The chief difficulty was in determining what property the defendant offered to sell. The lease was of the north-east quarter of lot 32, but the lessor "reserved" the house and a quarter of an acre around it. The option was to buy "said lot." If it was permissible to read "reserves" as meaning "excepts"—see Co. Litt. 143 (a); Doe d. Douglas v. Lock (1835), 2 A. & E. 705, 745, 746; Halsbury's Laws of England, vol. 18, pp. 427, 428—it should be so read in this case. And, according to that, the demised premises were the 50 acres less the quarter-acre in which the house stood. If the "said lot" meant "the demised premises," the offer to sell was an offer to sell the 50 acres less the quarter-acre.

If the words "said lot" were given their grammatical meaning, they would mean "lot 32." That could not be their real meaning, and the question was, whether the real meaning could be ascertained, or whether the words were too vague to be taken as the basis of a contract which could be specifically enforced. Could it be said either that the words certainly meant "the north-east quarter of lot 32" or "the demised premises?"

The learned Judge was at first inclined to think that resort might be had to the rule that, "as between the grantor and the grantee, if the words are of doubtful import, that construction shall be placed upon them which is most favourable to the grantee;" but that rule appeared not to be applicable. He referred to a number of authorities, and particularly to Barthel v. Scotten (1895), 24 Can. S.C.R. 367.

The case with which the Supreme Court of Canada had to deal was that of a grant, whereas what was in question here was an agreement to sell; but that distinction did not help the plaintiff; for the reason for applying the rule in the case of a grant seems to be at least as strong as the reason for applying it in a case in which the question is whether there is a contract definite enough to be specifically enforced.

The plaintiff here did not desire to have specific performance unless he was entitled to a conveyance of the whole 50 acres, and he could not have that conveyance unless he could shew a contract clearly entitling him to it. In the learned Judge's opinion, the plaintiff did not shew such a contract, and his action failed.

While the objection to which effect was given was covered by the general denial in para. 3 of the statement of defence, that there was an agreement for the sale of the lands described in the lease, it was not specifically pleaded; and, at the trial, counsel for the defendant, while not formally waiving it, said that, in his opinion, the words of the option would cover the whole 50 acres. There should be no order as to costs.

Action dismissed without costs.