

during their visit. The witnesses were excluded, and slight variations occur in what they recollected, but the general tenor may be well accepted. Probert, on their arrival, told Mrs. Moore that they wanted a house near the river, one with conveniences or in which conveniences could be put; he asked the defendant if a sewer was on the street; she said, "We have a private sewer," and he said that would answer the purpose. She said they had intended to put in a bathroom themselves, but they were going to move to Toronto. She said they had lots of water: three sources, pump water, rain cistern water, and water from the town. He pointed to a little place (closet), and she said, "That is where the sewer is." They then went upstairs, and Mrs. Moore said they were going to put the bathroom in a small room upstairs; then the agent pointed out what he said was a better place in the hall or landing where the pipes could be better connected with the sewer below, and the owner agreed with that suggestion. No examination of the sewer was made.

Mrs. Aspden gives some other details of what was said. Mrs. Moore shewed her where the convenience was—the private sewer—and said it was in good working order; that she had had the inspector in and he found everything all right. When the defendant said the sewer was in good working order, Probert said, "That would suit us, so that all the conveniences could be put in and no bother." She gives the same account of what was said upstairs about the best place to put the bathroom. She says that she would not have taken the house if it lacked such a sewer as was needed for her husband's requirements.

The transaction was closed by the husband when the report of the agent and his wife was made known to him; he was told, in brief, that he could have the conveniences in "right away," as there was a good private sewer in connection with the house.

I think, on this state of facts of what was said and what was suggested and what was left unsaid by the defendant, that the right conclusion is that the plaintiff was misled into the belief that the sewer was sufficient and in order so that a bathroom and closet could be put into the house for his use at a little further expenditure; there was wilful misrepresentation, and substantially the misrepresentation was as set forth in the 5th paragraph of the statement of claim, namely, that the dwelling-house was supplied with