

Haywood v. Brunswick Permanent Building Society (1881), 8 Q.B.D. 403; London and South Western R.W. Co. v. Gomm (1882), 20 Ch.D. 562; Austerberry v. Corporation of Oldham (1885), 29 Ch.D. 750.

The obligation of the bond could not be distorted into a covenant as to the mode of user of the land at all.

The main objection to the title was based upon the bond; but the question of the effect of the grant of the right to use the bank of the stream and the pond for fishing purposes remained. The plaintiff asserted that it was thoroughly understood between the purchaser and himself that the fishing privileges existed and were excepted from the grant. This was in contradiction of the exact terms of the written document; and, while credit should be given to the plaintiff in this respect, he must be held bound by the terms of his written contract; and, therefore, there ought to be compensation in respect of this defect. The compensation should be fixed at \$200, and the plaintiff should have judgment for specific performance of the agreement with this abatement of the price.

The opinion expressed in reference to the effect of the bond would not, of course, bind Morgan and his associates; and there might be some hardship in forcing title upon the purchaser where he might in the result find himself saddled with a law-suit. See *Smith v. Colbourne*, [1914] 2 Ch. 533, 541.

The learned Judge was inclined to think that a somewhat different practice ought to prevail in this Province. By Rule 602 the Court is empowered to determine a question not only as between vendor and purchaser, but so as to bind a third person interested. If the defendant should desire to have Morgan and his associates bound, this judgment should be allowed to remain in abeyance until the defendant should serve notice under that Rule. Such a proceeding would give him an indubitable title, but he would be at the risk of costs.

As the plaintiff thus substantially succeeded, his costs of the action should be added to the price to be paid by the defendant; and the defendant should, within 10 days, make his election as to the giving of notice.