evidence of her father, so bad as to render her helpless, and to require medical attendance. Of the children, two only are boys, one eight, the other six years old.

The defendant is a farmer, the proprietor of 150 acres of land in the township of Scarboro', of which about 110 are cleared and under cultivation, the whole farmed by himself. He has also horses, and farming stock and implements. He has also a cottage and small lot, worth, as he says, about $200, and which is worth, to rent, about $18 a-year. He appears to be in debt to the extent of about $400, or perhaps a little more. The annual value of his property appears to be somewhere about $450; the interest upon its value exceeds that amount. The master has allowed alimony for $150 a-year. This is complained of as too small, and I agree that it is so. It is suggested that the master has proceeded upon the principle of allowing for alimony a per centage upon the annual value of the husband's estate; it is said one-fifth, and it is conceded that what is allowed is about one-third. To proceed upon such a principle is, in my judgment, erroneous, and particularly so when the wife and family are in fact supported by the labour and skill of the husband; if any proportion were taken as the scale of allowance, the annual value of that labour and skill should be added to the annual value of the husband's property; in many cases it is the principal source of the income, and in many more it is the whole.

Regard must be had, as the decree expresses it, to the station in life and position of the parties, and also to the nature of the property of which the husband is possessed. A per centage upon the annual value of the husband's property will very rarely, in this country, form a just measure for the allowance of alimony; it has been discarded in numerous cases; among them is the case of *Severn* v. *Severn*, 7 U. C. Chan. R. 199, and is not followed in England, where the adoption of it would not do justice to the wife, or the wife and children. Two instances of this are the cases of *Whaldon* v. *Whaldon*, 5 L. T. N. S. 138, and *Wilcocks* v. *Wilcocks*, 30 L. J. Prob. 205. The court now proceeds upon the sounder principle of looking to what is just and reasonable under all the circumstances. The language of the decree furnishes a proper and safe guide for the discretion of the master.

The adoption of the rule I have observed upon operates with peculiar hardship in this case. The wife is forced, by the cruelty of her husband, to leave his house, and to seek shelter in that of her father, where, with seven children—herself sick and helpless—she is now living. For the support of herself and children the scant sum of $150 a-year is allowed, while to the husband, not burthened with the support of any children, double that sum is left, besides the house which, but for his misconduct, would have continued a shelter for all, and besides the value of his own skill and labour, as a farmer, to the benefit of which all are entitled.

It is a most unequal division, and, I apprehend, could only have been made by the master under the idea that he was bound to fix the amount of alimony by a scale measured by the annual value of the husband's property. I think the sum proposed to be allowed is very reasonable. The plaintiff's father says he thinks it would take £75 or £80 a-year to maintain herself and her family. I think the larger sum would be a moderate amount. It was suggested that I should fix the amount to be paid, instead of referring it back to the master. I therefore fix it at £80 a-year, to be paid from this date, and at the times mentioned in the master's report. Liberty will be reserved, as was done in *Severn* v. *Severn*, to both parties to apply to the court, as they may be advised, should the circumstances of the case alter, and the defendant must, in that case, pay the costs of the application.

What I see in this case leads me to remark that in cases of this nature the court looks to the possibility of the parties living again together. The husband, as I see by his affidavit, expresses an anxious wish that this should be the case. His cruel conduct is attributed to intemperance: he is described by two of his neighbours as kind, affectionate, and inoffensive in his disposition. A thorough reformation in his habits *may* lead to that reunion with his family which he professes so earnestly to desire.

McCALL v. FAITHORNE.

Specific performance—Compensation for deficiency in quantity of land sold.

A parcel of land having been surveyed and laid off into building lots, the same was afterwards offered for sale by public auction, when M. became the purchaser of two of such lots at an aggregate sum of £70. The plan, by which the property was sold, contained a memorandum on the margin that the same was drawn upon a scale of four chains to the inch. In reality the plan had been made upon a scale of three chains to the inch, which, however, was not discovered until after the conveyance had been executed, and the purchase money paid. Thereupon the purchaser M. filed a bill praying repayment of a proportionate amount of the purchase money, or a conveyance of a sufficient quantity of the adjoining land to make up the deficiency. The court, under the circumstances, considered that the plaintiff was not entitled to the relief asked, and dismissed his bill with costs; but

Semble, that if the conveyance had not been made, or the purchase money not fully paid, he would have been entitled to have been relieved in this court.

The bill in this case was filed by *David McCall* against *Robert F. Faithorne*, stating that in 1855 a parcel of land in the town of Sarnia, known as the Maxwell estate, and belonging to the defendant's wife, was surveyed and laid out in village lots by the defendant, and a plan of the property purporting to represent the premises in the proportion of four chains to an inch was made out and duly registered in the proper office. That the plaintiff and others attended an auction sale of the property, and bid for various lots as laid down on the plan. The plaintiff became the purchaser of two of the lots for the aggregate sum of £70. This sum had been since paid by the plaintiff, and a conveyance made to him; that upon measurement the plaintiff discovered that the plan was inaccurate, having been drawn on a scale of three instead of four chains to an inch, and the lots purchased therefore contained one-fourth less land than plaintiff was entitled to, but this had not been discovered until after the conveyance to the plaintiff had been executed and money paid as stated. The bill further alleged a demand made by the plaintiff to the defendant for repayment of one-fourth of the purchase money and his refusal to pay the same, and prayed that the defendant might be ordered to pay such sum, being £23 6s 8d., or make good the deficiency in the quantity of land by conveying a sufficient quantity of the land adjoining.

The answer set up that the plaintiff had already sued the defendant in the county court for damages caused by the alleged deficiency, in which suit a verdict had been given and judgment entered in favour of the defendant: that the words "scale four chains to the inch" were inserted by accident in the margin of the plan exhibited at the sale, but that the plaintiff was not thereby misled, as he otherwise knew the quantity of land contained in each lot. The defendant denied that there was any ground for equitable relief on the case stated by the bill, and alleged that it was at any rate within the jurisdiction of the county court.

Fitzgerald for the plaintiff.

Cruickmore for the defendant.

The authorities cited are referred to in the judgment of

SPRAGGE, V. C.—This bill is filed by a purchaser of real estate, who has paid his purchase money and received his conveyance, with usual covenants for title. The bill is for compensation, on on the ground of alleged deficiency in the quantity of land contracted to be sold; the sum claimed is £23 6s. 8d; and the bill prays that the defendant, the vendor, may be ordered to pay that sum, or, in the alternative, to convey more land to make up the deficiency.

The sale was by auction, and was of town lots according to a plan, noted upon the face of it to be upon a scale of four chains to an inch; in fact the lots were laid out and staked on the scale of three chains to an inch. The plaintiff was the purchaser of one lot on one street and another lot on another street, for the aggregate price of £70. It is not shewn that the defendant could make the lots of the size described in the plan—that he has now the adjoining land to do so; it is not alleged that he has, or that the contract was for anything but these particular lots. A money compensation, of which the amount claimed is the maximum, is all that can be had upon this bill.

I think the plaintiff cannot maintain a bill in equity for this purpose. The map which was distributed among the bidders at the sale is treated properly enough, I think, as a representation; and if the contract had not been executed—if the conveyance had not been made, or the purchase money not fully paid, I apprehend