

HON. MR. JUSTICE BRITTON.

NOVEMBER 29TH, 1913.

WALKER v. SKEY.

5 O. W. N. 366.

Vendor and Purchaser—Action for Specific Performance—Dispute as to Interpretation of Agreement—Claim of Purchaser for more Land than Vendor Willing to Give—Rescission by Vendor—Evidence—Correspondence—Right of Purchaser to Claim in Alternative—Return of Deposit—Damages—Costs.

BRITTON, J., *held*, that where purchasers refused to complete a purchase of certain lands, claiming that they were entitled to more land under the agreement of purchase than the vendors were willing or able to give, and as a result thereof, the vendors rescinded the agreement, the purchasers were not entitled to ask the Court for specific performance of the agreement according to their interpretation and in the alternative for specific performance according to the vendor's interpretation which in the opinion of the Court was the proper one.

Preston v. Luck, 27 Ch. D. 497, distinguished.

Action for the specific performance by the defendants of an agreement by them for the sale of land in Toronto, tried at Toronto without a jury.

A. C. MacMaster, for plaintiff.

E. E. A. DuVernet, K.C., for defendants.

HON. MR. JUSTICE BRITTON:—The plaintiff sets up an offer by him to purchase from the defendants for \$21,840, of the premises at the N. E. corner of Dufferin and Dundas streets, which premises have a frontage of about 182 ft. on Dundas street and of about 111 ft. on Dufferin street, and having a depth at its easterly limit of 140 ft. to a lane, running at right angles to Dufferin street, the south limit of which said lane was to form the northerly limit of the land in question. This offer, as the plaintiff alleges, was accepted by the defendants, but they now refuse to carry it out. The plaintiff paid \$1,000 deposit on account of the purchase. The plaintiff avers a readiness and willingness to pay the balance and to carry out all the terms of the contract.

The defendants set out the offer of the plaintiff in full, and the acceptance of it. In this offer the land is described as follows: "All and singular the premises situate on the north side of Dundas street, the parcel of land known as lot No. . . . , plan No. . . . , as registered in the registry office for the said city of Toronto, having a frontage of about 182 ft. by a depth of about 111 ft. more or less, starting