

coupled with such oral evidence as may legally be given to identify the lands mentioned in the documents, do or do not make out a contract complying with sec. 5 of the Statute of Frauds, 3 & 4 Geo. V. ch. 27.

An answer in the affirmative will not dispose of the action, in which several defences—including fraud and misrepresentation by the plaintiff—are pleaded, in addition to the statute.

In *Bulkeley v. Hope* (1856), 8 DeG. M. & G. 36, Lord Justice Turner said: "I have considered this case, and have formed my opinion upon both the questions which are raised by it. I find, however, that the opinion which I have formed would not finally settle the questions between these parties, and in this state of circumstances I think that it would not be right for me to state the conclusions at which I have arrived, as an opinion now given upon questions which would not determine the rights of the parties might prejudice the discussion of those rights when properly before the Court for its determination."

Under sec. 32, sub-sec. (2), of the Judicature Act, R.S.O. 1914 ch. 56, my decision upon the question of law raised here could not be departed from by the trial Judge without my concurrence. This is an additional ground for allowing the action to proceed to trial untrammelled by a judgment upon the stated case.

I, therefore, do not see fit to make any order except that the costs of the application be in the discretion of the Judge who tries the action.

LENNOX, J.

FEBRUARY 5TH, 1915.

RE MAJOR HILL TAXICAB AND TRANSFER CO.
LIMITED AND CITY OF OTTAWA.

Company—Dominion Incorporation—Provincial License—Company Doing Business as Carriers in City—Board of Police Commissioners—Powers of—By-law—Imposition of License Fee—Municipal Act, secs. 354, 422—Motion to Quash By-law—Discretion—Costs.

Motion by the company to quash a by-law (or part thereof) of the Board of Commissioners of Police of the City of Ottawa.

The motion was heard in the Weekly Court at Ottawa.

W. C. McCarthy, for the company.

F. B. Proctor, for the city corporation.