

and the defendant, seeing this, called at his office with a view to negotiate for its purchase. After having inspected the property, and after having ascertained that the frontage between fences on Matchedash street was between 65 and 70 feet, the defendant signed an agreement to purchase the northerly sixty feet of the two lots in question. There is a good deal of difference in the accounts given as to what took place. The agreement was mislaid, and only found shortly before the trial; but the recollection of the defendant was that there was no agreement, and that he had paid \$10 on account, taking a written option. The option is not forthcoming; and, from the fact that when the transaction was closed the defendant did not claim credit for this supposed payment, and that Mr. Evans is very clear that no such payment was made, it is evident that the defendant is mistaken in his recollection.

The account given by Mr. Evans is clear and in accordance with the written evidence. He says that, upon the defendant coming to his office and inquiring as to the property, he told the defendant that the estate was ready to sell sixty feet off the north end of these two lots; that the defendant then tendered \$10 to bind the bargain, but that he said he would prefer to have a written agreement, and desired the defendant to inspect the property again before signing the document. The defendant did go and inspect the property, and came back and expressed himself as satisfied, when the contract for the sale of the sixty feet was executed.

Mrs. Smith, who had a half interest in the property, signed the document as vendor. Her brothers were communicated with, and they signed the deed prepared in pursuance of the contract, conveying sixty feet only. The defendant then took possession not only of the sixty feet of land, but of sixty-nine feet, which, it is found on survey, actually lay between the fences. The nine feet additional consisted of two strips of approximately equal width, the one to the north of the sixty feet being the one as to which possessory title had been acquired, and the one to the south represented an overrun in the depth of the lot. The defendant has now built upon the property, some portion of his verandah being upon the northern strip, no part of his building being upon or near the southern limit of the land. He has interrupted Scott's access to the rear of his lot.

The plaintiffs brought this action for ejectment, claiming that the conveyance operated only to convey sixty feet. They are ready to allow the defendant to take the sixty feet from the