FASKEN v. WEIR—MAGEE, J.—JUNE 4.

Vendor and Purchaser—Contract for Sale of Land—Delivery—Taking Effect—Postscript Included in Contract—Uncertainty as to Land Intended—"South Part"—Specific Performance.]—Action for specific performance of an agreement by the defendant to sell certain lands to the plaintiffs, David and John W. Fasken. The agreement was in writing, dated the 15th August, 1908, and signed by "J. W. Fasken" and "Alex. Weir." The property specified was "the south part of the late William Kidd estate . . . . cottage, barn, and lake included;" and the consideration was $3,500. After the signatures these words were written: "P.S. This property lies east of Sprague road." For the defendant it was alleged that the agreement was made subject to the condition that he had the right on or before the 17th August, 1908, to cancel it, and that he did so cancel it; that the words of the postscript were added by J. W. Fasken after the agreement was signed and without the defendant's knowledge or assent; that the agreement, either with or without these words, was too vague, and did not comply with the Statute of Frauds; that, if the description included the land to the north of the cottage and barn, the defendant never intended to sell the same, and there was no consensus; that, if the agreement was binding, it should be reformed to exclude that part; and that, even if binding, there should, on account of the defendant's misunderstanding, be no specific performance. The learned Judge said that the matters in controversy practically rested on the evidence of the plaintiff John W. Fasken and the defendant, and were questions of veracity between them. And, on the whole, he was of opinion, considering the burden of proof and all the circumstances, that the defendant had failed to prove that the agreement was not to take effect at its delivery, or that he had any right to cancel it; and therefore he found that it did take effect from its delivery, and that the postscript was added immediately after the document was signed and before it had passed to either, and was intended to be part of it as much as if written there before the signatures, and that the signatures applied to it also. As to the parcel intended to be covered, there was much doubt; no precise part of the land could be said to be covered by the document; and the plaintiffs had failed to prove conclusively what part was intended. Action dismissed without costs. L. F. Heyd, K.C., for the plaintiffs. E. E. A. DuVernet, K.C., and J. H. Hancock, for the defendant.