

# The Ontario Weekly Notes

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DIVISIONAL COURT.

DECEMBER 21ST, 1912.

RUFF v. McFEE.

*Landlord and Tenant—Lease—Action to Set Aside—Fraud and Misrepresentation—Collateral Agreement—Alleged Breach of—Tenant in Possession—Counterclaim—Costs.*

Appeal by the defendant from the judgment of the Judge of the County Court of the County of Lambton, in an action to set aside a lease, and for damages for breach of agreement, fraud, and misrepresentation.

The appeal was heard by FALCONBRIDGE, C.J.K.B., BRITTON and RIDDELL, JJ.

R. I. Towers, for the defendant.

F. McCarthy, for the plaintiff.

BRITTON, J.:—The plaintiff, in my opinion, is not entitled to recover in this action. So far as the facts are set out in the statement of claim, these were as well known to the plaintiff as to the defendant, and there is nothing that would give the plaintiff the right of action by reason of fraud. The plaintiff entered into possession of the premises and made such alterations in them as he thought would suit his purpose; he is not now in a position to give up these premises in the same condition as when the plaintiff received them, or in a condition, without the expenditure of money, to be available for the defendant; the plaintiff, therefore, is not entitled to a rescission of the lease. As to the alleged permit from the town, no doubt both parties acted in good faith, but the plaintiff knew as much about the by-law and terms under which a permit would be granted, as did the defendant, or, if the plaintiff did not know, he ought to have known, as he had equal means of knowing as the defendant. The defendant did nothing to prejudice the plaintiff. The plain-