

reason of the alleged deficiency in the area of the lands described in the contract for sale between the parties.

In the contract the land was described as being "the north half of lot 31, con. 1. township of Scarboro, county York, together with all improvements thereon, being 100 acres more or less."

The area of the land, as shewn by actual survey, was 90 45/100 acres. The purchase money is \$21,000; and the purchasers claimed that only the sum of \$18,994.50 should be paid.

Shirley Denison, K.C., for the purchasers.

R. J. McLaughlin, K.C., for the vendors.

HON. SIR GLENHOLME FALCONBRIDGE, C.J.K.B.:—Mr. McLaughlin contended that I had no jurisdiction, on this application, to decide in effect that the purchasers are entitled to specific performance with abatement of purchase money and that the compensation mentioned in 10 Edw. VII., ch. 58, sec. 4, is only compensation arising out of the contract itself. I do not pass upon this objection, because I think the case is not one in which, in any view of the case, I can give relief to the purchasers.

The facts of the case are as follows: The said north half was patented on the 23rd of September, 1836, to one Robert Galbraith; and in the patent the land is described thus: "All that parcel or tract of land situate in the township of Scarboro in the county of York, in the Home District of our said Province containing by admeasurement one hundred acres, be the same more or less, and being the north half of our Clergy Reserve, lot number thirty-one in the said township of Scarboro."

The said half lot has always been described in the same manner, and always remained in the family of the original patentee until the transactions now in consideration.

By writing bearing date 28th June, 1912, F. D. Galbraith, a descendant of the original patentee, entered into an agreement for the sale to Paterson, the present vendor, of the said half lot, describing it in the same way, for the sum of \$18,000. Within very few days the present agreement of purchase was made. The agreement between Galbraith and Paterson has never yet been consummated by