

ALLEN V. CROWE—MIDDLETON, J.—MAY 21.

*Vendor and Purchaser—Agreement for Sale of Land—Mistake as to Quantity of Land—Parties not ad Idem—Return of Purchase-money Paid or Specific Performance with Abatement of Price—Election of Vendor—Costs.*]—Action for specific performance of an agreement in writing whereby the defendant agreed to sell to the plaintiff "six acres more or less on the Lake Shore road, having a frontage on the Lake Shore road of 1,220 feet," for \$13,500. The land was a triangular parcel, with the apex of the triangle to the north. The chief element of value was the frontage on the Lake Shore road. The Toronto and York Radial Railway Company operated a trolley line along the road, the tracks being laid immediately in front of the land in question. The agreement was made on the 6th March, 1912. The defendant had acquired title to the southerly four acres on the 24th November, 1909, paying \$3,500 for it. She acquired title to the northerly two acres by conveyance of the 17th November, 1910, paying \$3,200. On the 16th November, 1910, the defendant sold and conveyed to the railway company a strip 25 feet wide along the Lake Shore frontage of the four acres for \$3,500, the same amount which the whole parcel of four acres had cost her. There were some difficulties about the title; and, before the defendant was in a position to convey, the plaintiff advanced to her nearly \$3,000, receiving some security from her. When the title was finally quieted, another sum of about \$7,000 was paid by the plaintiff to the defendant—\$10,000 in all thus passing to the defendant. The plaintiff's story was that the defendant told him that she had obtained a reconveyance of the 25-foot strip from the railway company, and that, relying upon this, he paid over the money. He afterwards discovered that this was a mistake. This was early in 1913; but nothing was done until August, 1914, when this action was begun. The plaintiff claimed specific performance, with an abatement of price, or the return of the \$10,000. The action was tried without a jury at Toronto. MIDDLETON, J., after reviewing the evidence in a written opinion, said that the parties never were ad idem as to the subject-matter of the bargain, and that the defendant must now be put to her election whether she would accept the plaintiff's demand for specific performance with an abatement, or whether she would return the money received by her, with interest at 5 per cent. If she agreed to the former course, the abatement should be of the amount paid by the rail-