

assign for the benefit of his creditors, and so his credit was damaged for which he claims \$60,000, and his character was damaged for which he claims \$60,000, and his business was damaged for which he claims \$30,000—\$150,000. If the statement of claim discloses no cause of action it cannot be attacked in this way, and Mr. Smith does not base his appeal upon this ground, but contends that an assignment having been made, the action ought to be stayed. The action is the plaintiff's action, and be it well or ill founded, there is no ground for saying he is a nominal plaintiff put forward by others. The first two claims (if they can be enforced) and probably the third, are claims for purely personal damages such as would not pass to the assignee—*White v. Elliott*, 30 U. C. R. 253; *Dunn v. Irwin*, 25 U. C. C. P. 111; *Smith v. Coml. Union*, 33 U. C. R. 529. *Hodgson v. Sidney*, L. R. 1 Ex. 313 is a case the parties may well study as indicating that the damages which the plaintiff here seeks to recover are too remote.

The present motion fails and must be dismissed with costs to the plaintiff in the cause. This will not prejudice any properly conceived motion.

HON. SIR G. FALCONBRIDGE, C.J.K.B. APRIL 25TH, 1913.

RE PATERSON AND CANADIAN EXPLOSIVES
LIMITED.

4 O. W. N. 1175.

Sale of Land—Deficiency—Abatement of Purchase Money—Vendor and Purchaser Application—Jurisdiction—Mention of Survey in Agreement—Printed Form — Absence of Mala Fides—Specific Parcel Intended.

FALCONBRIDGE, C.J.K.B., refused upon a vendor and purchaser application to permit the purchasers to retain a portion of the purchase money agreed to be paid for lands purchased as being 100 acres more or less, but in which there was actually only 90 45-100 acres, upon the ground that the parties did not contract as to acreage, but as to the specific parcel of land sold.

Wilson Lumber Co. v. Simpson, 22 O. L. R. 452, 23 O. L. R. 253, followed.

Application under the Vendors and Purchasers' Act for an order authorizing the purchasers to retain out of their purchase money the sum of \$2,005.50 for compensation by