

land defendant was offering for sale would be, was definite enough to amount to misrepresentation by defendant, even if innocent misrepresentation, specific performance would not be enforced. It was not urged at the trial that there was any intentional misrepresentation—that, of course, would be fraud.

Defendant is entitled to have the contract performed. See *Powell v. Smith*, L. R. 14 Eq. 1; *Morley v. Clavering*, 29 Beav. 84; *Needler v. Campbell*, 17 Gr. 592; *Williams v. Felder*, 7 Gr. 345; *Campbell v. Edwards*, 24 Gr. 152; *Garrand v. Mukil*, 30 Beav. 445; *May v. Platt*, [1900] 1 Ch. 616.

Defendant has removed some timber. He was not careful of plaintiff's rights after the agreement. Plaintiff is entitled to a deduction of \$40. . . . The down timber belonged to the land. Plaintiff is entitled to the benefit of that: *McNeil v. Haines*, 17 O. R. 479; *Honeywood v. Honeywood*, L. R. 18 Eq. 306.

There is nothing in the objection that defendant was not ready to convey, or that the money was not ready on plaintiff's behalf. . . .

Upon payment within one month of \$2,660 and interest at 5 per cent. from 15th December to date of payment by plaintiff to defendant, plaintiff is to be entitled to a conveyance of the south 100 acres of lot 24. . . .

As plaintiff fails upon the matters in controversy, he must pay costs. Plaintiffs action dismissed with costs. Judgment for defendant upon his . . . counterclaim for specific performance as above without costs. . . .

TEETZEL, J.

JUNE 12TH, 1907.

CHAMBERS.

ILLSLEY AND HORN v. TORONTO HOTEL CO.

Parties—Assignment of Claims—Action Brought in Name of Assignors — Want of Substantial Interest — Insolvency — Motion to Dismiss Action — Security for Costs — Authority of Solicitors — Correspondence—Costs.

Appeal by defendants from order of Master in Chambers, 9 O. W. R. 935, refusing motion by defendants for an order under Rule 616 dismissing the action, on the ground that