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HON. MR. JUSTICE KELLY.

JUNE 27TH, 1912.

BOLAND v. PHILP.

3 O. W. N. 1562.

Vendor and Purchaser — Contract for Sale of Land — Absence of Authority from Owner—Contract with Husband—Correspondence—Establishment of Contract.

KELLY, J., dismissed without costs action for specific performance of an alleged agreement to sell certain lands, holding that no authority had been given by defendants to their agents for the sale and that there was no sufficient note or memorandum in writing to satisfy the Statute of Frauds.

Plaintiff brought this action against William H Philp (or Philp) and Ida Emily Philip (or Philp), husband and wife, for specific performance of an alleged agreement for the sale of property on Murray street, in West Toronto, or in the alternative for damages for breach of the agreement.

Tried at Toronto without a jury on June 10th, 1912.

A. C. Macdonell, K.C., for the plaintiff.

G. H. Gray, for the defendants.

HON. MR. JUSTICE KELLY:—Defendant Ida Emily Philp is the owner of the property; the evidence shews that any negotiations or dealings with plaintiff in respect of it were carried on not by her, but by others without any instructions or authority from her. She is not, therefore, liable.

As to defendant William H. Philp, he had had dealings with an agent, Bergland, in relation to other property, and mention was made between them of the property now in question, although it is not clear that any instructions were given to Bergland to sell it.