

Second.—Because the mortgage provided for was not complied with, so it is shown by the record herein, and that if the Defendant had obtained that he had no interest in getting more land, he would have had the 127½ acres sold for, or had a legal right to this quantity of land, a survey might have been ordered by the Court, in the said cause, and Judgment given for the value of the land, as the value was ascertained by.

Third.—That all the money due by the estate had not been complied with. It is submitted that the defendant's obligation, under the will, was to complete the purchase, by the said late George Bradford, at the request and on behalf of the vendor. A formal decree and ordering of final bonds to issue, with interest, is submitted, as it is not even mentioned that the Defendant has done that, the legal estate remained not sold for, and none of the money has been paid in payment of it since the date of the Test.

Fourth.—That there was not a formal assignment of the said land to the being named in the Plaintiff, by reason of the ambiguity of the transfer to the Defendant from the father, *conveyance de feodo* (No. 5 of Record.)

It will be seen by the Deed that said George Bradford, senior, transferred the said land, with boundaries to the use of the plaintiff, the said defendant, and his heirs, and assigns, his particular share, to the Plaintiff he conveyed part of his land, in the 4th concession of Chatham, also "the sum of £100 to the said assignee, for and owing, to be paid, and payable by William Henderson, senior, of Chatham, Cornwall, England, by yearly payments of twenty pounds; the first of which will become due and payable on the month of January next (1850), and so to continue regularly afterwards, each year at the same term of January, until fully paid—the whole according to the Deed of Sale granted unto the said Henderson, by the said assignee, before Cowrook and Colledge, Notaries, bearing date of the day, month, and year therein mentioned."

This, it is submitted, is a sufficient identification of the debt transferred, more especially as the instalment of 1850 must have been paid—the present action being for the three instalments due on 1st January, 1851, 1852 and 1853. It appears also by the protest (No. 8 of Record), made, notably on behalf of the Plaintiff, and served on the Defendant, that the description of the land is given therein in full, and the *protes verbalis* of Sinclair is therein also set out by name and the contents of the land given at 127½ acres, and the Plaintiff is declared to be subrogated in all the rights of his father in respect of the lands and monies, nor is there anything to seriously create a doubt as to the identity of the debt transferred with that sued for.

Fifth.—Because Sinclair's *protes verbalis* contains the words "making in all one hundred and twenty-seven and three-fourths acres, sold by the late George Bradford, in his life-time of Chatham, to JAMES [instead of WILLIAM] Henderson, who is at present occupying the whole of it."

This, it is submitted, cannot invalidate the Deed of Sale, as it is shown clearly that the land surveyed was the land sold to William Henderson, the Defendant.

Sixth.—Because part of the lands sold fell within the 4th concession. This is not proved in any way, and was raised under the Plea which was abandoned.

There is nothing of Record to contradict the *protes verbaux* filed, nor has it ever been contended that the Defendant was not put in possession of the whole of the 127½ acres, the price of which is now sued for, nor that he is not now in possession thereof.

There is no evidence to show that any part of the land sold by Plaintiff's father to Defendant, is included in the purchase made by the Defendant and his son, from Hammond, under the Deed No. 18 of Record.

That Deed only purports to convey the East half of lots numbers 1 and 2, in Block A in the fourth concession, and not any land in the 5th concession.

It is submitted, therefore, that the Judgment of the Court below ought to be maintained.

A. & W. ROBERTSON,
Attys. for Respondent.

MONTREAL, 7th April, 1850.