

necessary," said Cotton, L.J., in *Ellis v. Rogers*, 29 Ch. D. at p. 571, "in order to bring a case within the exception, that there should be knowledge on the part of the purchaser that he cannot get a good title." See also *Armour*, 3rd ed., p. 7.

The evidence here falls far short of shewing that plaintiff knew, when the contract was signed, that it was impossible to get a good title to the strip in question. He is, therefore, entitled to require the defendant to shew a good title, which, in my opinion, the defendant has failed to do, so far as the strip in question is concerned, and it is a material part.

The appeal must be allowed with costs to be paid by the defendant.

A motion for judgment was also made by the defendant on the basis of the Master's report. With the report amended in accordance with the result of this appeal, there should be judgment for the plaintiff for the amount paid on account of purchase, together with costs of the trial and so much of the reference as pertained to the inquiry as to the title of the 20 ft. strip, and as to plaintiff's knowledge of the defect; with no costs to either party in respect to the remainder of the reference.

If the parties cannot agree upon the amount, I will hear them at the opening of Sandwich assizes on 23rd instant.

Moss, C.J.O.

MARCH 9TH, 1909.

C.A.—CHAMBERS.

FISHER v. INTERNATIONAL HARVESTER CO. OF CANADA.

Appeal to Court of Appeal — Leave to Appeal from Order of Divisional Court — Judicature Act, sec. 76 (g) — Difference of Opinion between Trial Judge and Divisional Court — Master and Servant — Injury to Servant — Workmen's Compensation Act — Agreement — Acceptance of Benefits — Bar to Action — Absence of Special Circumstances — Leave Refused.

Motion by defendants for leave to appeal to the Court of Appeal from the order of a Divisional Court, ante 381, reversing the judgment of RIDDELL, J., at the trial, 12 O. W.