



# Follow-Up on Famous Canadian Cases

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## Aunt Laura's Promise

*This new "whatever happened to . . . ?" feature profiles a famous Canadian case from the past that holds considerable public and human interest and explains what became of the parties and why it matters today*

### Generous Aunt and Helpful Nephew

Most contracts do *not* have to be in writing. One of the few contracts that must be in writing to be enforced in court is the sale of land. Yet, there is a chance that a sale of land that is unwritten can still be enforced if the parties' actions clearly and unambiguously point to the existence of the sale. The leading Canadian case on this equitable principle called part performance is *Degelman v. Guaranty Trust Co. of Canada and Constantineau*, [1954] S.C.R. 725.

This story is about a generous aunt, Laura Constantineau Brunet, who orally promised one of her Ottawa houses to her 20-year-old nephew George Constantineau in return for him agreeing to do some errands for her. George readily agreed to that bargain. So, while attending a technical school for 6 months in 1934-35, he lived with Aunt Laura at 550 Besserer Street in Ottawa, who owned both that house and the adjoining 548. They agreed that if George was good to her and if he did some chores for her, she would leave him the land with house next door, at 548.

What chores you ask? All we know is that George took Aunt Laura on trips to Montreal and on pleasure drives. He did odd jobs around the two houses and minor services for her personal needs. Most likely these were not burdensome, nor numerous, tasks. We do not know the living arrangements in greater detail, whether he was paying market rent or enjoying a sweet deal on room and board. Many nephews do errands for their aunts without getting a house in return.

After living with her and helping her out for the six months, he moved away. She died about 18 years later and, because she did not write her promise down and had made no will, George (now a police officer) re-emerged to sue for his house. This did not please his other family members.

### Part Performance Applied to this Case

The part performance doctrine permits enforcement of the promise if there was strong evidence in the way of actions that Aunt Laura and George had indeed made this deal. In most of the previous cases, someone such as a caregiver or hired hand, worked decades for little salary on the strength of a promise to receive the land on which she or he lived when the owner died.

For George to win, he would have to show that doing those errands clearly referred to the sale of the house next door. But young nephews do errands for aunts who they

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## A Photo Tour Down Besserer Street



Besserer Street is close to downtown in Ottawa. This residential street is in a quiet, leafy, and affluent neighbourhood. A lot and house here today would be very attractive, and expensive!



This is 548 Besserer Street in Ottawa, where George lived comfortably with Aunt Laura for 6 months in 1934-35 while he was attending a technical school at the age of 20. It was during this time, and from this house, that he performed several errands for her on the strength of her promise that she would give him the house next door.



This is the promised land. As one can see, the promised house at 548 Besserer Street, which was behind the hedge, has been demolished since the litigation occurred.



Now a picnic table remains as silent witness to the family battle over this property that started with errands 75 years ago and competing claims to it 18 years later, after Aunt Laura's death. The dispute remains the leading case on when conduct between the parties alone can enforce a land sale when there is no written record.



A locked gate now marks the entrance to 548 Besserer Street, a fitting symbol of this lawsuit. We do not know what kind of house stood on this land in 1954 because it has been demolished, much like the family relationship. However, if that house was anything like its neighbours, it would have been grand. The land alone, now awaiting redevelopment, is very valuable.

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are residing with for six months for several reasons. The errands could be payment for room and board while he was at school. George might be a kind nephew merely helping out his aunt. An objective bystander, knowing nothing of the promises, would not likely conclude that the only explanation for George helping Aunt Laura was that George was getting the other house. His errands were not clearly, nor of their own nature, referable to any dealing with 548 Besserer Street.

However, George did not leave the courthouse empty-handed. Although he could not plainly demonstrate he had a deal for the house, the Supreme Court of Canada thought he should be paid for the errands he performed at the aunt's request, an equitable remedy known as *quantum meruit*. The Supreme Court said Aunt Laura would have been unjustly enriched by George if she did not pay something for those errands. She would have had to pay for his services if she hired anyone else to perform them. Supreme Court fixed these few errands as worth an extraordinarily high \$500 per month (a total of \$3,000) in 1954. Aunt Laura's estate was also ordered to pay all of George's legal bills.

We were aware that some homes, even in Ottawa, sold for \$3000 in 1954. The question we had was whether the *quantum meruit* remedy actually conferred the house on George, even as the Court maintained that he was not entitled to the specific house. We set about to see what these properties were worth today and whether George really did, in effect, "get the house".

## What We Learn From This Case

It is likely that 548 Besserer Street was the site of a large expensive traditional brick house that was worth at least the \$3000 George was awarded by the Supreme Court of Canada. So, George fared well in his case, coming close to getting the monetary value for "his house". Even when he lost in the Supreme Court, he won big!

From this famous case we learn to put promises of land in writing, whether in a contract or a will. The equitable doctrine of part performance bears a very high standard of evidentiary proof for good reason. A promise will not be enforced unless the actions attending it clearly refer to the existence of the oral contract for sale of the land.

We also see that the courts sometimes are willing to use estate assets to benefit individuals who make a sympathetic claim, including tapping the estate to pay for the legal costs of mounting such a claim. One is advised to make several alternative claims when claiming against an estate. Loss on one ground does not mean that you cannot win almost as much on another ground.

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