

should not see fit to amend, he should be at liberty to proceed as he might be advised to recover whatever sum he thought he should have.

The defendants should not have any costs, and should pay one-third of the plaintiffs' costs. There should be no costs of the counterclaim if the amendment is made.

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MASTEN, J.

MAY 27TH, 1920.

PETERSON v. BITZER.

*Contract—Agreement for Sale of Land (House Property)—Formation of Contract—Receipt—Cheque—Statute of Frauds—Description of Property by Street and Number—Fee Simple—Locality of House—Name of Town in which Situated—Purchase-price—Statement of—Terms of Payment—Mortgage for Part of Price—Implication as to Property on which Mortgage to be Given—Interest—Rate of—Silence of Documents—Inference—Subsequent Offer—Specific Performance.*

An action for specific performance of an alleged agreement between the plaintiff and defendant for the sale by the defendant and purchase by the plaintiff of a house property in Kitchener.

The action was tried without a jury at Kitchener.

V. H. Hattin, for the plaintiff.

Gideon Grant and A. L. Bitzer, for the defendant.

MASTEN, J., in a written judgment, found as a fact that the misrepresentation alleged by the defendant had not been established, and found also against the contention of the defendant that the parties were never *ad idem*.

The defendant intended to sell and the plaintiff intended to buy the premises No. 62 St. George Street in Kitchener, and the reason of the defendant's refusal to carry out the contract was correctly stated in her examination for discovery, viz., that her son was returning from the war, and the house would be needed for his occupation.

The remaining defence was the Statute of Frauds. On that question numerous points were raised on behalf of the defendant. The agreement relied upon by the plaintiff was as follows:—

“Kitchener, Ont., December 29th, 1919.

“Received from Clayton Peterson the sum of \$100 on deposit for house at No. 62 St. George Street—\$1,400 payable 1st May, 1920, and balance of \$2,300 on five year mortgage.

“Adeline Bitzer.”