

THE
ONTARIO WEEKLY REPORTER

VOL. 25.

TORONTO, APRIL 2, 1914.

No. 17.

SUPREME COURT OF ONTARIO.

SECOND APPELLATE DIVISION.

FEBRUARY 20TH, 1914.

VAUGHAN-RHYS v. CLARRY ET AL.

5 O. W. N. 929.

*Contract—Purchase of Timber Limits—Action for Purchase-Price—
Misrepresentations — Executed Contract—Absence of Fraud—
Breach of Warranty — Evidence—Res Judicata—Estoppel—
Findings of Trial Judge Confirmed.*

Action to recover for purchase price of timber limits; defendants counterclaimed for damages for deceit or for breach of warranty arising on the contract.

BOYD, C. gave plaintiff judgment on his claim and dismissed defendants' counterclaim with costs.

SUP. CT. ONT. (2nd App. Div.) affirmed above judgment holding that defendants had not established the charge of fraudulent misrepresentation.

Appeal by defendants from the judgment of HON. SIR JOHN BOYD, C., in favour of plaintiffs.

The action was for a money demand; and the defendants counterclaimed for damages for deceit or for breach of warranty arising upon a contract for the sale and purchase of timber limits. The judgment appealed from was in favour of the plaintiff on his claim and dismissed the counterclaim. The appeal was confined to the counterclaim.

J. Bicknell, K.C., and Nathan Phillips, for defendants (appellants).

Shirley Denison, K.C., contra.

HON. SIR WM. MULOCK, C.J. EX.:—In this action the defendants endeavour to succeed on one of two grounds: (1) deceit; (2) breach of warranty.

The first question to determine is, what was the contract between the parties?