

place on the occasion of the execution of the agreement—the only time when he saw the plaintiff—was that the frontage and depth of the property were then referred to, and that there was some discussion between plaintiff and defendant Flannigan about some part of the lots which they spoke of as reserved for street purposes. He says that there was no reference in this connection to any interest of the Canadian Pacific Railway Company.

Mrs. Stevenson, on the other hand, swears that from the first interview with the defendant Flannigan, who was admittedly acting on behalf of himself and his co-defendant Cameron, she made it clear to him that she intended to convey only so much of the lots numbered 9 and 10 as lay to the north of the strip of land in question, informing him that she could not convey the southerly strip because of an agreement between her husband and the Canadian Pacific railway Company, made many years ago, whereby that company was to acquire that strip in exchange for a portion of Edward street to which the company had acquired title under a by-law of the municipal corporation of Neebing, and a subsequent conveyance from the corporation executed to carry out such by-law. She does not profess to have explained fully to Flannigan the precise nature of the arrangement with the Canadian Pacific Railway Company, or the mode in which that company acquired their interest in the strip of land in question. But she is emphatic in her statement that on every occasion—and she says there were several—on which the matter was discussed before the agreement for sale was signed, she made it perfectly clear to Flannigan that she did not consider herself able to give title to this rear strip, and intended to sell and convey only the front portion of the lot, having an approximate depth of 125 feet. She says that on the occasion on which the agreement was executed Flannigan referred to the fact that the frontage of the lots was about 133 feet, and that she then told him that the depth would be about 125 feet, but that she was not sure of it and would have her son measure it. She further says that, in discussing the boundaries of the land to be sold, the fence, which appears to have been erected something over 20 years ago by the Canadian Pacific Railway Company, separating the strip in question from the land which she alleges she intended to sell to defendants, was referred to; that this fence stood in this position for some