

HON. MR. JUSTICE LENNOX.

SEPTEMBER 15TH, 1913.

HUTCHINSON CO. v. MCGOWAN.

5 O. W. N. 27.

*Contract—Breach—Measure of Damage — Agreement to Purchase
Merchant's Retail Stock—Loss on Resale—Misrepresentation —
Right to Charge for Stocktaking and Advertising.*

LENNOX, J., *held*, that a defendant who failed to carry out his contract to purchase the stock-in-trade of plaintiff, a retail merchant, was liable for any deficiency upon a resale.

Action for damages for breach of contract to purchase the stock-in-trade of plaintiff, a merchant of Alliston.

Walter G. Fisher, for the plaintiff.

W. S. Morden, for the defendant.

HON. MR. JUSTICE LENNOX:—I think the defendant was bound to carry out the contract he entered into with the plaintiffs and should have paid them for the store stock in question about the 20th April, 1912. There was a good deal of puffing in the advertisements of a character which no sensible man would give heed to and there were also some untrue statements which if not fraudulent came very close to the border line of fraud. Some of them arose out of unfounded assumptions made by the agent and as to these there was no actual fraud in fact. But I am not called upon to consider the effect these statements might have under other circumstances as it is not pretended that they induced the defendant to enter into the contract. He is a business man and visited Alliston, saw the stock and the town and upon this and advice he got, judged for himself. He agreed to pay 60 cents on the dollar per invoice prices.

The value of the goods on hand when stock was taken per invoice was found to be \$7,615.94. The defendant, therefore, should have paid \$4,569.57. The plaintiffs were compelled to re-sell and this sale netted after deducting \$77 hereafter mentioned, the sum of \$2,588.57, leaving a balance to be paid of \$1,981. The deduction is made up as follows: Electric light and rent pending re-sale, \$58 and \$19 for interest on defendant's purchase-money to date of re-sale; total \$77.