1925
Dec. 4.

J. LOCKIE WILSON .....CLAIMANT;

AND

HIS MAJESTY THE KING.....DEFENDANT.

Conveyancing—Transfer—Description—Surplusage—Maxim Falsa demonstratio non nocet.

Claimant's son and one W. purchased a property from the Soldier Settlement Board, each getting half, which they farmed in partnership for a time. Later W. abandoned farming and placed his half of the property on the market for sale. The claimant then applied for the purchase of W's interest in the property, stating that without it his son would be handicapped in his farming operations. The Crown agreed to sell this to him and submitted an agreement of sale in which the property was described as "the east half of that part of lot 12, Range 13, Credit Indian Reserve, Township of Toronto, County of Peel, described in deed from C. J. Conover to His Majesty The King represented by the Soldier Settlement Board of Canada." Before signing the same the claimant requested the insertion of the words "being 8 and $\frac{7}{8}$ acres," which was done. Upon later making a survey it was found that there was only 7.4 acres in the parcel. In the meanwhile claimant had made payment to the Board but declined to accept a conveyance of the land unless a deduction in price were made. Hence this action.

Held, that as the description in the agreement as submitted was an adequate and sufficient description of what the Crown was selling, and the claimant was buying, the inaccurate statement of the number of acres contained in the parcel subjoined to the description should be treated as *falsa demonstratio* and rejected as surplusage.

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ACTION for a rebate on the price of a property purchased from the Soldier Settlement Board. The claimant alleging that he had not received the acreage mentioned in his deed.

Toronto, October 11, 1925.

Action now tried before the Honourable Mr. Justice Maclean.

James P. MacGregor for claimant.
George Wilkie, K.C. for defendant.

The facts are stated in the reasons for judgment.

MACLEAN, J. now this 4th December, 1925, delivered judgment.

This is a reference under the Exchequer Court Act, and the question is, did the claimant buy of the respondent under an agreement of sale, a certain parcel of land represented to him, and by him believed to contain $8\frac{7}{8}$ acres, or did he buy a parcel of land of immaterial acreage.

There are facts, antecedent to the agreement of sale and purchase between the parties, which I should perhaps briefly recite, as the claimant regards them of importance.

In 1919 a son of the claimant, Ruthven Wilson, and a friend named Welton, both returned men, desirous of engaging in farming in proximity to one another, negotiated for the purchase of a farm reputed to contain 20 acres, from one Conover, for a specified sum. They applied to the Soldier Settlement Board for assistance in the acquisition of this farm, under the provisions of the Soldier Settlement Act, 1919, and in the course of time the Board agreed to purchase, and did purchase the farm, in order to sell it to these two young men. Apparently the purchase and resale, to Wilson and Welton, was recommended to the board by the claimant, at the time. In the course of negotiations it transpired, that the farm contained but $17\frac{3}{4}$ acres instead of 20 acres. The original acreage of this parcel of land had been diminished, owing to a right of way having been granted to one Fletcher, on one side, and on another side, a right of way had been granted to the Ontario Hydro-Electric Commission. The board's solicitor ultimately passed the title at $17\frac{3}{4}$ acres, Welton obtaining the east half of the farm, and supposedly of $8\frac{7}{8}$ acres, and Wilson, Jr., the other half of the farm. The

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advance made by the board on account of the purchase, and on the account of Wilson and Welton, was $10,000, each being liable for $5,000 to the board. They proceeded to work the property in partnership for two seasons, but in 1920 Welton gave notice of his intention of dissolving the partnership. In the meanwhile, by mutual agreement, Welton's portion of the farm was devoted to the growing of vegetables and small fruit, while Wilson's was planted as a cherry orchard. Eventually Welton abandoned farming operations, and placed his half of the farm, or his equity therein, on the market for sale.

There, the claimant, the father of Wilson, Jr., intervened. He is Superintendent of Agriculture for the Government of Ontario. In March, 1921, he wrote the Soldier Settlement Board reciting the fact that Welton was offering for sale his half of the property in question; that his son would be handicapped in his farming operations if he did not have the Welton half of the farm for market gardening, that it had been understood with the board that if one of the partners discontinued farming on the property, the other should have the right of purchase, over others. The claimant offered to take over the Welton agreement, reimburse Welton for any actual investment he had made in the property, and to purchase that interest on behalf of his son, describing the same in that letter as the "east half of the property," upon terms which were ultimately agreed upon, and which are not of importance here. In the end, an agreement of sale and purchase was entered into in writing, between the respondent and the claimant.

When the written agreement was first submitted to the claimant, the lands were described as follows:—

East half of that part of lot 12, range 13, Credit Indian Reserve, township of Toronto, county of Peel, described in deed from C. J. Conover to His Majesty the King represented by the Soldier Settlement Board of Canada.

The claimant requested the insertion of the words

being eight and seven-eighths acres

immediately following the above description, and this was done.

It later came to the knowledge of the Board, through a survey made for the purpose of procuring an accurate description for the deed of this land to the claimant, that the Welton half of this parcel of land contained but 7·4

acres, instead of $8\frac{7}{8}$ acres as it was generally supposed to contain. The claimant in the meanwhile had made payment to the Board of the purchase price, but declined to accept a conveyance of the land, unless some deduction in the price was made by the Board, by reason of the recently discovered reduction in acreage. Hence these proceedings wherein the claimant claims, an abatement in the purchase price, the amount claimed being here immaterial.

It might be useful here to say, by way of explanation of the origin of the error in the acreage, that in the deed from Conover to the Board the acreage is mentioned as being $17\frac{3}{4}$ acres more or less, the concluding words of the description being

saving and excepting thereout a lane or right of way conveyed to one Fletcher by said grantor, and a certain right of way granted to the Hydro Electric Commission,

which words were omitted in the agreement with the claimant. In the release to the Crown by Welton, of any right in law or equity which he had in the property, the acreage is referred to as

eight and seven-eights acres be the same more or less.

The acreage of the rights of way is not anywhere stated, and probably had not been surveyed. In the agreement of sale with the claimant, the acreage was stated as $8\frac{7}{8}$ acres, again no consideration being given to the deduction or reservation necessary on account of the rights of way. Apparently at one stage, the Board's solicitors were of the opinion that the fee simple of the rights of way went with the property, the occupants having merely an easement.

The claimant's case is, that he dealt with the Board on the basis, that the whole parcel of land contained $17\frac{3}{4}$ acres; that he had advised the Board by letter on January 24, 1922, in response to an enquiry from it, that he had never surveyed the land; that in his first letter to the Board, March 21, 1922; he described the property as "containing by admeasurement $17\frac{3}{4}$ acres, or $8\frac{7}{8}$ acres allotted to each," that is Wilson Jr. and Welton, and on that basis he made the offer of purchase contained in that letter; that the agreement of sale states the acreage to be $8\frac{7}{8}$ acres; that the decreased acreage is a serious deduction in the quantity of land, in a small farm of high-priced acreage, and lessens materially the possible quantity or volume of production, with little or no material reduction in the production costs.

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The respondent's case is that the claimant knew he was buying the east half of the Conover farm; that what he offered to purchase was Welton's portion of the farm, and which in his offer of purchase he designated as *the east half of the property,* and that he did not purchase a specific acreage; that he knew the property and was familiar with it as a farm; that he bought the property for his son, and in pursuance of an alleged understanding between his son and Welton with the Board, that if either of them gave up farming the property, the other would have the first option of purchase, and that what he the claimant desired to purchase and did purchase, was the interest of Welton, whatever the acreage.

I have thought it proper thus to set forth, at perhaps unnecessary length, the circumstances and facts, antecedent and relating to the execution of the agreement in question. There is no question as to the good faith of the parties herein, which is admitted.

It appears to me that the description in the agreement,

> east half of that part of lot 12, range 13, Credit Indian Reserve, township of Toronto, county of Peel, described in deed from C. J. Conover to His Majesty the King, represented by the Soldiers' Settlement Board, being eight and seven-eighths acres

must be construed against the claimant's contention. This description, less the reference to the acreage, clearly indicates what the claimant was buying and the Crown was selling, and supply the leading words of description. It described the subject matter with reasonable certainty, and the further particulars as to acreage being inaccurate, must be rejected as surplusage. It is a mere *falsa demonstratio* and does not affect that which is already accurately described. There is the legal maxim, *falsa demonstratio non nocet,* which means that if there is an adequate and sufficient description, with convenient certainty as to what was to pass, a subsequent erroneous addition will not vitiate it. In such cases the description so far as it is false, applies to no subject at all. I would refer to *Morrell* v. *Fisher* (1), *Doe* v. *Hubbard* (2), *Llewellyn* v. *Earle of Jersey* (3), *Cowen v. Truefitt Ltd.* (4).

(1) [1849] 4 Ex. 591 Alderson, B. at p. 605.
(2) [1850] 15 Q.B.R. 227, at pp. 240 & 241.
(3) [1843] 11 M. & W. 183 Parke B., p. 189.
(4) [1899] 2 Ch. D. 309, Lindley M.R., at p. 312.

The action is for abatement in the purchase price and not for recision. The claimant made an offer for the property as generally described, which property he knew, and the boundaries of which he must have observed, and the rights of way as well. If he was buying $8\frac{7}{8}$ acres of land and this was definitely in his mind when making the offer of purchase, he had means fo raising distinctly the issue then, and clearly making it a condition absolute. The claimant, is a person I might say of more than ordinary intelligence and capacity, and he so impressed me. I cannot but conclude that what he wished to purchase, and did purchase, was the east half of the property, and that part which had been occupied by Welton, and that was what the Crown intended to sell him, whatever the exact acreage. The circumstances motivating the strongly expressed desire of the claimant, in his letter of March 21, to acquire this property, rather excludes the hypothesis that he wished to buy $8\frac{7}{8}$ acres of land, or that the property he wished to purchase was other than that designated by the general description, being the east half of the property, or the property occupied by Welton and adjoining his son's property. In reality, the claimant was but completing the Welton agreement to purchase the property, and he wished to put himself in the place of Welton, and all he could have had in mind or could have expected, was the purchase of whatever interest Welton had in the whole parcel of land, nothing more and nothing less.

I must therefore hold that the claimant's action fails. As agreed upon, there will be no costs to the successful party.

Judgment accordingly.