

A block of three hundred and twenty acres may have some sloughs and stones upon it, and yet, as a tract of land, be fairly described as "good farm land;" but in this case the proportion of waste land is too great, and the impediments in the way of cultivation are too formidable, to justify this description.

There is evidence both ways, of course; and there are extremes; but even the evidence for the defence admits that there are very considerable acreages that cannot be cultivated. I think Robertson himself admits that there are ten acres unworkable on account of stones. The defendants' witness David Brown says there is too much water on the land to class it as even a second-class farm.

Whilst I think the evidence was fairly honest all round, the witnesses who impressed me, as having the requisite combination of honesty and knowledge, were Thompson and Kenney. They are both farmers. Thompson, who lives near the land, and has been in the habit of going over it for years—although he did not know the boundaries until recently—says it is not good farming land; he would not call it farming land at all, and he would not put any value on it as a farm; that stones and sloughs cover more than one-half of it; and that "as a farming proposition," the stones are too plentiful and too large to remove. Kenney says that one-fourth of it is covered with sloughs, that it is generally stony, and is not good farming land. He could not put a value on it for farming.

In my judgment the defendants were not in a position to convey what they agreed to convey; were not able to substantially comply with the conditions upon which this transaction was to be carried out, if carried out at all; and the plaintiff is not bound to accept a conveyance of the land in question or to comply with the provisions of exhibits 5 and 6.

There will be judgment for the plaintiff against the defendants for \$320 with interest from the 8th of June, 1911, and the costs of this action; and for delivery up to the plaintiff of the promissory note for \$952 mentioned in the pleadings herein; and declaring that the defendants have not complied with the terms and conditions of their contract of sale, and are not entitled to enforce it against the plaintiff. And directing that upon the expiry of the time allowed the defendants for appeal, or upon the dismissal of their appeal if taken, the officer of the Court at Owen Sound in whose