $900 was paid on the 3rd or 5th October following. The agreement permitted the plaintiffs to " take possession of the building now occupied as a garage, on payment to the said Gibbons of one month's rent in advance. The present lease to be assumed on completion of sale, and payment of balance of $900. Such rent and monies received, on closing of same, to be adjusted from October 1st, 1912."

Jno. McGregor and R. H. Holmes, for the plaintiffs.

T. J. W. O'Connor and E. D. Wallace, for the defendants.

Hon. Mr. Justice Britton:—The plaintiffs went into possession, and very soon became dissatisfied, and on the 23rd October, this action was commenced. The plaintiffs allege that they were induced to purchase this garage business by the false and fraudulent representations of the defendants in regard to a building, and the right to remove the same, erected or claimed by the defendant Gibbons, and generally the plaintiffs allege that the defendants made false and fraudulent representations in regard to the prop-