

defendant never negotiated with the plaintiffs at all for the purchase of 160 acres of the west half of lot 31, but that, from the beginning, what was pointed out to the defendant by Vaurs, when they were together in the settled portion of Melville, before driving out to the property and while on the property, as the rising ground, and which forms part not of the west half, but of the east half of lot 31, was what he intended to deal with, and that alone.

Upon the whole evidence, I have no doubt, as I have already indicated, that Vaurs did point this out to the defendant and did later on shew it to him. I cannot hold, therefore, upon the evidence, that the defendant ever negotiated at all for the purchase of any part of the west half of lot 31. The plaintiffs insist that it was a part of that half of the lot that they were seeking to sell to him.

I find as a fact, then, that Vaurs knowingly and intentionally pointed out and shewed to the defendant the high land with a view to deceive him, and that the vendors were aware when they wrote the letter of the 4th August, 1910, that the defendant had been deceived as to the location of the land mentioned therein, and, if he replied to that letter, would do so in the belief that he was referring to land other than what was mentioned therein.

The plaintiffs seek specific performance of an alleged contract. The defendant has convinced me by his evidence that the allegations in paragraph 5 of his statement of defence, namely, "the plaintiffs misrepresented the location of the said land, and through such misrepresentation the defendant was led to believe and did believe that the land offered for sale was land more advantageously situated and closer to the business centre of the town of Melville than is the land described in the plaintiffs' statement of claim," are true. I think they constitute a good answer to the plaintiffs' action.

The defendant should not be forced to take a property from the plaintiffs which they knew he did not negotiate for or intend to buy: *Dart on Vendor and Purchaser*, 7th ed., p. 1050; *Leake on Contracts*, 5th ed., p. 212; *Smith v. Hughes*, L.R. 6 Q.B. 597; *Paget v. Marshall*, 28 Ch. D. 205.

The action will be dismissed with costs.