

of the Deed of Sale or transfer from his father and of Sinclair's *procès verbal* of survey, to be served upon the Defendant, with a demand of payment of the sum of £60, being the amount of the three instalments of £20 each, the last of which became due on the 1st January, 1859, and were unpaid, for which sum of £60 the Plaintiff prayed judgment.

To this Action the Defendant pleaded four Pleas:—

1. *A defense en fait.*

2. That by an *acte* between the Plaintiff's father and the Defendant, before the same Notaries, of the 27th December, 1847, it was declared that the tract of land as designated in the Deed of Bargain and Sale had not been correctly described, and that the true designation and description thereof should be as follows:—"A certain tract or parcel of land situate in the said Township of Chatham, and being parts of lots numbers 1 and 2 in the 5th range of the said Township of Chatham, butted and bounded as follows, to wit: bounded in front by Moses Davis, Esquire, in rear by a line at right angles, dividing the said tract from the land of John Earl on number one, joining on the East side to the line of the Seignior of Argenteuil, and on the West side by land belonging to the vendor and Charles Bradford, including all the land belonging to the vendor on the South side of the said North River, from the front up to the said right angle line, dividing him from John Earl as aforesaid, and including the said River up to the said right angle line only."

That the Deed of sale remained unaltered, in other respects, and that the agreement as to the survey of the land "was a condition precedent to be performed, or fulfilled by or on the part of the said George Bradford, senior, before he could legally compel the Defendant to pay the said purchase money or any part thereof; that neither the said George Bradford, Sr. nor the Plaintiff or his assigns, had ever yet performed or fulfilled the said condition precedent, and that neither of them has ever caused a good, sufficient, correct, and proper survey, and *procès verbal* of the said tract of land to be made, by duly sworn Land Surveyors, or by a duly sworn Land Surveyor, and that the quantity of land contained in the said tract is still unascertained, and the same is still unknown to the Defendant." Conclusion for dismissal of Action.

The third Plea sets up the description of the land as given in the *procès verbal* of Sinclair, and alleges that he, the Defendant, was never made or called upon to be, and was not a party to the survey made by Sinclair, or to that made by McDonald; that moreover these Surveyors did not conform to the statute 12 Vict. chap. 33, relating to surveys, and particularly to the 11th, 15th, 16th and 20th sections thereof, which sections are not set forth in the Plea, and that the surveys and *Procès Verbaux* were null. Conclusion to have the same declared to have been and to be invalid, ineffective and null and void, in so far as they relate to Defendant, and for dismissal of Plaintiff's action.

The fourth Plea states, that by the pretended survey by Sinclair the tract of land sold was found to contain 127½ acres, composed of two parcels, one of 52½ and the other of 75½ English acres, but "that at and before the time of purchasing the whole of the said tract of land from the said George Bradford senior, the said George Bradford senior represented the said whole tract of land as forming part of lots one and two in the 5th range of lots in the said Township of Chatham, and that he, the said George Bradford senior, was proprietor and owner thereof and entitled to sell the same," that in fact he the vendor was not such owner, but that the 75½ acres was the property of Moses Davis, and formed part of a tract of land sold by him by Deed of 11th March, 1847, before Courcelles and Colleague, N. P., to James Pollock and John Pollock, and which was sold by the said Pollocks to John Hammond by Deed of the 29th March, 1848, before DeLaronde and Colleague N. P., and that the same 75½ acres were sold by Hammond to the Defendant and his son James Henderson, by Deed of the 14th October, 1851, before DeLaronde and Colleague N. P.

That under the said Deed the Defendant and his son were proprietors of the East half of lots 1 and 2, in Block A, in the fourth range of Chatham, containing 333 acres including the 75½ acres above referred to, and that they had by themselves and their said *auteurs*, openly, peaceably and uninterrupted held and possessed the said 75½ acres, as proprietors, for more than 30 years, and that by reason thereof, "neither the said George Bradford senior, nor the Plaintiff, as his assign, ever was entitled to demand and have of and from the Defendant payment of any purchase money for the said 75½ acres, or any part thereof, under and by virtue of the said Deed of Bargain and Sale, from the said George Bradford, senior, to the said Defendant, mentioned and declared on in the Plaintiff's declaration."

Conclusion for the dismissal of Plaintiff's action.

The Plaintiff filed general answers to these Pleas, also a special answer to second Plea, admitting that the *acte* of the 27th December, 1847, was passed, and alleging that a proper survey was made, as set up in the Plaintiff's declaration, and that the number of superficial acres contained in the tract was duly ascertained, and was, and is, the quantity in Plaintiff's declaration mentioned.