

LENNOX, J.

DECEMBER 18TH, 1920.

BELL v. GUILBEAULT.

Vendor and Purchaser—Agreement for Sale of Land—Formation of Contract—Correspondence—Sufficiency—Identity of Subject-matter—Store Property—Easement—Use of Lane—Specific Performance—Damages—Costs.

An action for specific performance of the defendant's agreement to sell to the plaintiff a store-property in the town of Mattawa.

The action was tried without a jury at North Bay.
J. H. McDonald, for the plaintiff.
J. H. McCurry, for the defendant.

LENNOX, J., in a written judgment, said that the land in question was lot 3 on the south side of the Mattawa and Pembroke road, which is the "Main street" of the town, less 30 feet along the easterly side of the lot. The easterly 5 feet of the land in question and the westerly 5 feet of the 30 feet referred to were used as a lane, having been set apart by previous owners as a means of ingress and egress to and from all parts of the adjoining properties and communicating with the "Main street." The defendant obtained this property from Angela Meindl and her husband, by an unregistered deed of the 11th October, 1919. The property consisted of the land and upon it a brick building used as a store with a public hall above it, a log dwelling house about 5 feet back from the rear of the store, and stables and outbuildings in the rear of the dwelling house. Access to the rear of the store, to the public hall, to the dwelling house, and to the outhouses, was obtained by means of this lane. There was a direct means of communication between the store and the dwelling through a rear door in the store building, without using the lane. Continuously since the store was built, the whole lot had been occupied and used as one property, and all the buildings except the hall had been used in connection with the business of the store. In March, 1920, the property was under lease to one Payette, who carried on business in the store, lived in the dwelling, and utilised the stables and outbuildings in connection with the delivery branch of his business. The property had always been used in this way. Subject to Payette's tenancy, the defendant was the owner, and he desired to sell out.

The plaintiff relied upon correspondence—letters and telegrams—to make out the contract.