

BRITTON, J.

JUNE 11TH, 1907.

TRIAL.

McINTYRE v. McLAUGHLIN.

Vendor and Purchaser—Contract for Sale of Land—Mistake as to Quantity—Reformation of Contract—Specific Performance — Absence of Misrepresentation — Removal of Timber by Vendor—Deduction from Purchase Money.

Action for reformation of a contract for the purchase by plaintiff for \$2,700 of part of lot 24 in the 14th concession of Enniskillen, and for specific performance of the contract as reformed. Counterclaim by defendant for specific performance of the contract as drawn up and executed.

A. Weir, K.C., and F. W. Wilson, Petrolia, for plaintiff.
J. Cowan, K.C., for defendant.

BRITTON, J.:—The contract is in writing and is for the south 100 acres of the lot. Plaintiff alleges that he bought the south half of the lot. The lot contains 210.3 acres.

At the close of the trial, and for reasons then given, I dismissed plaintiff's action for reformation of the agreement and for specific performance of the agreement as contended for.

Defendant counterclaims and asks to have the written agreement specifically performed.

I find that plaintiff supposed he was buying the south half of the lot, and not the south 100 acres.

This is a case where there has been a misrepresentation, and there is no ambiguity in the terms of the contract. I cannot find upon the evidence what may fairly be considered legal grounds for the mistake so as to disentitle defendant to the performance by plaintiff of the contract as asked in the counterclaim.

Tamplin v. James, 15 Ch. D. 215, 217, cited by defendant, seems very much in point on the facts under consideration.

If an injustice would be done plaintiff, performance of the contract would not be enforced, although he would be liable in damages, and upon this record I would be bound to assess the damages.

If I could say that the conversation between one Henry Sutton and defendant, in plaintiff's hearing, as to the point where the end of the line defining the northern limit of the