

a sewer drain fully sufficient to permit of a bathroom being placed by the plaintiff in the said residence.

To the knowledge of the defendants, this was not the case, and the conduct and words of the owner, Mrs. Moore, led the agents of the plaintiff to believe what was contrary to the fact.

The falsity of the representation was found out by the plaintiff, and verified by testing soon after his occupation of the premises in August, and at the end of the same month they complained and offered the property back, but the defendants refused to hear any complaint, and threatened action upon the mortgage; \$900 had been paid when the deed was given and a mortgage given back for the balance, \$900.

No repairs are possible to reinstate the sewer and make it efficient to a proper outlet; for the town authorities have forbidden it. The only way of drainage is upon the public street near by, and this is contingent on the frontagers agreeing to call upon council for such relief, and would cost a good sum.

As to the law, I may adapt to this case the language of Campbell, C.; "Simple reticence does not amount to fraud, however it may be used by the moralists. But a single word or a nod or a wink, or a shake of the head, or a smile from the vendor intended to induce the purchaser to believe the existence of a non-existing fact, which might influence the price or induce the sale, would be sufficient ground for equity to refuse specific performance." *Walters v. Morgan*, 3 DeG. F. & J. 724.

If the word and the conduct be such as to involve an intention to deceive; if, in other words, the vendor so speaks and acts with knowledge of the real fact as to mislead the other in regard to any material circumstance, and if under that misapprehension of fact induced by that misrepresentation the contract is completed; in such case the Court will undo and set aside the whole transaction if the parties can be replaced in *statu quo*.

The question as to damages *quoad* the defendants (husband and wife) was not discussed, nor was evidence given thereon, though interesting questions may be involved therein: see *Traviss v. Hales*, 6 O. L. R. 574, and *Earle v. Kingscote*, [1900] 2 Ch. 585.