

MIDDLETON, J.

MARCH 23RD, 1917.

LINDSAY v. ALMAS.

*Contract—Exchange of Plaintiff's Land for Defendant's Goods—
Title to Land—Failure of Defendant to Perform Contract
—Damages—Value of Goods—Conveyance of Land—Vendor's
Lien.*

Action for specific performance of an agreement for an exchange of land for goods, or for damages for breach.

The action was tried without a jury at Brantford.

W. S. Brewster, K.C., for the plaintiff.

W. E. Kelly, K.C., for the defendant.

MIDDLETON, J., in a written judgment, made the following findings of fact:—

(1) Almas agreed to the exchange in reliance upon his own judgment as to the value of the farm.

(2) There was no representation as to value—\$7,000 was named as a value for exchange merely.

(3) The incumbrances were stated to be \$3,000. There was no statement that this was one mortgage.

(4) Objections to title were not made in due time or before the day fixed for closing. There was an agreement extending the time to the following Monday, and no objections in writing were then made.

(5) After action, objections were made, and the plaintiff agreed, without prejudice to his rights, to attempt to answer them.

(6) The objections were satisfactorily answered by the 16th February, within a reasonable time.

(7) A good title was then shewn.

(8) The defendant had, before making the agreement in question, agreed to exchange with one Robinson. He repudiated this agreement, and made a bill of sale to the plaintiff before the time for completion of the exchange, fearing an injunction would be applied for; but this bill of sale never became operative, and the defendant wrongfully refused to carry out the transaction.

(9) While the correspondence over the title was on foot, the defendant made a third agreement for exchange with one Elliott, which was far more advantageous than the bargain in question. This agreement was carried out on the 20th February. This was the real excuse for the repudiation of the bargain in question.