

## HIGH COURT DIVISION.

SUTHERLAND, J.

JANUARY 5TH, 1920.

## KENNING v. WALSH.

*Vendor and Purchaser—Agreements for Sale of Land—Description—Inclusion of Water-lot to which Vendors had no Title—Provision in Agreements as to Effect of not Making Objections to Title within Limited Time—Estoppel—Abatement in Price—Determination by Court—Right of Purchaser to Cease Paying Instalments of Purchase-money on Title not being Shewn—Recovery of Purchase-money Subject to Abatement—Interest—Costs—Reference.*

Action by the trustees of a syndicate to recover the balance of principal and interest due under two contracts entered into by the defendant for the purchase of portions of the land owned by the syndicate. The defendant counterclaimed for damages for the plaintiffs' failure to make improvements which they had agreed to make, as the defendant alleged, and for the failure to procure a patent for the land, and for rectification of the contracts.

The action and counterclaim were tried without a jury at Sandwich.

E. A. Cleary, for the plaintiffs.

A. St. George Ellis, for the defendant.

SUTHERLAND, J., in a written judgment, said that there was no express statement in either contract with respect to the water-lot in front of the land, nor to a Crown patent. In the agreement of the 19th August, 1914, had it not been for the words contained in the description, "and thence northerly to channel bank," the description would have been perfectly accurate. The description being an adequate, particular, and sufficient one of what was no doubt intended to pass, it was argued on behalf of the plaintiffs that the words quoted were an erroneous addition and should be discarded. Reference to *Cowen v. Truefitt Limited*, [1899] 2 Ch. 309; *Mellor v. Walmesley*, [1904] 2 Ch. 525; *Jarman on Wills*, 6th ed., vol. 2, pp. 1265, 1266. But here the addition to the description of the land which the plaintiffs owned and intended to convey, namely, lot A, was in the nature of something definitely described and intimately associated with that lot—probably affecting its value in the mind of a purchaser.

Under the contracts it was incumbent upon the purchaser to search the title to the lands he was purchasing within 30 days and