

Be that as it may, I am of the opinion that the plaintiffs are not now in a position to maintain this action; and it must, therefore, be dismissed.

It is doubtful whether, in any aspect of the case, proper notices were given by the plaintiffs to rescind or put an end to the contract.

It will be seen from the above narrative of events that the plaintiffs, who bought for speculative purposes, have had a pretty hard time, and I make no order as to costs.

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BRITTON, J., IN CHAMBERS.

FEBRUARY 21ST, 1914.

TORONTO DEVELOPMENTS LIMITED v. KENNEDY.

*Pleading—Statement of Defence—Motion to Strike out Portions—Embarrassment—Title to Land—Land Titles Act—Res Judicata.*

Appeal by the defendant from an order of the Master in Chambers striking out paragraphs 2, 3, 4, and 5 of the statement of defence.

W. N. Tilley, for the defendant.

W. M. Douglas, K.C., for the plaintiffs.

BRITTON, J.:—The plaintiffs allege that they are the registered owners of lots 15 and 16 in registered division D for Toronto; and this action is brought against the defendant for trespass and for an injunction.

The defendant in the first paragraph of the statement of defence denies all the allegations in the statement of claim.

The objectionable paragraphs in the statement of defence are as follows:—

“2. If the plaintiffs, as alleged (which this defendant does not admit, but denies), are the registered owners of parcels 15 and 16 in register for section D in the office of Land Titles at Toronto, then this defendant says that they wrongfully and improperly obtained such title from one James H. Kennedy, the executor of the will of the late David Kennedy, who had no right, authority, or power to sell the lands in question in this action to the plaintiffs or to any other person, persons, or corporation.