

HIGH COURT DIVISION.

FALCONBRIDGE, C.J.K.B.

JANUARY 18TH, 1915.

FEE v. DORR.

Vendor and Purchaser—Sale and Conveyance of Land—Deficiency in Acreage—Compensation—Provision in Agreement for Sale—Misrepresentation not Amounting to Fraud.

Action by John J. Fee against Jennie A. Dorr and Thomas H. Bessey, executors of Adam Dorr, and Russell James Dorr, a beneficiary under the will of Adam Dorr, to recover compensation for deficiency in acreage of certain lands which the defendants agreed to sell to the plaintiff.

The land was described in the agreement as being in the township of Grantham and "containing by admeasurement between 66 and 67 acres of land be the same more or less and being all the property owned by the late Adam Dorr in the said township except those portions sold to Thomas H. Bessey."

The price was \$12,250.

The plaintiff alleged a deficiency of $15\frac{1}{2}$ acres in the parcel which was conveyed to him by the defendants.

The action was tried without a jury at St. Catharines.

E. D. Armour, K.C., and G. F. Peterson, for the plaintiff.

W. M. Douglas, K.C., and W. H. Clipsham, for the defendant Jennie A. Dorr.

A. W. Marquis, for the defendant Bessey.

FALCONBRIDGE, C.J.K.B.:—I find in favour of Mrs. Dorr's account of what took place during the verbal negotiations. The plaintiff admits on examination for discovery that he did not buy by the acre. I have no doubt that he had good reason to believe that the canal was going through the property. Mrs. Dorr honestly believed that there were 66 or 67 acres left after the deed to Bessey, and she said so to the plaintiff, but after he had made his lump offer for whatever they had.

The defendants are willing to return the money and take back the property, but the plaintiff wants to have his cake and eat it too. He is doing uncommonly well out of the expropriation, but he wants to recover, in addition, \$4,000 odd from the defendants.