

of the defendants was called to the fact that under the Devolution of Estates Act, R.S.O. 1914 ch. 119, sec. 25, the personal representative had only power to lease from year to year without the approval of the Supreme Court or a Judge thereof.

The defendant Stephens offered to repay the \$60 to the plaintiff, which offer the plaintiff declined to accept, and this defendant paid \$60 into Court.

Where the breach of a contract consists only of a defect in title, the purchaser cannot claim damages for the loss of the profit or benefit of the contract, even though the vendor knew of the defect, provided he acted bona fide. The lessee can recover only the actual expense to which he has been put: Halsbury's Laws of England, vol. 18, p. 380; Leake on Contracts, 6th ed., p. 788; Halsbury, vol. 10, p. 338.

If the lessors, at the time of entering into the contract, knew that they had no title and no means of acquiring one, and the circumstances are such as to make their contract fraudulent, the purchaser can recover damages in an action of deceit: Halsbury, vol. 25, p. 410; but that is not this case.

If, however, the rule as to the measure of damages did not intervene, it would be impossible to fix any substantial sum by way of damages. The plaintiff did not pretend to name any sum; his only suggestion on the matter of damages is that he could put more pool-tables into these premises, which were somewhat larger than those which he was occupying, and probably make more money thereby. There was no advantage in situation, the two premises being almost opposite each other in the same street.

In no point of view, therefore, could it be found that the plaintiff had suffered substantial damage. It cost him \$2 for his share of the charge for drawing the lease; and his damages should be assessed in all at the sum of \$5.

Judgment should therefore be entered for the plaintiff for \$5, with Division Court costs; the defendants to have the usual set-off of costs. The defendant Stephens should be allowed to take the \$60 out of Court, and apply it pro tanto on the balance of costs in his favour.