

B.C.]

BORLAND v. COOTE.

[Nov. 21, 1904.

Agreement for sale of land—Falsa demonstratio—Position of vendor's signature—Specific performance.

On the conclusion of negotiations between C. and B. as to the sale of two city lots on the corner of Hastings Street and Westminster Avenue, in Vancouver, B.C., C. signed a document as follows:

"Vancouver, June 28th, 1902.—Received from James Borland the sum of ten dollars being a deposit on the purchase of Lots No. 9 and 10, Block No. 10, District Lot 196, purchase price twenty thousand dollars (\$20,000.00), the balance to be paid within . . . (10 July) . . . days, when I agree to give the said James Borland a deed in fee simple free from all incumbrances.

"JOS. COOTE,

"N.W. Cor. Hastings & Westr. Ave."

The lots on the corner of the streets mentioned were, in fact, lots 9 and 10 in block 9, and the trial Judge found that these were the lots intended to be sold, and also that the words below the signature formed part of the receipt. In an action for specific performance of the agreement for sale of the lands;

Held, affirming the judgment appealed from (10 B.C. Rep. 493), Killam, J., dissenting, that the inaccuracy of the description in the receipt was a mere discrepancy which should be disregarded and the decree made for specific performance in respect of the lots actually bargained for between the parties. Appeal dismissed with costs.

Joseph Martin, K.C., for appellant. *Davis*, K.C., for respondent.

Ont.]

[Dec. 14, 1904,

MITCHELL v. CANADA FOUNDRY CO.

Negligence—Employer and workman—Volenti non fit injuria—Finding of jury.

In an action claiming compensation for personal injuries caused by negligence, the defendant who invokes the doctrine of *volenti non fit injuria* must have a finding by the jury that the person injured voluntarily incurred the risk, unless it so plainly appears by the plaintiff's evidence as to justify the trial judge in withdrawing it from the jury and dismissing the action. Appeal dismissed with costs.

Du Vernet, for appellants. *Godfrey*, for respondents.