

document relied upon is referred to and sufficiently identified in the contract. Had the Supreme Court not seen fit to place its judgment on this ground, I should have thought it apparent that the application might be identified by reference, and that this express provision found in clause (b) went far to indicate that this was intended to be an exception to the general rule; . . . but the Court has deliberately refrained from placing its decision upon this ground, and has preferred to adopt a construction of the clause which, I fear, has had the effect of nullifying the intention of the Legislature.

If I am right in this, it is admitted that the plaintiff's action fails, and it is not necessary to consider the other questions argued.

The action is dismissed without costs.

DIVISIONAL COURT.

MARCH 13TH, 1912.

McCABE v. McCULLOUGH.

*Deed — Reformation — Boundary — Survey — Evidence —  
Intention — Registry Act.*

Appeal by the defendant from the judgment of SNIDER, Co. C.J., in an action in the County Court of the County of Wentworth, brought to recover possession of a small triangular parcel of land.

The appeal was heard by FALCONBRIDGE, C.J.K.B., BRITTON and MIDDLETON, JJ.

S. F. Washington, K.C., for the defendant.

W. J. O'Reilly, K.C., for the plaintiff.

MIDDLETON, J.:—The Misses Doherty owned lot 65 and part of lot 64 on the south side of York street, Hamilton. Lot 65 was bounded on the east by Davenport street. These streets intersect at an obtuse angle, about five degrees greater than a right angle.

Two pairs of semi-detached houses are constructed upon the lands, fronting upon Davenport street. The boundary fence between the north pair and south pair of houses is erected approximately at right angles to Davenport street. It does not extend to the rear of the lot, but terminates at a barn upon the southerly portion of the lot, where there is a slight jog; and