

The contract was made on the 2nd June, 1913. On the 12th November, 1914, the plaintiff signed a written repudiation of the contract, on the ground that he was an infant when he entered into it, and the action was also based upon that ground.

On the 30th September, 1915, the action was tried without a jury at Toronto.

J. J. Gray, for the plaintiff.

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

SUTHERLAND, J., in a written judgment, said that it appeared in evidence that the plaintiff was born on the 20th February, 1894, and came of age on the 20th February, 1915. During the hearing, the plaintiff filed a written statement, signed by him, whereby he adopted the proceedings of his next friend and assumed liability for the whole costs of the action.

The learned Judge said that it appeared from the evidence that no advantage was taken of the plaintiff on the contract of sale, either as to title or as to value. No fraud was perpetrated upon the plaintiff; he simply rued his bargain; and he could not recover the money paid by him on account of the contract: *Short v. Field* (1915), 32 O.L.R. 395, following *Wilson v. Kearse* (1800), *Peake Add. Cas.* 196. The alleged delay of the defendant was not such as to bring this case within the general law as indicated in *Sugden's Vendors and Purchasers*, 14th ed., p. 268; *Stickney v. Keeble*, [1915] A.C. 386.

The plaintiff may have judgment for specific performance on condition of his paying the defendant's costs of suit. If he is not prepared to accept this, the action will be dismissed with costs.

MIDDLETON, J.

OCTOBER 20TH, 1915.

WALLACE v. CITY OF WINDSOR.

Highway—Nonrepair—Injury to Pedestrian by Fall on Defective Sidewalk—Negligence—Lack of System—Failure to Give Notice to Municipality in Due Time—Municipal Act, R.S.O. 1914 ch. 192, sec. 460 (4), (5)—Reasonable Excuse—Absence of Prejudice.

Action for damages for injuries sustained by the plaintiff by a fall upon a sidewalk in the city of Windsor.