

that the compensation mentioned in 10 Edw. VII. ch. 58, sec. 4, is only compensation arising out of the contract itself. I do not pass upon this objection, because I think the case is not one in which, in any view of the case, I can give relief to the purchasers.

The facts of the case are as follows. The said north half was patented on the 23rd September, 1836, to one Robert Galbraith; and in the patent the land is described thus: "All that parcel or tract of land situate in the township of Scarborough, in the county of York, in the Home district of our said Province, containing by admeasurement one hundred acres, be the same more or less, and being the north half of our Clergy Reserve, lot number thirty-one in the said township of Scarborough."

The said half lot has always been described in the same manner, and always remained in the family of the original patentee until the transactions now in consideration.

By writing bearing date the 28th June, 1912, F. D. Galbraith, a descendant of the original patentee, entered into an agreement for the sale to Paterson, the present vendor, of the said half lot, describing it in the same way, for the sum of \$18,000. Within a very few days the present agreement of purchase was made. The agreement between Galbraith and Paterson has never yet been consummated by the making and delivery of a deed. In other words, Paterson simply sold his option or agreement, at a profit of \$3,000. There is no allegation whatever of any want of good faith on the part of any of the persons interested.

Mr. Denison based an argument on the following sentence in the purchasers' offer: "You shall not be bound to produce any abstract of title, or any title deeds, or evidence of title *or survey*" (the italics are my own) "except such as you may have in your possession." The contention is, that the use of the words "or survey" contemplates the making of a survey before closing the matter; and that, therefore, this constitutes a contract made with a view to a possible abatement.

The words in question appear as part of a real estate broker's printed form, and I do not think that they are open to the construction which the purchaser seeks to give to them.

The cases on this subject are reviewed and discussed in *Wilson Lumber Co. v. Simpson* (1910), 22 O.L.R. 452; in the *Divisional Court* (1911), 23 O.L.R. 253.

As I said before, there is no fraud or suggestion of fraud on the part of the vendor. He simply turned over what he had acquired the right to purchase, using the ipsissima verba of his